(24,926)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 643.

THE BUCKEYE POWDER COMPANY, PLAINTIFF IN ERROR,

vs.

E. I. DU PONT DE NEMOURS POWDER COMPANY, EASTERN DYNAMITE COMPANY, AND INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY,

against

E. I. DU PONT DE NEMOURS POWDER CO., *et al.*

Docket Entries.

1911, Sept. 18, Summons issued, returnable October 6, 1911.

1911, Sept. 27, Designation of Local Attorney filed.

1911, Oct. 6, Summons returned, served and filed.

1911, Oct. 6, Declaration filed.

1911, Oct. 26, Summons issued, returnable November 6, 1911.

1911, Oct. 30, Summons returned, served on Eastern Dynamite Co. and filed.

1911, Nov. 23, Rule to Show Cause why Declaration should not be stricken out, filed.

1911, Nov. 23, Rule to Show Cause why Service of Summons should not be set aside as to Laflin & Rand Powder Co., filed.

1911, Nov. 24, Special appearance of Frank S. Katzenbach, Jr., for Laflin & Rand Powder Co., filed.

1911, Dec. 2, Notice for taking testimony filed.

1911, Dec. 2, Acknowledgment of service of rule to show cause, filed.

1911, Dec. 11, Testimony of the Laflin & Rand Powder Co., on motion to set aside service of summons, filed.

1911, Dec. 11, Hearing on motion to set aside service of summons as to Laflin & Rand Powder Co., decision reserved.

1911, Dec. 11, Hearing on motion to strike out Declaration. Briefs to be submitted and day to be set for further argument.

1912, Mar. 28, Opinion on motion to strike out Declaration, filed.

1912, May 23, Order setting aside service on Laflin & Rand Powder Co., filed.

1912, May 23, Order allowing Amended Declaration, filed.

1912, May 23, Amended Declaration filed.

1912, June 29, Pleas of E. I. du Pont de Nemours Powder Co. filed.

1912, June 29, Pleas of Eastern Dynamite Co. filed.

1912, June 29, Pleas of International Smokeless Powder & Chemical Co., filed.

1912, Aug. 8, Replications to pleas filed (3).

1912, Dec. 21, Notice of Trial filed.

1913, Jan. 6, Notice, Motion for rule for discovery and inspection and Affidavit, filed.

1913, Jan. 6, Hearing on motion for rule for discovery and inspection. Decision reserved.

1913, Jan. 9, Demand for Bill of Particulars filed.

1913, Jan. 9, Acknowledgment of Service and Stipulation filed.

1913, Jan. 17, Depositions on part of plaintiff filed.

1913, Jan. 24, Depositions on part of plaintiff filed.

1913, Jan. 21, Continued for the Term.

1913, Feb. 4, Amended motion and affidavit for discovery and inspection, and Notice of Application filed.

1913, Feb. 11, Order to Show Cause on Motion for Discovery, etc., filed.

1913, Feb. 24, Hearing on Order to Show Cause. Order discharged.

1913, Feb. 24, Affidavit of Walter S. Gavan, filed.

1913, Feb. 24, Answer of Defendants to Petition filed.

1913, Mar. 10, Stipulation for appointment of Commissioner to take testimony, filed.

1913, Mar. 10, Order for appointment of Commissioner to take testimony, filed.

1913, Mar. 10, Notice of Trial filed.

1913, Apr. 3, Continued for the Term.

1913, May 9, Notice to Produce, etc., filed.

1913, May 16, Order to Show Cause why defendants should not make discovery, filed.

1913, June 2, Supplementary Notice to Produce, filed.

1913, June 2, Hearing on Order to Show Cause. etc. Decision reserved.

1913, Aug. 5, Notice of Trial filed.

1913, Aug. 6, Depositions on part of plaintiff and defendant taken before Special U. S. Commissioner (11).

1913, Aug. 18, Notice and Demand to Admit, filed.

1913, Sept. 9, Motion heard June 2, denied.

1913, Sept. 15, Depositions on behalf of Complainant filed.
1913, Sept. 15, Exhibit Books filed (2).
1913, Sept. 23, Subpoena ad Test filed.
1913, Sept. 24, Subpoena ad Test filed.
1913, Sept. 23, Trial.
1913, Sept. 24, Answer to demand for a Bill of Particulars filed.
1913, Sept. 24, Trial.
1913, Sept. 25, Trial.
1913, Sept. 26, Trial.
1913, Sept. 30, Trial.
1913, Oct. 1, Trial.
1913, Oct. 3, Trial.
1913, Oct. 7, Trial.
1913, Oct. 8, Trial.
1913, Oct. 10, Trial.
1913, Oct. 14, Trial.
1913, Oct. 15, Trial.
1913, Oct. 16, Trial.
1913, Oct. 17, Trial.
1913, Oct. 18, Subpoena ad Test, filed.
1913, Oct. 21, Trial.
1913, Oct. 22, Trial.
1913, Oct. 23, Trial.
1913, Oct. 24, Trial.
1913, Oct. 25, Subpoena ad Test, filed.
1913, Oct. 28, Trial.
1913, Oct. 29, Trial.
1913, Nov. 6, Trial.
1913, Nov. 7, Trial.
1913, Nov. 11, Trial.
1913, Nov. 12, Trial.
1913, Nov. 13, Trial.
1913, Nov. 14, Trial.
1913, Nov. 18, Trial.
1913, Nov. 19, Trial.

1913, Nov. 20, Trial.
1913, Nov. 22, Subpoena ad Test filed.
1913, Nov. 25, Trial.
1913, Nov. 26, Trial.
1913, Nov. 26, Subpoena ad Test filed.
1913, Dec. 2, Trial.
1913, Dec. 3, Trial.
1913, Dec. 4, Trial.
1913, Dec. 5, Trial.
1913, Dec. 9, Trial.
1913, Dec. 10, Trial.
1913, Dec. 11, Trial.
1913, Dec. 12, Trial.
1913, Dec. 16, Trial.
1913, Dec. 17, Trial.
1913, Dec. 18, Trial.
1913, Dec. 19, Trial.
1913, Dec. 30, Trial.
1914, Jan. 7, Trial.
1914, Jan. 8, Trial.
1914, Jan. 9, Trial.
1914, Jan. 13, Trial.
1914, Jan. 14, Trial.
1914, Jan. 15, Trial.
1914, Jan. 16, Trial.
1914, Jan. 21, Trial.
1914, Jan. 22, Trial.
1914, Jan. 23, Trial.
1914, Jan. 27, Trial.
1914, Jan. 28, Trial.
1914, Jan. 29, Trial.
1914, Jan. 30, Trial.
1914, Feb. 3, Trial.
1914, Feb. 4, Trial.
1914, Feb. 5, Trial.
1914, Feb. 6, Trial.
1914, Feb. 10, Trial.

1914, Feb. 11, Trial.
1914, Feb. 12, Trial.
1914, Feb. 13, Trial.
1914, Feb. 17, Trial.
1914, Feb. 18, Trial.
1914, Feb. 19, Trial.
1914, Feb. 24, Trial.
1914, Feb. 25, Trial. Verdict "No cause of Action as to all defendants."
1914, Mar. 13, Reasons for Rule to Show Cause for New Trial, filed.
1914, Mar. 13, Affidavits on Rule to Show Cause for New Trial, filed.
1914, Mar. 13, Rule to Show Cause why Verdict should not be set aside and New Trial granted, filed.
1914, Mar. 18, Stipulation extending time to take depositions on Rule to Show Cause, filed.
1914, Apr. 6, Order extending time for Bill of Exceptions, filed.
1914, Apr. 10, Deposition on Rule to Show Cause, filed.
1914, Apr. 10, Argument on return of Rule to Show Cause why new trial should not be granted. Motion denied. Rule discharged.
1914, Apr. 16, Order extending time for Bill of Exceptions, filed.
1914, Apr. 20, Rule dismissing Rule to Show Cause, and for Judgment final for defendant, filed.
1914, May 14, Order extending time for Bill of Exceptions, filed.
1914, Sept. 3, Order extending time for Bill of Exceptions, filed.

1914, Sept. 17, Notice of settlement of Bill of Exceptions, filed.

1914, Sept. 28, Order extending time for filing Bill of Exceptions, filed.

1914, Oct. 5, Notice of motion to extend time for hearing upon settlement of Bill of Exceptions, filed.

1914, Oct. 5, Hearing on motion to extend time for hearing upon settlement of Bill of Exceptions.

1914, Oct. 6, Stipulation as to Bill of Exceptions, &c., filed.

1914, Oct. 10, Proposed Bill of Exceptions filed (4 vols.).

1914, Oct. 14, Order extending time for filing Bill of Exceptions, filed.

1914, Oct. 6, Petition for Writ of Error filed.

1914, Oct. 7, Assignment of Errors filed.

1914, Oct. 7, Bond of Appeal filed.

1914, Oct. 7, Writ of Error allowed and issued. Copy filed.

1914, Oct. 7, Citation issued.

1914, Oct. 14, Citation returned, service acknowledged. Copy filed.

1914, Nov. 4, Order extending time to file record, filed.

1914, Nov. 9, Order extending time to defendants to file proposed amendments to proposed Bill of Exceptions, filed.

1914, Nov. 9, Notice of Motion and Stipulation filed.

1914, Dec. 9, Defendant's proposed amendments to plaintiff's proposed Bill of Exceptions filed (2).

1914, Dec. 12, Notice of Motion for Settlement of Proposed Bill of Exceptions, filed.

1914, Dec. 14, Hearing on Application for settlement of proposed Bill of Exceptions. Referred to C. S. Chevrier to adjust differences, &c.

1915, Jan. 13, Order that Bill of Exceptions be in form of question and answer, filed.

1915, Jan. 13, Hearing on Settlement of Bill of Exceptions. Bill of Exceptions partly settled. Adjourned to Jan. 19th.

1915, Jan. 26, Continuation of hearing on Settlement of Bill of Exceptions. Continued.

1915, Jan. 26, Continuation of hearing on settlement of Bill of Exceptions. Continued.

1915, Feb. 15, Taking of Testimony on settlement of Bill of Exceptions.

1915, Mar. 15, Notice of Motion for Settlement of Bill of Exceptions.

1915, Mar. 15, Hearing on Motion for Settlement of Bill of Exceptions.

1915, Mar. 17, Bill of Exceptions filed as of October 4, 1914.

Amended Declaration.

UNITED STATES CIRCUIT COURT,

DISTRICT OF NEW JERSEY,

Of the Sixth Day of October, 1911.

THE BUCKEYE POWDER COMPANY, a Corporation,
Plaintiff,
against
E. I. DU PONT DE NEMOURS POWDER COMPANY (a Corporation of New Jersey), EASTERN DYNAMITE COMPANY (a Corporation of New Jersey), INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY (a Corporation of New Jersey),
Defendants.

Action Under Section 7 of the Act of Congress of July 2, 1896

TO THE HONORABLE JUDGES OF THE ABOVE ENTITLED COURT:

E. I. du Pont de Nemours Powder Company (a corporation of New Jersey), Eastern Dynamite Company (a corporation of New Jersey), International Smokeless Powder and Chemical Company (a corporation of New Jersey), the defendants in this suit, were summoned to answer the Buckeye Powder Company, the plaintiff herein, in an action for damages under the Seventh Section of the Act

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of Congress of July 2d, 1890, known as the Sherman Act; and thereupon the plaintiff by McFarland, Taylor and Costello, its attorneys, complains as follows, to-wit: Whereas,

First. That plaintiff is and has been ever since on or about the 28th day of January, 1903, a corporation duly organized and existing under the laws of the State of Delaware; that the principal purpose of the incorporation and organization of
5 plaintiff was to carry on the business of manufacturing and selling powder and other explosives and particularly black blasting powder; that it began such business on or about the first day of September, 1903, and continued in and conducted said business down to the 19th day of September, 1908, and during all of said period its business was interstate and conducted in the States of Illinois, Iowa, Indiana, Ohio, Michigan, Minnesota, Misouri, Montana, Kansas, Nebraska, Colorado, Wyoming, West Virginia and Indian Territory and the foreign country of Mexico; that during all of said period it
6 manufactured black blasting powder in the State of Illinois for the purpose of selling the same in the states, territory and foreign country above mentioned and the same was sold and delivered to purchasers in said states, territory and foreign country.

Second. That the defendant E. I. du Pont de Nemours Powder Company is and has been ever since the 19th day of May, 1903, a corporation organized and existing under the laws of the State of New Jersey; that the defendant, the Eastern Dynamite Company, is, and was during the times hereinafter mentioned, a corporation organized and doing business under the laws of the State of New

Jersey; that the defendant, the International Smokeless Powder and Chemical Company, is, and was during the times hereinafter mentioned, a corporation organized and existing under the laws of the State of New Jersey; and the defendants and each of them are, and were during the times hereinafter mentioned, engaged in interstate trade and commerce in the shipment and sale of gunpowder and black blasting powder and other high explosives among the States and Territories of the United States and in foreign Countries.

Third. That certain corporations, to-wit: E. I. du Pont de Nemours & Company (a corporation of Delaware), E. I. du Pont de Nemours & Company (a corporation of Pennsylvania), du Pont International Powder Company (a corporation of Delaware), Delaware Securities Company (a corporation of Delaware), California Investment Company (a corporation of Delaware), Delaware Investment Company (a corporation of Delaware), Hazard Powder Company (a corporation of Connecticut), Laflin & Rand Powder Company (a corporation of New York), Fairmont Powder Company (a corporation of West Virginia), Judson Dynamite and Powder Company of California (a corporation of California), and certain individuals, namely, Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner and Frank L. Connable and Jonathan A. Haskell, residents of the State of Delaware (as officers and directors of the defendants mentioned in the last preceding paragraph, and of the corporations mentioned in this paragraph, or some of them), were

co-conspirators with the defendants herein in the unlawful and wrongful acts and conduct hereinafter complained of.

Fourth. Plaintiff shows that for a long time previous to the year 1902, to wit, for a period of more than thirty years and by means of many agreements and the adoption of many forms, certain manufacturers and vendors of powder and other explosives in the United States and foreign
11 countries and including some of the defendants above mentioned, had attempted to establish, and in a measure had succeeded in establishing, a more or less complete monopoly of said trade in their own hands; that by forcing their competitors out of business or coercing them into a union with them, by imposing fines and penalties for violation of said agreements to monopolize said trade, by limiting the output of the various parties to said agreements, by apportioning the share of business among the said parties and by dividing the said
12 trade among themselves, by fixing the prices of said powder and other explosives arbitrarily and not according to any law of supply and demand, the said manufacturers and vendors became and continued to be an unlawful combination for the purpose of restraining interstate trade and commerce within the United States and foreign countries; that on or about the 9th day of February, 1902, the defendants, Thomas Coleman du Pont and Pierre S. du Pont, with the intent and purpose of securing a more complete monopoly and a more effective control of the power trade in the United States and foreign countries, caused the said E. I. du Pont de Nemours and Company to be organized under the laws of the State of Delaware as a corporation under the name of the E. I. du Pont de

Nemours Company (which name was subsequently changed to E. I. du Pont de Nemours and Company); and thereupon the said defendant, E. I. du Pont de Nemours and Company, entered upon the policy of securing the actual physical or legal control and ownership of all the plants, manufactories and tangible property theretofore partially controlled by them, or theretofore co-operating with them, to monopolize the powder trade aforesaid, and to vest the absolute ownership thereof in said E. I. du Pont de Nemours and Company and to dissolve and destroy their entity, so that there could not be any interference with the plans of said E. I. du Pont de Nemours and Company, to completely monopolize the powder trade in the United States and foreign countries; that in pursuance of said policy and purpose the said E. I. du Pont de Nemours and Company thereafter succeeded in absorbing or acquiring control of a large number of said plants, manufactories and tangible property and of the corporations owning and operating the same, and plaintiff further shows that notwithstanding the success of said E. I. du Pont de Nemours and Company, in its efforts to monopolize the said trade, not being satisfied with the completeness of its monopoly, and seeking to make said control absolute, on the 19th day of May, 1903, caused the defendant E. I. du Pont de Nemours Powder Company to be organized under the laws of the State of New Jersey with a capital stock of Fifty million ($50,000,000) dollars to act as a holding company of the various properties, manufactories and plants which had already been or might thereafter be acquired by it; and thereupon the said E. I. du Pont de Nemours and Company, in consideration of the issuance to it of Thirty million two hundred thousand ($30,200,000) dollars par

value of the capital stock of the said defendant du Pont de Nemours Powder Company, sold, assigned and transferred to said defendant E. I. du Pont de Nemours Powder Company, all the right, title and interest which it possessed in or to any of the plants, manufactories or properties hitherto acquired by it, and thereby placed within the absolute control of the said defendant E. I. du Pont de Nemours Powder Company the property, plants and manufactories and the business of the following named corporations and thereupon caused said corporations to be disolved and destroyed and removed from the business of manufacturing and selling powder and other explosives, to wit: Blue Ridge Powder Company, U. S. Dynamite Company, Laflin Powder Manufacturing Company, Hudson River Powder Company, Acme Powder Company, Columbia Powder Company, Dittmar Powder & Chemical Company, Wolf Dynamite Company, Rock Glycerine Company, Sterling Dynamite Company, Atlantic Dynamite Company of New Jersey, Atlantic Dynamite Company of New York, Hecla Dynamite Company, Hercules Powder Company, Repauno Chemical Company, Repauno Manufacturing Company, Clinton Dynamite Company, A. Kirk & Son Company, Robina Fuse Company, Weldy Dynamite Company, Oliver Dynamite Company, Monarch Powder Company, Forcite Powder Company of New Jersey, Forcite Powder Company of New York, New York Powder Company of New Jersey, New York Powder Company of New York, Electric Powder Company, Joplin Powder Company, Shenandoah Powder Company, Brooklyn Glycerine Manufacturing and Refining Company, Pennsylvania Torpedo Company, A. S. Speece Powder Manufacturing Company, Giant Manufacturing Company, Standard Exporting Company, Limited;

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Metropolitan Powder Company, Climax Powder Manufacturing Company, Explosives Supply Company, American Stor. and Deliv. Company, Atlantic Manufacturing Company, Hudson River Wood Pulp Manufacturing Company, National Torpedo Company, Producers' Powder Company, Chattanooga Powder Company, Lake Superior Powder Company, Ohio Powder Company, American Forcite Powder Manufacturing Company, Hecla Powder Company, Anthracite Powder Company, Globe Powder Company, Marcellus Powder Company, H. Julius Smith Electric Fuse Company, James Macbeth and Company, Phoenix Powder Manufacturing Company, Conemaugh Powder Company, Enterprise High Explosive Company, Schaghticoke Powder Company, California Vig Powder Company, California Powder Works, Western Torpedo Company, Oliver Powder Company, Thompson Torpedo Company, E. I. du Pont Company, King Mercantile Company, Mahoning Powder Company, and thereupon the said E. I. du Pont de Nemours Powder Company became possessed of a controlling interest in the capital stock of each of the following-named corporations, to wit: Hazard Powder Company, The Laflin and Rand Powder Company, The Eastern Dynamite Company, The Fairmont Powder Company, The International Smokeless Powder and Chemical Company, The Judson Dynamite and Powder Company, The Delaware Securities Company, The Delaware Investment Company, the California Investment Company, the E. I. du Pont de Nemours Company of Pennsylvania and the International Powder Company; and plaintiff further shows that Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee du Pont,

Francis I. du Pont, Victor du Pont, Jr., Jonathan A. Haskell, Arthur J. Moxham, Hamilton M. Barksdale and Frank I. Connable, as officers and directors of the said defendant E. I. du Pont de Nemours Powder Company, and the defendant, International Smokeless Powder and Chemical Company, or one of them, and the defendant, Edmond G. Buckner, as a director of the said defendant, International Smokeless Powder and Chemical Company, and each and all of them, acting from
23 time to time within the scope of their authority as such officers and directors, instituted, directed, ratified and approved of the various unlawful and wrongful acts hereinbefore and hereinafter complained of; and plaintiff further shows that by reason of the matters and things alleged and set forth in this paragraph the defendants and the various other corporations and individuals hereinbefore in paragraph Third named, and acting as co-conspirators with the defendants, succeeded in establishing within themselves, and have ever since maintained
24 a practically complete monopoly in interstate trade in powder and other explosives amounting to about ninety-five per cent. (95%) of said entire trade, and ever since have been and now are engaged in a combination and conspiracy to unreasonably restrain and monopolize said trade throughout the United States and foreign countries, and have suppressed competition and have fixed prices of powder and other explosives arbitrarily and unreasonably, and have driven independent competitors out of business or have coerced them into a sale to or union with said unlawful combination, and have unreasonably restrained trade and commerce among the several states of the United States and with foreign nations, and have committed various other unlawful and wrongful acts as hereinafter set

forth, all in contravention of the laws of the United States and particularly the act of Congress of July 2d, 1890, and in derogation of the rights of plaintiff to its great damage, as hereinafter set forth.

Fifth. Plaintiff shows that a short time previous to the date when plaintiff was incorporated and organized as hereinbefore set forth, one R. S. Waddell, who afterwards became its president and general manager, conceived the idea of organizing and afterwards perfected the organization of plain- 26
tiff for the purpose of entering into the business of the manufacture and sale of black blasting powder, and that his active experience and acquaintance with the powder trade in the United States and foreign countries for a period of more than thirty years enabled him to determine with scientific accuracy the best and most practical field for succesful operation of a plant with which to conduct such business; that the defendants well knew of the experience and ability of said Waddell as a powder expert and salesman, and well knew that 27
his acquaintance with the powder trade was wide and accurate; that as soon as the said defendants became aware of the purpose of the said Waddell to organize plaintiff and engage in the manufacture and sale of black blasting powder, and with the intent and purpose to perpetuate the monopoly which they had already acquired as aforesaid, entered into a conspiracy to prevent him from carrying out his said purpose and the officers and agents of the said E. I. du Pont de Nemours and Company endeavored to dissuade the said Waddell from carrying out his said purpose, failing in which they then offered to join him in conducting said business upon the condition that he would place the said E. I. du Pont de Nemours and Company in

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control of said plaintiff's business and affairs, and failing to obtain the consent of the said Waddell thereto, the said officers and agents then endeavored to influence him to cause the plant of the plaintiff to be located in a sparsely settled region where the development of the market for black blasting powder had been comparatively slow and not of sufficient consequence to justify the hope of prosperous returns; finding that the said Waddell could not be moved in his purpose to select
29 a location and site for the plant and mills at a point where the powder trade was already largely developed and rapidly developing, the said officers and agents thereupon immediately formed a plan to prevent him from carrying out his purpose of organizing plaintiff and engaging in the business of manufacturing and selling powder and other explosives, thus planning to retain the monopoly of said trade to the said E. I. du Pont de Nemours and Company and their co-conspirators, aforesaid; and with this end in view they placed detectives on
30 the track of the said Waddell to shadow him throughout the United States as he should journey from place to place in search of a location, to keep them advised of his movements and to enable them through their emissaries to forestall him in obtaining a location and to create opposition to the location of plaintiff's plant in such place as might be decided upon, by instilling fear into the minds of the people thereabouts, and also, if need be, by entering into competition with the plaintiff for the purchase of sites and bidding up the price of said property, not, however, with any purpose to make use of the same themselves, but to prevent the entrance of an independent competitor for the powder trade in the states, territory and foreign country aforesaid, and with a view of altogether preventing

plaintiff from finding a site for its mills and plant; that by reason of the matters and things set forth in this paragraph the said Waddell was compelled to travel from place to place with great secrecy, and sometimes under assumed names, and to adopt various disguises to avoid being interfered with, and the said Waddell was thereby compelled to spend much time and money in an effort to avoid the unjustifiable surveillance to which the said defendants subjected him while in the pursuit of a lawful calling and while engaged in the rightful exercise of the privileges guaranteed to citizens of the United States by the laws of the land.

Sixth. Plaintiff shows that by reason of the dangerous nature of powder and other explosives, the matter of freight rates and transportation facilities are important and often controlling factors in determining the price or prices at which the same can be delivered to the customer profitably and economically; and for this reason the powder trade of the United States and adjoining countries, if left free to adjust itself naturally, would tend to the establishment of many local plants and to active competition between manufacturers and would thereby result in great benefit to the consumer and would thereby tend to maintain prices at such figures as would produce reasonable and living profits to the manufacturer; that this is particularly true of black blasting powder, which is most commonly used in coal mining operations; that long experience has demonstrated that one pound of such powder will be consumed on the average to each ton of coal mined; plaintiff further shows that by reason of the matters and things set forth in this paragraph and by reason of the fact that there was previous to the year 1903,

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a great extension of coal mining operations and a large and rapidly developing trade in black blasting powder in the States of Illinois, Iowa, Indiana, Ohio, Michigan, Minnesota, Missouri, Montana, Kansas, Nebraska, Colorado, Wyoming, West Virginia and Indian Territory and the foreign country of Mexico, the promoters of the business in which plaintiff was organized to engage, with the intent and purpose to supply a natural market and demand and to conduct a legitimate and profitable
35 business in the manufacture and sale of black blasting powder, selected a point near the City of Peoria, State of Illinois, as the most favorable location for its plant and mills and constructed the same at said point; that said City of Peoria was at said time and ever since has been favorably situated with respect to railroad facilities and transportation, and has had and still has the benefit of favorable freight rates due to competitive transportation conditions; that by reason of the superior transportation facilities and freight rates thus af-
36 forded, plaintiff was assured of a vast market for its product as aforesaid; and plaintiff further shows that the natural and normal increase of the consumption of black blasting powder in said states, territory and foreign country, for a long time previous to the location and construction of its said plant and mills was much more than sufficient to have absorbed the entire output thereof, working at their full capacity, without diverting any of the trade already established from the usual channels of supply and without disturbing any existing business of any other manufacturer thereof.

Seventh. Plaintiff shows that by reason of the favorable location of its mills and plant as hereinbefore alleged and by reason of the superior

facilities of transportation and freight rates afforded thereby, it was able to meet the requirements of consumers of black blasting powder in the states, territory and foreign country above mentioned, at the lowest price at which the same could be made and supplied and leave a fair and living profit; that it was willing and able to engage in fair and open competition for the said trade with any other manufacturer or manufacturers of black blasting powder; that defendants and their co-conspirators well knowing this fact, but being desirous to prevent fair and open competition or in fact any competition at all and with the design and intent to coerce plaintiff into a combination with the defendants and their co-conspirators or to drive it out of business and thereby stifle competition in said district, entered into a conspiracy with each other, whereby all the co-conspirators aforesaid except the defendant E. I. du Pont de Nemours Powder Company agreed to retire from the business of supplying or competing for the said trade in said states, territory or foreign country and thus leave the said E. I. du Pont de Nemours Powder Company a clear field to carry on a war of extermination against plaintiff and drive it out of business; and in pursuance of said agreement and as part thereof an arrangement was made between said conspirators whereby all losses were to be apportioned among them ratably, and whereby the said defendant E. I. du Pont de Nemours Powder Company should be compensated for all losses which it might incur or suffer in carrying on such war of extermination; thereupon the said defendant E. I. du Pont de Nemours Powder Company appointed a committee (known and designated as "The Peoria Committee") to have charge of and conduct said fight against plaintiff, and in further pursuance of

said arrangement for the purpose of enabling the defendant E. I. du Pont de Nemours Powder Company to conduct a more effective campaign against your petitioner, all of the other defendants withdrew their agencies from said City of Peoria and ceased all effort to secure any of the trade in black blasting powder for themselves within said states, territory and foreign country, taking in lieu thereof certain allotments of trade elsewhere to compensate them for the trade thus yielded; that thereupon the
41 defendant E. I. du Pont de Nemours Powder Company began and continued a most determined, bitter and disastrous warfare against plaintiff to destroy its business and prevent it from acquiring any new business and to drive it out of business entirely, as more particularly hereinafter set forth.

Eighth. Plaintiff further shows that the defendant E. I. du Pont de Nemours Powder Company instituted shortly after the organization of said company and maintained and still maintains, as a part
42 of its organization for the more effective prevention and suppression of competition, a department or bureau known as the "Bureau of Information" (sometimes called "Trade Reports Bureau"); that the headquarters of said bureau was established and has since been kept at the head office of said defendant in the City of Wilmington, Delaware; that said bureau has maintained and still maintains a system of agents, emissaries, spies and detectives throughout the various states and territories of the United States and in some foreign countries for the purpose of collecting and reporting facts, rumors and information of every kind concerning the trade in powder and other explosives and concerning the various consumers and manufacturers of the same; that said agents, emissaries,

spies and detectives are from time to time instructed and required to collect such facts, rumors and information in any manner which they may deem necessary for that purpose and without regard to the means employed; that by reason of said instructions and requirements the said agents, emissaries, spies and detectives have resorted to various questionable and corrupt practices for the purpose of obtaining such facts, rumors and information, and said defendant has thereby built up and maintained a system of espionage upon the business and private affairs of persons, corporations and associations engaged in legitimate occupations throughout the United States and foreign countries entirely at variance with the genius of the government of the United States and in contravention of the statutes and laws of the land; that from time to time a vast amount of facts, rumors and other information has been collected and forwarded to said Bureau of Information and the same has been tabulated and arranged into three divisions; designated as White, Yellow and Red Divisions; that the White Division contains reports concerning consumers and manufacturers who are classed as loyal to the said defendant E. I. du Pont de Nemours Powder Company and whose loyalty may be depended upon under all circumstances; that the Yellow Division contains reports of consumers and manufacturers who are considered as friendly to said defendant but untrustworthy and whose movements must be watched and who must be dealt with as the circumstances may seem to require from time to time and who are kept under close surveillance and espionage to prevent the loss of their trade, support and co-operation; that the Red Division contains reports of consumers and manufacturers known to be independent and who

are ready and willing at all times to enter the open market and encourage competition in the powder trade, and who are, therefore, classed as enemies to said defendant and dangerous to its monopoly, and who are marked for the most vigorous methods which can be brought to bear to coerce them into a union with the defendants or to completely drive them out of business, and the agents, emissaries, spies and detectives of the E. I. du Pont de Nemours Powder Company are required to increase their vigilance and espionage and seize upon every opportunity to annoy, embarrass and injure them in such business; and for this purpose such agents, emissaries, spies and detectives are authorized to stir up strife between employers and employees, to encourage creditors to institute legal proceedings, to create false and malicious rumors concerning their solvency and generally do any and every thing which would tend to discredit and embarrass them, and to make full reports of all such false and fictitious conditions thus sedulously and wickedly created by themselves; that it has long been the practice with said Bureau of Information to select certain facts, rumors and other information and spead them broadcast among the powder trade where they would produce the greatest damage to such consumers and manufacturers included within the class known as the Red Division in order to force them to ally themselves with said defendant and cooperate with it in maintaining its monopolistic control of the powder trade or drive them out of business entirely; and plaintiff further shows that plaintiff and its customers were classed by said Bureau with the division known as the Red Division and that every method and device known to the said bureau and its agents, emissaries, spies

and detectives was employed to prevent it from acquiring any portion of the powder trade and to prevent consumers of black blasting powder from purchasing the same from it and to induce its customers to abandon it and to injure and destroy its credit by creating distrust among its creditors, and by circulating false and malicious rumors regarding its solvency and by circulating false and malicious statements concerning the quality of the powder manufactured by petitioner and by stirring up strife between miners and operators thereby to induce 50
said miners to refuse to use the powder manufactured by plaintiff, and by secretly sending its emissaries and spies into plaintiff's mills and plant to learn the secrets of its business and tampering with its processes and by employing the agents of various transportation companies to furnish information of the consignments from plaintiff's mills and the names and addresses of the consignees and thereafter inducing said consignees to reject said consignments by offering to furnish them black blasting powder below the price contracted with 51
the plaintiff and below any price which plaintiff might see fit to offer, and below the actual cost of said powder if necessary to secure said trade; all as more particularly hereinafter set forth.

Ninth. Plaintiff shows that there was during the period while plaintiff was engaged in the manufacture and sale of powder, an Association known as the "Coal Operators' Association," composed of the owners and operators of coal mines in the State of Illinois and other States, and another Association known as the "Miner's Union," composed of miners engaged in mining said mines; that annually, or as often as might appear to be necessary, an agreement was regularly entered into between

52 said Associations to the effect that the members of the Operators' Association should originally purchase all powder necessary to be used in the mining operations to be carried on in all mines owned or operated by them, and that the members of the Miners' Union would buy of the Operators all the powder used by them in performing the work in such mines, at the agreed price of One Dollar and Seventy-five Cents ($1.75) per keg; that said price was fixed and unchangeable during the life of said
53 agreement regardless of the price at which the Operators might be able to purchase said powder; that these agreements have sometimes produced discord between the members of the two Associations and have sometimes led to claims of injustice on the part of the Miners against the Operators by reason of the variation in the prices at which the Operators may have been enabled to purchase the powder from the manufacturer; and plaintiff shows that the defendant, E. I. du Pont de Nemours Powder Company, at various times after plaintiff's
54 plant went into operation, employed evilly-disposed persons to enter the mines of Operators who had made purchases of black blasting powder of plaintiff, for the purpose of stirring up discontent among the Miners and to instill into their minds prejudice against said powder, and to cause them to refuse to use the same, so as to induce the purchaser to reject the same, intending and planning thereby to secure to itself the business of said Operators; and in some instances these methods succeeded in producing boycotts by said Miners against the powder manufactured by plaintiff, and by reason of such wrongful and wicked conduct, certain consignments of powder from plaintiff's mills were from time to time rejected and returned, and further purchases were discontinued through fear of

causing disagreements and disturbances which would lead to shut-downs and idleness; plaintiff further shows that such a condition was the more easily created by reason of the fact that the Miners' Union always reserved the right under said agreements to select the grade and make of powder which the Operator was bound to purchase; and in order to foment unjust opposition and strife, certain persons were employed by said defendant, E. I. du Pont de Nemours Powder Company to travel from place to place and mingle with the miners of the 56 various coal mines to insidiously induce them to believe that it was for their interest to reject the powder manufactured by the plaintiff, and certain influential miners were employed to make use of their influence with their fellow-workmen to induce them to boycott such powder; that in some cases intoxicating liquors were distributed among said miners, sometimes clothing, food and household articles were distributed among said miners and their families, and sometimes cash was paid to various of said miners to obtain their co-operation and 57 influence with their fellow-workmen as aforesaid; that these methods were sometimes carried to such an extent as to become open and public scandals, tha by reason of the matters and things alleged in this paragraph, the good order and peace of the community was disturbed and set at naught, and the morals of said employees corrupted and the coal mining business of said operators was disturbed, and serious loss was occasioned and threatened to them and the said operators almost invariably yielded to the demands thus fictitiously created and refused to make further purchases from plaintiff.

Tenth. Plaintiff shows that the defendant, E. I. du Pont de Nemours Powder Company, on various occasions caused various persons to seek employ-

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ment with plaintiff for the purpose of entering its mills and plant and obtaining its manufacturing and business secrets, and plaintiff being ignorant of the purpose of said persons in seeking employment and not suspecting their duplicity and fraud and being desirous of obtaining their services, gave employment to some of such persons and particularly to one Colburn, who was employed as a competent and trustworthy person to act as Superintendent of its plant and mills; that subsequently plaintiff
59 ascertained that said Colburn prepared frequent reports of its business and of the various processes used by it and of the amount of powder manufactured and shipped by it and of the names and addresses of the consignees, all of which were regularly transmitted to the defendant, E. I du Pont de Nemours Powder Company at Wilmington, Delaware, and in other instances the said defendant E. I. du Pont de Nemours Powder Company succeeded in enlisting the services of employees of various railway companies receiving powder from
60 plaintiff for transportation to its customers (particularly certain employees of the Chicago, Burlington and Quincy Railroad Company) to furnish said defendant with daily telegraphic reports of all shipments made by plaintiff from its mills and passing through their hands; that sometimes in consideration of said services said defendant agreed to pay and did pay said railway employees One Dollar ($1) for each telegram and Five Dollars ($5) for each letter sent to the said defendant or any of its agents or emissaries and carrying any such information; and said defendant agreed to and did pay others of said employees various sums of money by way of salary; and plaintiff further shows that immediately, and continuously for a long period of time, the information so obtained

was made use of by the said E. I. du Pont de Nemours Powder Company in various ways to induce said consignees to reject shipments from, and to abandon, plaintiff and thereafter to purchase black blasting powder of said defendant exclusively, and in some cases such customers were thereby induced to desert plaintiff, and in other cases to reject shipments already consigned.

Eleventh. Plaintiff shows that the said E. I. du 62
Pont de Nemours Powder Company, as a part of its plan to create and maintain a monopoly in the powder trade of the United States and foreign countries and intending to ruin plaintiff and drive it out of business, sought to make it impossible for plaintiff to secure any trade whatsoever in said States, Territory or foreign country by inducing each consumer of black blasting powder therein to enter into a secret contract with said defendant whereby said consumer bound himself to give the said defendant his exclusive trade in said powder for a term of years, varying from one to five years; 63
that said contracts were secured sometimes by promises of special privileges and prior right over other persons for delivery; sometimes by threats to deprive such consumer of the right to purchase other grades of powder and explosives not manufactured by the plaintiff; sometimes by misrepresenting the capacity of plaintiff's mills and plant; sometimes by circulating false and damaging statements through its agents and emissaries concerning accidents at plaintiff's mills and plant, sometimes by false and malicious statements concerning the quality of plaintiff's powder, sometimes by offers of financial assistance to such consumer, sometimes by stirring up strife among the employees of such consumer a hereinbefore alleged, and by vari-

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ous other unlawful and wicked conduct; and plaintiff further shows that the terms of said contracts, and even the existence thereof, were in all cases made strictly confidential for the reason that the said defendant well knew that said contracts were unjust, unfair and unlawful, and that they were especially contrary to the act of Congress known as the Sherman Act, and made in defiance of said act, and with deliberate purpose to evade its provi-
65 sions; that said contracts provided for secret rebates based upon a schedule of the amount of powder purchased annually as follows, to wit: a purchase of more than five hundred (500) and less than one thousand (1,000) kegs annually entitled the purchaser to a rebate of five (5) cents per keg; more than one thousand (1,000) and less than twenty-five hundred (2,500) kegs a rebate of ten (10) cents per keg; more than twenty-five hundred (2,500) and less than five thousand (5,000) kegs a rebate of (15) cents per keg; more than five thousand (5,000) and less than ten thousand (10,000) kegs
66 a rebate of seventeen and one-half (17½) cents per keg; more than ten thousand (10,000) and less than twenty-five thousand (25,000) kegs a rebate of twenty (20) cents per keg; over twenty-five thousand (25,000) kegs a rebate of twenty-two and one-half (22½) cents per keg; and plaintiff further shows that in cases where the consumer could not be induced to contract as aforesaid, a "Special Cut-Price" was issued for his benefit, of which he was permitted to take advantage at any time he desired, to the same effect as if he had signed such contract, and by reason of the fact that such special price was far below a fair and living price for said powder and did not afford a fair profit therefor, or in fact any profit whatsoever, it was impossible for plaintiff to compete for the trade of such consumer,

and his trade went to said defendant as effectively as if covered by a formal contract; and plaintiff further shows that in those cases where a customer was already under contract with the said defendant at the time when plaintiff began business, the said defendant, realizing the insufficiency of said contracts to bind said consumer lawfully, and in order to forestall plaintiff in its efforts to secure the trade of said consumer in open and free competition, voluntarily increased the secret rebates 68
specified therein, and made such increases effective immediately and to continue for the unexpired term of the contract upon the condition that said exclusive contract should and would be extended and continued at its expiration for a further term of years; that the amount of the rebate, and the increase of rebate was not regulated or determined by any law of supply and demand, but was determined solely by the necessity of making a price which would be sufficient to induce the consumer to give all his trade to the said defendant, and take him out of the open market for a long 69
period of time, at least until plaintiff had been coerced into submission or forced to retire from business; that said defendant was able to, and in some cases did, contract to supply said powder at less than the actual cost thereof, without any regard whatsoever to a fair and living profit or any profit thereon, which said defendant was enabled to do by reason of the fact that all losses which it might thereby sustain should and would be apportioned among and made up to it pro rata, by the other defendants and their co-conspirators aforesaid.

Twelfth. Plaintiff shows that in furtherance of the purpose of the defendants to monopolize and control the trade in powder and other explosives,

70 the defendant, E. I. du Pont de Nemours Powder Company, shortly after its incorporation created a Board known as the "Sales Board" composed of a Director of Sales and assistant directors, who exercised the power to fix prices and establish policies which all the other defendants and parties to the unlawful combination and conspiracy were compelled to observe; that no regular or fixed price-list was issued, but the prices which were established from time to time were purely arbitrary;
71 that in those States, Territories or foreign countries where the defendants and their co-conspirators were in full control of the powder trade, such prices were always fixed so as to leave substantial and sometimes excessive margins of profit, but that in those States, Territories and foreign countries where the defendants and their co-conspirators or some of them were conducting business in competition, or in danger of competition, such prices were regulated and determined solely with the object in view of preventing all manufacturers not
72 parties to the conspiracy from obtaining a fair proportion or any of the powder trade, and not with a view of obtaining business for itself at a fair margin of profit, so that the defendants and their co-conspirators might have a clair field to make any prices they should thereafter see fit, and without regard to the interest of consumers; and plaintiff further shows that for a period of more than five years it was continuously forced to meet the prices thus fixed by said defendant in an endeavor to obtain and retain enough business to keep its mills and plant operating and to obtain its fair share of the powder trade in said States, Territery and foreign country; but plaintiff was unable to offer to supply such powder at any price below which said defendant would not go, and wherever

and whenever the business of the consumer was submitted for bid, or to competition, in almost every case, the said defendant would underbid plaintiff by persistently reducing its price at from five to ten cents per keg, and thus not only depriving plaintiff of said business but sometimes making sales at an actual loss; that in this manner, plaintiff would ultimately be compelled to surrender the business of such consumer and leave the said defendant a clear field to make up its losses by fixing any price it might thereafter see fit; and by reason 74
of the matters and things alleged in this paragraph plaintiff suffered irreparable losses not only in the loss of the fair profits which would have come to it from each contract which it was thus prevented from securing, but from the extension of its business so as to keep its mills and plant continuously operating; and plaintiff further shows that the said defenadnt E. I. du Pont de Nemours Powder Company, in pursuance of the policy and practices in this paragraph set forth, did in most cases ultimately succeed in inducing the purchasers of black 75
blasting powder to enter into contracts with it for a period of years according to the tenor and effect hereinbefore in the last preceding paragraph set forth, and thereby gradually removed the danger of competition in the powder trade in said States, Territory and foreign country by absorbing more than ninety-five per cent. thereof.

Thirteenth. Plaintiff shows that on or about the 10th day of January, 1904, an explosion occurred at its said plant and mills whereby a large part thereof was totally destroyed, entailing a heavy direct loss upon plaintiff on account of the destruction of said property, and further serious losses on account of the enforced idleness of the remain-

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der of said plant and mills during the time required for rebuilding; and plaintiff further shows that immediately after said explosion, the agents of said defendant caused to be printed and distributed among its own and plaintiff's customers large numbers of exaggerated reports of the extent of the damage done by said explosion, and endeavored to create a feeling of uncertainty among consumers generally and among plaintiff's customers in particular, concerning plaintiff's ability to meet their
77 future requirements for black blasting powder, with a view to inducing, and in some cases thereby succeeded in inducing, said consumers to enter into exclusive contract with said defendant to supply them with black blasting power, said contracts being of the tenor and effect hereinbefore in Paragraph Eleventh particularly set forth.

Fourteenth. Plaintiff shows that the defendant, E. I. du Pont de Nemours Powder Company, in order to forestall and prevent the construction of
78 powder mills throughout the United States and foreign countries, and to prevent competition, and with the purpose of securing to itself and its associates in said unlawful combination and conspiracy to monopolize the powder trade, further conspired, combined, confederated and agreed to and with various persons, corporations and associations engaged in the manufacture of powder-making machinery for the purpose of obtaining the exclusive use and control of powder-making machinery and thereby to limit the sale and use of such machinery to themselves and their associates; and by threatening to refuse to purchase powder-making machinery of any maker who would not give it and them such exclusive right, the said E. I. du Pont de Nemours Powder Company succeeded in intimi-

dating many powder machinery makers and thereby induced them to refuse to sell such machinery to any person, corporation or association not a party to the said combination and conspiracy; and plaintiff shows that at the time when plaintiff decided upon the construction of its plant as aforesaid, plaintiff sought to purchase the necessary machinery for use in said plant from various manufacturers of high-grade powder-making machinery, to wit: The Prox-Brinkman Manufacturing Company of Terre-Haute, Indiana, and Olin Scott of Bennington, Vermont, and I. & E. Greenwald Co. of Cincinnati, Ohio, and others; that at the behest of the said defendant, E. I. du Pont de Nemaurs Powder Company and in pursuance of said unlawful agreement, said manufacturers declined to supply such machinery to plaintiff upon the ground that the said defendants had insisted generally, and particularly in the case of plaintiff, upon a strict compliance with the terms of the said agreement, under penalty of the loss of future patronage of the said defendant and its associates in said combination and conspiracy; and thereby plaintiff was compelled to and did contract for the manufacture of said machinery especially for its purposes with other persons, and paid therefor a much higher price than the usual and customary cost of similar powder-making machinery, and largely in excess of the cost of similar powder-making machinery to the said defendant and its associates, and largely in excess of what plaintiff could have obtained said machinery for but for the threats, intimidation and unlawful conduct hereinbefore in this paragraph set forth, to the damage of plaintiff in the sum of Five Thousand Dollars ($5,000).

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Fifteenth. Plaintiff shows that being unable to

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withstand the great and continuing losses forced upon it by reason of the unlawful and wrongful acts of the defendants, as hereinbefore set forth, it was finally compelled to offer its mills, plant and business for sale; that the methods and conduct of the defendants and their said co-conspirators toward plaintiff had become generally known among powder manufacturers and dealers throughout the United States and foreign countries, as well as among the usual investors in property
83 owned and used for the manufacture and sale of powder, and it was generally known that the methods employed by the defendants and their said co-conspirators and particularly by the defendant, E. I. du Pont de Nemours Powder Company against plaintiff, were the methods that had long been similarly employed against other manufacturers and vendors of powder who had attempted to operate independently of the defendants, and their said co-conspirators, or some of them from time to time engaged in the conspiracy to monopolize the trade in explosives, and that generally independent ope-
84 rators had been unable to survive the combined assaults of said defendants, and their co-conspirators, and for this reason there was no market for such property except among the defendants and their said co-conspirators or some of them and among investors who had been accustomed to invest only in such properties as were operated or controlled by the defendants and their said co-conspirators or some of them; and plaintiff, not being able to find a purchaser, or in fact to obtain any bid or offer from any source, finally solicited the defendants and others of said co-conspirators to purchase its mills and plant at the fair value thereof and also to purchase its business, goodwill and stock on hand, for the fair and reasonable

value thereof, but all efforts to induce any of said defendants to consent to purchase said properties or any of said properties at the fair and reasonable value thereof totally failed, and plaintiff was then compelled, in order to keep said properties from going to waste and in order to avoid suffering a total and irretrievable loss of the entire value of said properties, to accept any offer that it might be able to obtain therefor, without any regard whatsoever to the true and fair value thereof; and thereafter, to wit: on or about the 19th day of September, 1908, plaintiff sold and disposed of its entire plant, mills, business and good-will for the total sum of Seventy thousand dollars ($70,000), and the stock on hand for Five thousand five hundred and four and 8/100 Dollars ($5,504.08) additional; and plaintiff further shows that the nominal purchaser of said property was one Franklin W. Olin of the City of Alton, State of Illinois; but plaintiff states that the said Olin purchased the same at the instance and request of the defendant E. I. du Pont de Nemours Powder Company and their said co-conspirators and by reason of a contract with the defendant E. I. du Pont de Nemours Powder Company and others associated with it at said time in said unlawful combination and conspiracy, whereby the said E. I. du Pont de Nemours Powder Company and said associates agreed to purchase ninety-five per cent. (95%) of the future entire output of said mills and plant for a long period of time; that immediately after the said properties were so purchased by said Olin, a corporation was organized for the purpose of taking over and operating the same, said corporation being designated the Western Powder Manufacturing Company and the said properties were thereupon transferred to said Western Powder Manufacturing Company,

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and it has ever since held the title to the same. And plaintiff further shows that the said Franklin W. Olin was at the time, the president of the Equitable Manufacturing Company, forty-nine per cent. (49%) of the stock of which said Company was then and is now held by the said defendant, E. I. du Pont de Nemours Powder Company, and which said Equitable Manufacturing Company had been theretofore for a long period associated with the said E. I. du Pont de Nemours Powder Company
89 in the said unlawful combination and conspiracy; that immediately after said purchase and transfer of said mills, plant and business to the said Western Powder Manufacturing Company, the same began operating to the full capacity thereof and have so continued down to the present time; that the entire output of said mills and plant was at once allotted and apportioned to the said E. I. du Pont de Nemours Powder Company and its associates under said contract and has ever since been and is being disposed of at the fair value thereof, and
90 the business of said Company at once became and ever since has been very profitable; that plaintiff further shows that at the time when it was so wrongfully compelled to sell and dispose of its plant, mills, business and good-will, as hereinbefore in this paragraph set forth, the true and fair value thereof was the sum of Five hundred thousand Dollars ($500,000), and plaintiff has suffered damage on account thereof in the sum of Four hundred thirty thousand Dollars ($430,000).

Sixteenth. Plaintiff shows that its mills and plants were equipped and designed to do a large and profitable business with users and dealers in explosives, and particularly black blasting powder; that when operating at full capacity, it employed

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a large force of men in the manufacture of such powder and was capable of producing one thousand (1,000) kegs daily; that the total annual capacity of said mills and plant, based upon three hundred (300) working days per year, was three hundred thousand (300,000) kegs of black blasting powder; that plaintiff began the manufacture of such powder on or about the 1st day of October, 1903, that during the year 1904, it manufactured and sold a total of One hundred eight thousand seven hundred and ninety-eight (108,798) kegs, and during the year 1905 a total of One hundred and fifty-eight 92 thousand one hundred and six (158,106) kegs, and during the year 1907 a total of eighty-six thousand three hundred and seventy-five (86,375) kegs, and from January 1st to August 31st, 1908, a total of thirty-two thousand and fifty-nine (32,059) kegs; that the inability of plaintiff to keep its plant and mills working at the full capacity thereof was due to and was the natural and proximate consequence of the wrongful and unlawful acts of the defendants, and their said co-conspirators as hereinbefore set forth; that every effort was made by plaintiff during all of said period not only to increase its 93 sales and keep its mills and plant operating to the full capacity thereof, but to maintain its customers and prevent the falling off of said sales, but by reason of the unfair, unlawful and wrongful conduct of the defendants, and their co-conspirators and particularly of the defendant E. I. du Pont de Nemours Powder Company, its agents, officers and employees, as hereinbefore alleged, plaintiff was prevented from obtaining a fair share of the trade in black blasting powder and other explosives in said states, territory and foreign countries, and was prevented from making a fair and reasonable profit on the powder manufactured and sold by it

94 as above set forth; and plaintiff shows that it was especially well equipped to secure a fair and reasonable portion of the said powder trade in fair and open competition; that said R. S. Waddell had full charge of the sales department of plaintiff and that he carried on a persistent and energetic campaign, during the entire period aforesaid, for a fair share of the powder trade in said states, territory and foreign country, and the business of plaintiff would have grown and increased from year to year instead of decreasing as above stated, but for the acts of
95 the defendants and their said co-conspirators and particularly the defendant, E. I. du Pont de Nemours Powder Company, as aforesaid; that the natural demand for black blasting powder within said states, territory and foreign country was sufficient to enable plaintiff to keep its mills and plant working to the full capacity thereof and its employees steadily employed; and plaintiff shows that its failure to keep its mills and plant working to the full capacity thereof and to prevent a falling off of its business from year to year instead of an
96 increase thereof, was the natural and proximate consequence of the said acts of said defendants; and plaintiff shows that by reason of said unlawful and wrongful acts, it sustained further losses as follows, to wit; the loss of the fair and reasonable profits of one hundred and ninety-one thousand two hundred and two (191,202) kegs of black blasting powder, which it was prevented from manufacturing and selling during the year 1904, and one hundred and forty-one thousand eight hundred and ninety-four (141,894) kegs during the year 1905, and two hundred and twenty-five thousand two hundred and fourteen (225,214) kegs during the year 1906, and two hundred and thirteen thousand six hundred and twenty-five (213,625) kegs during the

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year 1907, and one hundred and sixty-five thousand four hundred and forty-one (165,441) kegs during the period extending from January 1st to August 31st, 1908, making a total of nine hundred and thirty-seven thousand three hundred and seventy-six (937,376) kegs, which it was thus prevented from manufacturing and selling previous to the time when it was forced by the defendants to dispose of its mills and plant and retire from business; that the fair and reasonable profits of said business which it was thus prevented from acquiring was the sum of thirty (30) cents per keg, after 98
deducting all expenses connected with the manufacture, sale and transportation, or a total of two hundred and eighty-one thousand two hundred and twelve and 80/100 Dollars ($281,212.80); and plaintiff further shows that if it had not been driven out of business by the defendants as aforesaid, and if it had not been unjustly and unlawfully interfered with in its right to continue in business and make fair and reasonable profits from the manufacture and sale of black blasting powder to the full capacity of its mills and plant from the 19th 99
day of September, 1908, to the present time, it would have manufactured and sold during the said period three hundred thousand (300,000) kegs per annum or a total of nine hundred thousand (900,000) kegs additional, upon which it would have made a profit of thirty (30) cents per keg, or a total of Two hundred and seventy thousand Dollars ($270,000) more; and plaintiff further shows that the fair profit on the powder which it actually manufactured and sold, as hereinbefore stated, and which it wholly lost by reason of the unjust and unlawful and wrongful acts of the defendants, as aforesaid, amounted to the sum of thirty (30) cents per keg on four hundred and sixty-seven thousand

one hundred and sixty-seven (467,167) kegs, or a total of One hundred and thirty-nine thousand one hundred and forty-nine and 10/100 Dollars ($139,149.10); making a total loss of profits resulting as the natural and proximate consequence of the acts of the defendants as hereinbefore in this paragraph set forth, in the sum of six hundred and ninety thousand three hundred and sixty-one and 90/100 Dollars ($690,361.90).

Seventeenth. That with the intent to impede, impair, injure and destroy the business of plaintiff, the defendants, and their said co-conspirators and particularly the defendant E. I. du Pont de Nemours Powder Company, maliciously, wantonly, wilfully, oppressively and wickedly, through their officers and agents, acting within the scope of their employment and by direction of and with the approval of the defendants and their said co-conspirators and particularly the defendant E. I. du Pont de Nemours Powder Company, committed the wrongs herein set forth, whereby the business and property of plaintiff was injured and impaired and totally destroyed to its further damage, and by reason thereof plaintiff is entitled to recover punitive or vindictive damages against said defendant, and particularly against the defendant E. I. du Pont de Nemours Powder Company, in the sum of Five hundred thousand Dollars ($500,000).

WHEREFORE plaintiff prays that by reason of the matters and things hereinbefore set forth, it do have and recover judgment of and from the defendants herein and each of them, for three-fold the damages suffered by it, amounting to the sum of One million, one hundred nineteen thousand nine hundred and fifty-seven and 82/100 Dollars ($1,-

119,957.82), as actual damages, and the sum of Five hundred thousand Dollars ($500,000), as vindictive or punitive damages, or the total sum of Three million eight hundred and fifty-nine thousand eight hundred seventy-three and 46/100 Dollars ($3,859,873.46); and for a reasonable attorney's fee, and for its cost and disbursements herein, as authorized by law in such cases made and provided.

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Borough of Manhattan,
City of New York.

TWYMAN O. ABBOTT,
WALTER J. BARTNETT,
Of Counsel.

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106 **Pleas.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY, a corporation, Plaintiff, against 107 E. I. DU PONT DE NEMOURS POWDER COMPANY (a corporation of New Jersey), Eastern Dynamite Company (a corporation of New Jersey), International Smokeless Powder and Chemical Company (a corporation of New Jersey), Defendants.	Action Under Section 7 of Act of Congress of July 2, 1890. Pleas.

108 And the said E. I. du Pont de Nemours Powder Company, one of the defendants in this suit, by Frank S. Katzenbach, Jr., its attorney, comes and defends the wrong and injury when &c., and says that it is not guilty of the said supposed grievances above laid to its charge, in manner and form, as the said plaintiff hath above thereof complained against it &c., and of this it, the said defendant, puts itself upon the country.

And for a further plea in this behalf, the said defendant, by leave of the Court here, for this purpose first had and obtained, according to the form of statute in such case made and provided, says, that the said plaintiff ought not to have or maintain its aforesaid action thereof against it, because it says that the said several supposed causes

of action in the said declaration, did not, nor did any or either of them accrue, at any time within six years next before the commencement of this suit, in manner and form as the said plaintiff hath above thereof complained against it, the said defendant. And this it, the said defendant, is ready to verify. Wherefore it prays judgment if the said plaintiff ought to have or maintain its aforesaid action thereof against it, &c.

FRANK S. KATZENBACH,
Attorney of defendant, E. I. du Pont de Nemours Powder Company. 110

STATE OF DELAWARE }
COUNTY OF NEWCASTLE. } ss.:

ALEXIS I. DU PONT, being duly sworn according to law, on his oath says that he is the Secretary of the E. I. du Pont de Nemours Powder Company, the above named defendant, and for this purpose its duly authorized agent; that the pleas above about to be filed are not intended for the purpose of delay, but because it is verily believed that there is a 111
just and legal defense to the action on the merits of the case.

ALEXIS I. DU PONT.

Sworn and subscribed before me a Notary Public in and for the County of Newcastle and State of Delaware, the 28th day of June, A. D. 1912.

PERCY E. STRICKLAND,
Notary Public, Delaware.

[Official Seal.]

My commission expires May 24, 1914.

Endorsed: Filed June 29, 1912.

GEORGE T. CRANMER,
Clerk.

112 **Pleas.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY, a corporation, Plaintiff, against 113 EASTERN DYNAMITE COMPANY (a corporation of New Jersey), International Smokeless Powder and Chemical Company (a corporation of New Jersey), Defendants.	Action Under Section 7 of Act of Congress of July 2, 1890. Pleas.

And the said Eastern Dynamite Company, one of the defendants in this suit, by Frank S. Katzenbach, Jr., its attorney, comes and defends the wrong
114 and injury when &c., any says that it is not guilty of the said supposed grievances above laid to its charge, in manner and form, as the said plaintiff hath above thereof complained against it, &c., and of this it, the said defendant, puts itself upon the country.

And for a further plea in this behalf, the said defendant, by leave of the Court here, for this purpose first had and obtained, according to the form of statute in such case made and provided, says, that the said plaintiff ought not to have or maintain its aforesaid action thereof against it, because it says that the said several supposed causes of action in the said declaration, did not, nor did any or either of them accrue, at any time within

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six years next before the commencement of this suit, in manner and form as the said plaintiff hath above thereof complained against it, the said defendant. And this it, the said defendant, is ready to verify. Wherefore it prays judgment if the said plaintiff ought to have or maintain its aforesaid action thereof against it, &c.

FRANK S. KATZENBACH,
Attorney of defendant, Eastern
Dynamite Company.

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STATE OF DELAWARE, }
COUNTY OF NEWCASTLE. } ss.:

CHARLES COPELAND, being duly sworn according to law, on his oath says that he is the Treasurer of the Eastern Dynamite Company, the above named defendant, and for this purpose its duly authorized agent; that the pleas above about to be filed are not intended for the purpose of delay, but because it is verily believed that there is a just and legal defense to the action on the merits of the case.

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CHARLES COPELAND.

Sworn and subscribed before me,
a Notary Public in and for the
County of Newcastle and State
of Delaware, the 28th day of
June, A. D. 1912.

J. ED. WILSON,
Notary Public,
Newcastle County,
State of Delaware.

Endorsed: Filed June 29, 1912.

GEORGE T. CRANMER,
Clerk.

118 **Pleas.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY, a corporation, Plaintiff, against 119 INTERNATIONAL SMOKELESS POWDER & CHEMICAL COMPANY (a corporation of New Jersey), Eastern Dynamite Company (a corporation of New Jersey). Defendants.	Action Under Section 7 of Act of Congress of July 2, 1890. Pleas.

And the said International Smokeless Powder and Chemical Company, one of the defendants in this suit, by Frank S. Katzenbach, Jr., its attorney, 120 comes and defends the wrong and injury when, &c., and says that it is not guilty of the said supposed grievances above laid to its charge, in manner and form, as the said plaintiff hath above thereof complained against it, &c., and of this it, the said defendant, puts itself upon the country.

And for a further plea in this behalf, the said defendant, by leave of the Court here, for this purpose first had and obtained, according to the form of statute in such case made and provided, says that the said plaintiff ought not to have or maintain its aforesaid action thereof against it, because it says that the said several supposed causes of action in the said declaration, did not, nor did any or either of them accrue, at any time within

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six years next before the commencement of this suit, in manner and form as the said plaintiff hath above thereof complained against it, the said defendant. And this it, the said defendant, is ready to verify. Wherefore it prays judgment if the said plaintiff ought to have or maintain its aforesaid action thereof against it, &c.

FRANK S. KATZENBACH,
Attorney of defendant, International
Smokeless Powder & Chemical Company.

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STATE OF DELAWARE, }
COUNTY OF NEWCASTLE. } ss.:

W. E. STEEN, being duly sworn according to law, on his oath says that he is the Treasurer of the International Smokeless Powder and Chemical Company, the above named defendant, and for this purpose its duly authorized agent; that the pleas above about to be filed are not intended for the purpose of delay, but because it is verily believed that there is a just and legal defense to the action on the merits of the case.

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W. E. STEEN.

Sworn and subscribed before me a Notary Public in and for the County of Newcastle and State of Delaware, the 28th day of June, A. D. 1912.

PERCY E. STRICKLAND,
Notary Public, Delaware.
[Official Seal.]
My commission expires May 24, 1914.

Endorsed: Filed June 29, 1912.

GEORGE T. CRANMER,
Clerk.

124 IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY, a Corporation,
Plaintiff,
against
E. I. DU PONT DE NEMOURS POWDER COMPANY (a Corporation of New Jersey), EASTERN DYNAMITE COMPANY (a Corporation of New Jersey), INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY (a Corporation of New Jersey),
125 Defendant.

Bill of Exceptions.

BE IT REMEMBERED that afterward, to wit, on the 23d day of September, 1913, at a stated term
126 of the United States District Court for the District of New Jersey, begun and holden at the City of Trenton in said district, before the Hon. John Rellstab, a Judge of said district, the issues joined in the above cause of action, as set forth in the Amended Declaration and the Answers thereto, came on to be tried before a jury and continued, with sundry adjournments, until the 25th day of February, 1914; that the plaintiff was represented by its attorneys, MacFarland, Taylor and Costello, Willard U. Taylor, Twyman O. Abbott, Walter J. Bartnett, Linton Satterthwaite, and Alfred H. Strickland; and the defendants by their attorneys, Frank S. Katzenbach, Jr., Robert H. McCarter, J. P. Laffey, William H. Button and George S. Graham; that a jury was impanelled and

sworn; that upon the trial of said issues the parties by their respective attorneys, to maintain and prove the issues, each on its part to be proved, introduced and offered in evidence the testimony of certain witnesses, and introduced and offered in evidence certain documents and records; and certain objections were made to said offers, and said objections were sustained or overruled, and said offers were received or refused, all as hereinafter particularly set forth; that the names of the witnesses whose testimony was so offered and received in evidence, 128
together with the testimony so offered and received, and the objections made thereto, and the orders of said Court sustaining or refusing said offers, together with plaintiff's exceptions taken at the time thereto, and together with the documents and records which were offered in evidence as exhibits and which were received or refused by said Court, in so far as the same is necessary to determine the issues upon Writ of Error on behalf of the plaintiff herein, are particularly hereinafter set forth as follows, to wit:

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Jury called as follows: Richard Satterthwaite, W. Howard Shreve, James B. Bell, William B. Wean, Peter A. Sturgeon, Edgar T. Beers, Thomas T. Woodhouse, Lloyd H. Rockhill, George W. Prall, August Jenter, John F. Dickson, John S. Neary. Jury sworn.

Twyman O. Abbott, Esq., opened for plaintiff.

PIERRE S. DU PONT, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. du Pont, where do you reside? A. In Wilmington, Delaware.

Q. What is your business? A. I am treasurer of the E. I. du Pont de Nemours Powder Company.

Q. How long have you been treasurer of the corporation whose name you mention? A. Since the corporation was organized in 1903.

Q. In 1903? A. Yes.

Q. Do you hold any other official position in that company? A. I am now acting president of the company; also a director.

Q. How long have you been a director of the com-
131 pany? A. Since the organization of the company in 1903.

Q. Previous to your becoming president, or becoming connected with the E. I. du Pont de Nemours Powder Company, what was your occupation? A. I had been with the E. I. du Pont de Nemours and Company in the manufacturing department for nine years, from 1890 to 1899; from 1899 to 1902 I was engaged in business in Lorraine, Ohio, nothing to do with explosive business. In 1902 I gave up my position with that company and took the position of treasurer of the E. I. du
132 Pont Company, the new company.

Q. Previous to the organization of the E. I. du Pont de Nemours Powder Company, what were the du Pont interests known as technically? A. E. I. du Pont de Nemours & Company.

Q. And was it a corporation? A. The former E. I. du Pont de Nemours Company was a partnership from the year 1802 to 1899, it was several partnerships succeeding each other.

Q. Are you acquainted with the du Pont Company from its formation down to the present day? A. In a general way, yes.

Q. Will you kindly state in a general way when the du Pont interests began business, and how long they have been continued in that business? A. The

business was started in the year 1802 and manufacturing started about 1804. At that time so far as I know, the du Ponts were the only manufacturers of explosives in the United States; and from then on for some time, I think about 1850 other companies appeared in the field.

Q. What other companies were there? A. I think the Hazard Powder Company was started about 1850; and the Laflin & Rand Powder Company started before that; I think they had a mill started about 1820. 134

Q. Were there any other? A. I have none others in mind; I don't know if there were or were not.

Q. Now, proceed with the narration of events. A. The du Pont Company was, I believe, the largest interest in the explosive industry at that time. In 1876 the du Pont Company purchased all of the stock of the Hazard Powder Company and from then on was decidedly the largest manufacturer of explosives in the United States.

Q. You say the du Pont Company? A. That is the partnership.

Q. The partnership? A. Yes. 135

Q. How long did that continue as a partnership? A. Until the year 1899. There were, of course, partnerships succeeding each other, but the partnership was maintained from 1802 to 1899.

Q. Do you know who were the members of that partnership? A. The last partnership?

Q. The last partnership? A. Mr. Eugene du Pont, Col. H. A. du Pont, F. G. du Pont, Alexis I. du Pont, and I think Charles I. du Pont, and Alfred I. du Pont.

Q. Did you yourself have any interest in that partnership? A. No; none whatever.

Q. When did you state that the partnership became incorporated? A. The year 1899.

Q. Did you have any interest in that incorporation? A. None whatever.

Q. Who were the members—who did have interest in that corporation, if you know? A. Eugene du Pont, Col. H. A. du Pont, Alexis I. du Pont, F. G. du Pont, Alfred I. du Pont, and Charles I. du Pont.

Q The next step in the organization, or in the carrying on of the business of the du Pont companies after the organization of the company was
137 what? A. The corporation of 1899 was in operation for three years until 1902, when Mr. Eugene du Pont, who was president of the company and the active manager—in fact, the only manager died, the end coming very suddenly. The company was thus left without a managing head. None of the stockholders had been interested in the management, or knew much of it; and three of them out of the six were at the time in ill health; and they determined that the business must be sold, that they were not in a position to operate it any longer.

138 Q. What was the amount of capital stock of the corporation which was formed to take over the du Pont partnership, if you know? A. It organized with apparently, with a nominal capitalization, which had nothing to do with the assets—two million dollars.

Q. Two million dollars formed the capitalization? A. Yes, sir.

Q. That did not amount to the actual value of the assets? A. Oh, no; that was purely a nominal figure.

Q. Do you know in what proportion that stock was divided between the stockholders at that time? A. Yes; Mr. Eugene du Pont, Col. H. A. du Pont, Alexis I. du Pont and Francis G. du Pont each had 20 per cent; Alfred I. du Pont and Charles I. du Pont each 10 per cent.

Q. It was about this time you stated that you became interested in the du Pont Powder business? A. In the year 1902.

Q. In the year 1902? A. Yes.

Q. Will you describe how you came to take an interest in that business at Wilmington? A. The first intimation I had that the business was to be sold came to me through a telephone message to Lorraine, Ohio, where I was then a resident, from T. C. du Pont. Mr. T. C. du Pont called me and told me that Mr. Alfred du Pont and he had decided 140 to make an effort to purchase this business; that the former owners had decided to sell, and that he, T. C. du Pont, had agreed to help purchase, if I would join in the enterprise, as T. C. du Pont, Alfred I. du Pont and myself.

Q. What response did you make to that intimation? A. I told him I was willing to do it, although I knew nothing of the details at the time.

Q. What steps, if any, did you take to inform yourself? (Objection sustained.)

Q. Did you inform yourself, Mr. du Pont, as to the assets of the interests which you were proposing 141 to take over? A. I did; yes.

Q. Did you inform yourself? A. I did; yes.

Q. You decided to take over these assets, did you? A. Yes.

Q. What did you ascertain the valuation of the properties to be at that time? (Objection overruled.) A. I can best answer that by saying that I, as director of the corporation that was organized to take over the property, voted to purchase for $24,000,000—that was the valuation at which the property was put.

Q. Did you make any previous investigation of the question of valuation before you took the vote that you have just now mentioned? A. Yes.

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Q. Now, what was that valuation that you ascertained the property to be from the investigation which you say you made? (Objection overruled.) A. That valuation, as I said, was $24,000,000, which was the purchase price of the property.

Q. I am asking you now about the previous valuation which you put upon the property? A. That was the only valuation that there was. I examined the books and from that we determined to purchase the property for the amount named, $24,000,000.

143 Q. You stated a while ago that you had no knowledge of the extent of the business at the time when the proposition was made to you to become interested in the business? A. None whatever.

Q. I will ask you to state whether or not on or about the 20th day of February, 1902, you wrote a letter to Irenee du Pont, 788 Broad Street, Newark, N. J. A. I cannot remember having written it; it is quite possible.

Q. Well, I show you a book which is marked Plaintiff's Identification 12, being a part of the

144 record of the United States of America, petitioner, vs. E. I. du Pont de Nemours & Company, defendants, and refer you to page 38 of Vol. 1 of the exhibits (Government exhibits), and ask you to look at the matter which appears there and state whether or not you can recall whether that is a true, correct copy of a letter which you wrote at the time mentioned? A. Yes; I believe it to be correct.

(Letter referred to offered and received in evidence as Plaintiff's Exhibit 19 and read to the jury as follows):

February 20th, 1902.

Irenee du Pont, Esq.,
788 Broad Street, Newark, N. J.

Dear Irenee:—

Just after Cousin Eugene's death the stockholders of E. I. du Pont Co. had a meeting and decided to sell out the business to Laflin & Rand as no one was ready to 146
take up the management. Alfred made a request that he be permitted to take the property which request was granted. He came to Coleman and me and we decided to make an offer to the old stockholders to buy them out. This has been done and the proposition I am informed by Eugene this afternoon has been accepted. It is now only necessary to reduce it to writing. This will doubtless come as a great surprise to you; nevertheless, it seems to be a 'go.' I think
that there is going to be some tall hustling 147
to get everything re-organized. We have not the slightest idea of what we are buying, but in that we are probably not at a disadvantage as I think the old company has a very slim idea of the property they possess.

"I mentioned this matter to Fenn the last time I was in New York and have just written him asking whether you and he would be prepared to take on any additional work in Dallas, as it will be necesary for me to shift part of this burden on some one else. I have written to Bill asking him whether he will take it up in the way I have, supposing you will act with him as you have with me. You may talk with Irenee about this, but

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do not mention it outside until I advise you as the du Ponts are cranky and may not like to have the news announced before they do it themselves.

Your affectionate brother,

PSduP/JJR (signed) Pierre S. duPont.

Q. Now, Mr. duPont, did you write another let-
149 ter—I show you the same volume which I showed you a moment ago and ask you to refer to pages 39 and 40 of that volume, and look at what appears to be Defendant's Exhibit No. 5 and examine the same and state whether you recall having written the same? A. Yes; I recall the letter.

(Letter offered and received in evidence as Plaintiff's Exhibit 20, and read to the jury as follows):

February 20th, 1902.

150 William K. duPont, Esq.,
Johnstown, Penna.

Dear Bill:

The wheel of fortune has been revolving at a pretty high speed on the Brandywine during the last week or two with the result that Coleman, Alfred and I have made E. I. duPont & Co. an offer to buy out their property, and I have to-day received verbal acceptance of the proposition The matter came about through the determination of the old stockholders to sell the property, as no one was willing to handle the management. After decision to sell was made Alfred re-

quested that he might be allowed to purchase. He then came to Coleman and me and we decided to go in together. The proposition to the old stockholders is to offer bonds in payment of the property giving a stock bonus. Eugene, who has come up to stay at our house until his folks return, told me last evening that they had had a meeting at which Cousin Henry, Frank, Charles and Eugene were present, and decided to accept the proposition. Cousin Alex was not well 152
and did not come to the office, but Eugene assures me that he will accept also. I suppose we will go over to-day to make arrangements for transferring the property. You will doubtless be surprised at this turn of affairs. I realize that we are taking up a pretty big load; the prospects, however, I think, are bright for making it a success.

"I have made arrangements concerning The Johnson Co. to turn over a good deal of my work to Mr. Donaldson, though I can- 153
not cut loose from there all together. Mr. Johnson knows of the circumstances, and thinks it is all right for me to act as I have.

"As to Dallas, I am somewhat uncertain. Would like to turn part of the care of the property over to you if you can arrange it. I have talked with Coleman and believe he would advise you to make some arrangements concerning the Ice Company and take up the other work in addition if possible. Will you please think over the proposition: 1st, as to whether you can get some time away from Johnstown, and 2d, whether you care to undertake the Dallas work. I think that the financial part of it can be arranged

satisfactorily. Of course, it will not be necessary for you to go South oftener than I have done. You may tell Ethel all about this, but please do not mention it to any one else until I advise you to do so. The deal is not absolutely perfected yet and had better not be talked around until it is a sure go. I told mother before she left for Arizona and asked her to tell Belin. Lou also knows. Coleman has told Aunt Poll and Alfred has
155 talked to Bessie. I do not know whether any one else knows of it or not.

Your affectionate brother,
PSduP/JJR.

Q. At the time that you wrote those letters, as I understand it, you had made no investigation of the value of the properties which you were proposing to buy? A. My investigation was made between the first of February and the time the property was finally transferred, which I think was in April
156 or May. I believe my investigation was made during the months of April and March.

Q. Was anything said by the persons who were proposing to turn this property over to you as to the value of the property? (Objection overruled.) A. Yes; I understand that the former owners were willing to sell it for twelve millions in cash.

Q. Now, how were the interests, which you were proposing to take over at that time constituted, what were they made up of? A. They were made up of cash and cash assets used in the manufacture and sale of explosives, the factories and magazines, also for the sale and manufacture of explosives and stocks of other corporations, principally those manufacturing explosives.

Q. What plants did the duPont interests have in

actual operation at that time? A. They had plants which they owned directly, one at Wilmington, Delaware, for the manufacture of black blasting powder, one at Wap-Walloken, Pennsylvania, for like manufacture, one at Ulooar, Iowa, for the same manufacture and a factory at Carney's Point, N. J., for the manufacture of smokeless powder.

Q. What was, according to the best knowledge, the valuation of those plants that were you were then proposing to take over? (Objection overruled.) A. I couldn't make any estimate of that; 158
I do not remember any separate figures.

Q. Well, then, would you state at this time what the other assets were of the duPont Company that you were then proposing to purchase outside of these plants which you have named? A. They had cash, accounts receivable——

Q. How much cash? (Objection overruled.) A. My recollection is about a million or a million and a half dollars; I should think a million and a half dollars, and accounts receivable, materials and supplies.

Q. How much were the accounts receivable? 159
(Objection overruled.) A. I couldn't make any estimate of that.

Q. How much supplies? (Objection overruled.) A. I couldn't estimate that either.

Q. What were the other assets? A. There were stocks in corporations for manufacturing explosives and also investments in what might be termed standard securities.

Q. What kind of securities? A. Standard securities; Stock Exchange securities, if you please.

Q. How much in standard securities? (Objection overruled.) A. I cannot remember that; I should think about $3,000,000.

Q. What else? A. And they had tracts of real

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estate throughout the country; some had been used for magazine purposes, some had been abandoned for that use.

Q. How much did you place to that account? A. I have no recollection of that.

Q. Well, now, what else did you have? A. Stocks in manufactories of supplies.

Q. Now, that was the point I wanted to reach; what stocks did it hold in other manufacturing concerns? A. You mean the companies in which they
161 were interested?

Q. Yes. A. I can name some of them, I think.

Q. Have you any data on hand upon which you can give an accurate statement? A. No; I have not.

Q. I refer you to page 485 of the defendant's record, testimony, Vol. 1, in the case to which I called your attention a moment ago, and ask you to look at what appears on that page and state whether you are able to give a definite resume of the stocks owned and the various corporations in which the same were owned at the time when you were pro-
162 posing to take over the duPont interests. A. (after examination) I judge that is a correct list; yes.

Q. Well, now, will you kindly read into the record a full list of the stocks and corporations owned by the duPont Company at the time when you took over those interests? A. "Austin Powder Company, 266 shares, 32 per cent of the total capital; Birmingham Powder Company, 203 shares, 32.5 per cent; California Powder Works, 6500 shares, or 20 per cent; Chattanooga Powder Company, 731 shares, 29 per cent; Consumers Powder Company, 530 shares, 25 per cent; Eastern Dynamite Company, 1908 shares, 9.5 per cent; The Enterprise Powder Manufacturing Company, 438 shares, 35 per cent; Equitable Powder Company, 298 shares, 29.8 per cent; Fairmount Powder Company, 446 shares, 59.4

per cent; the Indiana Powder Company, 411 shares, 20.5 per cent; Laflin Powder Company, 2091 shares, 34.8 per cent; Lake Superior Powder Company, 908 shares, or 22.7 per cent; Mahoning Powder Company, 500 shares, or 50 per cent; The Northwestern Powder Company, 136 shares, or 22.6 per cent; Ohio Powder Company, 230 shares, or 15.3 per cent; Oriental Powder Mills, 1235 shares, 31.3 per cent; Phoenix Powder Manufacturing Company, 2314 shares, 28.9 per cent."

Q. At this time did that company have any interest in what was known as the Hazard Powder Company? A. Yes. 164

Q. What interest did it have belonging to the company under the name of the Hazard Company? A. It owned all of the stock of the Hazard Powder Company and had owned it since 1876 or thereabouts.

Q. Do you know what the assets were of the Hazard Powder Company were at that time? (Objection overruled.) A. Yes; it had a factory for the manufacture of black blasting powder at Hazardville, Connecticut, and the necessary cash assets to operate that factory and sell this powder and also numerous stocks in other corporations manufacturing explosives. 165

Q. Do you know at this time what stocks it held in other corporations? A. I could name some of them; I have no list at hand.

Q. I show you the same volume that you just read from a moment ago, page 486, and ask you to look at it and state whether you can give a detailed statement of the stocks held by the Hazard Powder Company at that time? A. (after examination) That is a correct list; yes.

Q. Well, now, will you kindly read into the record the statement that you see there that you think

is correct? A. The Eastern Dynamite Company, 5164 shares, 25.8 per cent; The Hecla Powder Company, 52 shares, 5.2 per cent; the Lake Superior Powder Company, 609 shares, 15.2 per cent; the Ohio Powder Company, 116 shares, 7.7 per cent; the Oriental Powder Company, 1222 shares, 30.5 per cent; The Phoenix Powder Manufacturing Company, 1104, 13.8 per cent.

Q. Do you know what the total amount of the
167 black powder business was which was done by your company and the Hazard Powder Company at the time that you are about to take over the DuPont interests? A. No, I do not remember that.

Q. Did you have any interests outside of the Hazard Powder Company in what is known as the Laflin-Rand Powder Co.? A. No, sir; no interests whatever.

Q. Were you in any way interested with the Laflin and Rand Powder Company, in the ownership of any properties or any interests which were engaged in the manufacture of powder at that time?
168 A. Yes.

Q. In what way? A. They were owners of stock in most of the corporations in which E. I. DuPont de Nemours & Company were interested.

Q. Have you any means at hand of giving a definite statement as to the amount of stock owned by the Laflin & Rand Powder Company at that time? A. No, I have not.

Q. Now, will you state how the E. I. DuPont de Nemours & Co., and the Laflin & Rand Powder Company were united in carrying on the black powder business of the country? A. I don't understand the question.

Q. Was there any union in any way, any kind of an arrangement whereby you were to conduct the black blasting powder trade, which your interests

and the Laflin & Rand interests conducted? (Question withdrawn.)

Q. You have just testified that you had large interests in the Hazard Powder Company; when did you first acquire those interests, when did the Du-Pont interests first acquire those interests? A. 1876; that is, the stock of the Hazard Powder Company was purchased about 1876, all of the stock.

Q. That was by the duPont interests known as the partnership? A. Yes.

Q. Did the duPont interests continue to hold the 170
interests in the Hazard Powder Company, down to the time when you entered into negotiations to purchase them? A. Yes.

Q. Can you state at this time what per cent. of the black blasting powder trade of the country was controlled by the Laflin & Rand Powder Company?

The Court: When?

Q. When you were negotiating for the purchase of the du Pont interests? A. No, I cannot state 171
that.

Q. I refer you to page 467 of the same volume which you examined a moment ago and ask you to examine that page and state whether or not you can refresh your memory upon that point? A. No, I cannot answer your question from this. This does not relate to the powder trade of the country.

Q. Well, will you state what it does relate to, upon that point? A. This relates to the black powder business done by the E. I. du Pont de Nemours Powder Company and Laflin & Rand Powder Company and the corporations which they together con trolled and owned of the stock.

Q. What was that interest? A. The Lafln Rand Company had twenty per cent. of the business of the two companies and the jointly controlled companies.

Q. And what part of the E. I. du Pont Company, what part did they have? A. Thirty-six per cent.

Q. And together they controlled 44 per cent. is that correct? A. No, the corporations in which they had a controlling interest together had a controlling interest together add up to 44 per cent. those figures add up to 100 per cent. but that is not of the total trade of the company, bu that is of he trade enumerated in the paragraph.

Q. State definitely just what that percentage
173 that you have given here does relate to? A. Those percentages are the percentages of the total trade controlled—I mean supplied by Laflin and Rand, E. I. du Pont d Nemours & Company and by the corporations which they together controlled the majority of the stock. That covered nothing in which they held a minority interest and in which they had no interest. It does not relate to the trade of the country.

Q. Now after you formed the—after you decided to purchase the du Pont interests as represented by the du Pont Company, which you proposed to
174 buy over, how did you go about it to purchase those interests? A. Which interests do you mean?

Q. The du Pont interests. In other words what did you decide to pay for them? A. We organized a corporation which was known as the E. I. du Pont de Numours Company and that name was afterward changed to E. I. du Pont de Nemours & Company, that corporation and all those assets formerly owned by the E. I. du Pont de Nemours Company of 1899 were bought for twenty-four millions of dollars.

Q. How did it pay the twenty-four millions? A. Twelve millions on four per cent. notes and twelve millions in stock.

Q. What was done with the balance of the stock

of the E. I. du Pont de Nemours & Company? Objected to.

The Court (To the witness after argument): Was any more stock issued?

The Witness: There is no more stock issued than that I have named, twelve million in notes and twelve millions of stock. The total authorized issue of the stock was twenty million shares, the balance of it was in the company. 176

Q. Was the balance of it assigned or given to anybody? A. No.

Q. What was ever done with the balance of the stock? Did it still remain unissued? A. Still remained unissued in the company.

Q. In the possession of the company which took over the final interest of E. I. du Pont de Nemours Company? A. Yes; I think I am clear on your question. The corporation, E. I. du Pont de Nemours Company, organized by us to take over the assets of E. I. du Pont de Nemours & Company 177 issued twelve million dollars of notes and twelve million dollars of stock to purchase the assets of the seller and no further issue of stock was made.

Q. Can you state—A. May I correct that statement? There was stock sold afterwards for cash I think to about thirteen million dollars total.

Q. Have you a list of the stockholders of the company accessible? A. Of the E. I. du Pont de Nemours Company, organized in 1902

Q. The one which you organized to take over the assets of the partnership? A. I have not a list accessible, I could name them, I think.

Q. You can name them? A. As they were at that time, I think so; yes.

Q. Will you kindly do so? A. The estate of Eugene du Pont, Col. H. A. du Pont, Alexis I. du Pont, Charles I. du Pont, F. G. du Pont, Alfred I. du Pont, T. C. du Pont, and P. S. du Pont.

Q. How much of that stock was held by T. C. du Pont? A. I cannot state that exactly.

By the Court (to the witness after objection and argument):

179 Q. I understand you to say no more stock was issued, Mr. du Pont, than that which was necessary to take over the du Pont interests? A. That I think is correct. There was twelve million of stock issued in payment of this property, in part payment, the balance made up by notes and further stock issued, I think, up to thirteen millions.

Mr. Graham: For cash?

The Witness: One million dollars of the stock was issued for cash later on. I think the stock of the company when finally dis-
180 solved that had to be taken up was $13,300,000 or thereabouts.

Q. Upon the organization of the company, the new company had to take that stock? A. Yes, they did.

Q. That would be included in the twelve million dollars, would it? A. Yes, part of that twelve million went to the organizers of the company.

The Court: Proceed.

By Mr. Abbott:

Q. Who were the officers of the company which you organized to take over the interests of the

du Pont company at the time? A. I am not quite clear as to this. Mr. T. C. du Pont was President of it; Mr. Alfred I. du Pont, Vice President; I was treasurer; and Mr. Alexis I. du Pont, Secretary.

Q. Now, who were the directors? A. I am not quite clear, but I think I can name them. There was Col. H. A. duPont; Alexis I. duPont, Sr.; F. G. duPont; T. C. duPont; Alfred I. duPont; P. S. duPont, and I think Alexis I. duPont, second.

Q. Have you any means at this time, Mr. duPont, of stating exactly how many shares of stock you 182
held in that company at that time?

Mr. McCarter: That we object to as utterly immaterial.

Mr. Abbott: I am trying, if Your Honor please, to reach the point, in every way that I can, from this witness, of what was done with that 80 per cent. of stock which he says was practically unissued, that is to say——

The Court: He said that was unissued, unissued except for one million.

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A. (Interrupting) About one million which was afterwards issued.

Mr. Abbott: I want to know what was done with that stock?

The Court: If it was not issued, it is not issued.

Q. Do you remember what interests were owned by the Laflin and Rand Powder Company, what corporations were owned by them at the time when you took over the interests of the duPont Company? A. I could name some of them, but not the exact amount.

Q. You know the corporations that they were interested in? A. I think so; yes.

Q. Will you kindly do so, stating the amount of shares of stock that they held in any corporation and also the percentage that it would be? A. I could not state that now.

Q. Then, I will refer you to Page 495 of the same volume which I handed you a moment ago, and ask you to look at it and state whether or not you can refresh your memory (handing book to
185 witness)? A. I am afraid I have not the right place here.

Q. At the bottom of the page, Mr. duPont. A. This does not seem to be a list of the Laflin & Rand holdings.

Q. What does it refer to? A. That refers to the corporation in which they were the largest stockholders and majority stockholders.

Q. Let me look at that a moment and see. (Takes book.) Well, do you know who was the owner of what was known as the Birmingham Powder Com-
186 pany at the time you took over the interests of the duPont Company? A. The duPont Company and the Hazard Powder Company which had shares in it, but I cannot name the other stockholders.

Q. What shares did the duPont Company have in that company? A. I would have to refer to the list that was just read for that.

Q. What shares did the Laflin & Rand Powder Company have in that? A. I could not state that; they were stockholders, though.

Q. Now, after you formed and took over the interests of the duPont Company, what was the next step that you took in reference to the conduct of the business of that company? Did you continue to do business under the name of E. I. duPont de

Nemours & Company as changed? A. No, we continued to do business under the name of E. I. duPont de Nemours Company, which was the name of the corporation organized, the new company. There was a slight difference in the names of the organizations from the E. I. duPont de Nemours & Company to the new corporation of E. I. duPont de Nemours and Company which we formed.

Q. So that the name of the corporation was then E. I. du Pont de Nemours and Company? A. It was, and the old corporation was dissolved immediately on the formation of this one and on the dissolution of the company we changed the name of our company to E. I. du Pont de Nemours & Company. 188

Q. Was the stock of the company isued? A. Yes; that is the company which we have been speaking of.

Q. Was there any change in the amount of stock that was held by the various stockholders of the company after its name was changed? A. No; nothing that I know of.

Q. How long did you conduct the business under the name of E. I. du Pont de Nemours Company? A. E. I. de Pont de Nemours Company? 189

Q. Yes, E. I. du Pont de Nemours Company. A. I think for a very short time; I think the name of that company was changed within a very few months.

Q. How long did you conduct the business under the name of E. I. du Pont de Nemours & Company? A. Until about August, 1903.

Q. Then what did you do with reference to E. I. du Pont de Nemours & Company? A. The corporation was organized under the name of E. I. du Pont de Memours Powder Company, which is the present corporation, and on August 1st, 1903, E. I. du Pont de Nemours & Company sold all of its property to

Q. All of the property it had acquired from the du Pont Company? A. Yes.

Q. As well as all of the property that it had subsequently acquired? A. Yes, sir.

Q. What property had it acquired between the time that it came into existence and the time it went out of existence? A. I can not remember anything of note excepting the stock of the Delaware Securities Company, and the stock of the California Investment Company—no, I think they did not acquire
191 that, I think that they acquired the Delaware Securities Company and that was the only stock.

Q. What was the Delaware Securities Company? A. That was a corporation that was organized to purchase the shares of the Laflin & Rand Powder Company.

Q. How much of the stock of the Delaware Securities Company did the E. I. du Pont de Nemours Powder Company acquire? A. They eventually acquired all of it but about 15 shares, I think.

Q. Previous to that time had the Delaware Secur-
192 ities Company acquired all of the interest of the Laflin & Rand Powder Company? A. I am not certain about that; I think they did, I think they acquired all of the shares of the Laflin & Rand Powder Company.

Q. So when the E. I. du Pont de Nemours & Company—so far as they were concerned, they acquired the Laflin & Rand Company? A. Yes, sir.

Q. At that time it had the Laflin & Rand interest, and the Hazard interest which you had acquired previously, and the interest known as the E. I. du Pont interest, is that correct? A. That is correct.

Q. And so E. I. du Pont de Nemours Powder Company composed within itself all of the assets that had previously been held by the du Pont interests and by the Hazard company interests and the

Laflin & Rand Company interests, is that correct? A. Yes; the Hazard interests had been already owned by the du Pont interests.

Q. Now, after all these interests were acquired by the Powder Company (I will use that term for a short name), what other interests were acquired by that company? A. The E. I. du Pont de Nemours Powder Company made an offer to purchase the shares of all the corporations in which the du Pont interests had been interested, on the same basis as had been offered the du Pont interests, the same 194 price per share to each stockholder.

Q. Was that offer accepted? A. To a very large extent, yes.

Q. Did the Powder Company finally succeed in acquiring all of the interests held by the du Pont interests—du Pont heirs? A. They had already acquired that in their first purchase, the first purchase made by the Powder Company when it took the property known as the du Pont interests they acquired that entire, at one purchase.

Q. Was there at this time, or were there at that 195 time—during the year 1908 or up to the time of 1908, were there at that time outstanding any interests formerly known as "du Pont interests" which were not held by the Powder Company? A. No.

Q. Now, have you a list of the stocks owned by the Powder Company in 1909? A. No, I have not.

Q. I show you Government's Exhibit 402 on page 2757 of Volume 5 of Petitioner's Records in the case of United States of America, Petitioner, against E. I. du Pont de Nemours & Company, which has been marked as Plaintiff's Exhibit 8, and ask you to look at that document and state whether or not it refreshes your memory so that you can answer the question which I previously propounded to you- (Handing book to witness). A. I judge that is correct. (Objection sustained.)

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Q. I was asking you as to 1908, is that correct? A. 1909.

Q. Was any portion of the stock of the E. I. du Pont de Nemours Company ever reconveyed, or retransferred to any other party to your knowledge than those who were the original holders of the stock? (Objection sustained.)

Q. I will ask you to state whether or not you and Mr. T. C. du Pont and Mr. A. I. du Pont did not receive directly or indirectly, share and share alike,
197 75 per cent. divided between you of the stock of the E. I. du Pont de Nemours & Company, which succeeded to the interests of the du Pont Company. (Objection sustained.)

By the Court:

Q. We understand that only 20 per cent of the stock of this company that was organized to take over the du Pont interests was issued? A. That is not quite right, your Honor. I said twelve millions
198 out of twenty millions issued.

Q. The 80 per cent was not issued? A. The balance of eight millions, the difference between eight millions and twelve millions.

Mr. Graham: Counsel said 80 per cent of this stock.

Q. Counsel's interrogations were always based on 80 per cent. That, of course, by mathematics, would leave 20 per cent issued. (To the witness): Do you understand that that was so? A. No; I understood the question——

Q. About the eight millions? A. How much was issued in payment for the property?

Q. No; that was not his question. A. May I have

the question again? (After argument question repeated.)

Q. The original payment was twenty-four million dollars. Twelve million in notes, twelve million in stocks. There remained at that time unissued eight million of stock. One million or thereabouts was issued afterwards for cash in subsequent years, but the whole twenty millions was never issued.

Q. You say that there remained at that time, unissued—what was the total capitalization of that 200
company? A. Twenty million.

Q. And that left eight millions that was unissued, except this one million which was subsequently sold? A. Yes, sir.

Q. For cash? A. That is correct; yes, sir.

By Mr. Abbott:

Q. Now, what was done with the nine million of stock, afterwards, at any time?

Mr. McCarter: Where do you get that 201
nine million?

Q. I mean the seven million? A. That seven millions was never issued.

Q. After you organized the E. I. duPont de Nemours Powder Company, then what was done with this seven million shares of stock—the seven millions of stock which had been unissued? A. That still remained unissued. It was never issued.

Q. It was never issued? A. It was never issued.

Q. It was finally cancelled? A. Yes, sir.

Q. Now, how were the shares of stock of your Powder Company divided up? Can you say at this time, without having to refer to the books? (Objection overruled.) A. The shares of the Powder

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Company were distributed to the owners of the property for which those shares were paid. The E. I. duPont de Nemours & Company received its share of the stock in payment for its assets, and remained possessed of that stock until the dissolution took place, the dissolution of the E. I. duPont de Nemours & Company, and the stockholders—and that which went to the E. I. duPont de Nemours Powder Company was distributed among the stock-
203 holders of the E. I. du Pont de Nemours Powder Company.

Q. I will ask you, Mr. duPont, whether you can state what stocks in the various companies were owned by the E. I. duPont de Nemours Powder Company on September 18, 1908? A. No, I cannot.

Q. Will you furnish a list of such stock? A. Why, I can attempt to get it; I think I can.

Q. Now, then, I will ask you also to state whether you can furnish a list of the number of shares of capital stock issued and outstanding, the capital stock of the E. I. duPont de Nemours Powder Com-
204 pany, outstanding on September 18, 1908; will you do that? A. I think that can be furnished; yes.

Q. I will ask you at the same time to furnish a statement showing all the stocks owned in the various Explosives Companies by the E. I. duPont de Nemours & Company, at the time when the same was organized in 1903, and at any time subsequent to that time, down to September 18, 1909? A. I am not quite clear on that question. Is the question to find out the number of shares owned September 18, 1908?

Q. The question implies the ownership of stocks by the Powder Company from the time of its organization down to September 18, 1908? A. Each acquisition made, do you mean?

Q. Beg pardon? A. Each acquisition made, do you mean, by the Powder Company?

Q. I am speaking now of the stock that it held in other Explosive Companies? A. Yes, but you wish a list of each acquisition of stock made between those dates?

Q. Yes, if you can do so—and the amounts? A. It will take a long while to get them. It can be furnished, I think, though.

Q. Did the Austin Powder Company have any interest in the E. I. du Pont de Nemours Powder Company at any time during its organization? A. Yes. 206

Q. What? How much? A. I can't state that.

Q. Did the Birmingham Powder Company have any such interest? A. I do not know that they did.

Q. Beg pardon? A. I do not know that they did.

Q. Did the California Powder Works have any such interest? A. I think not.

Q. Did the Powder Company have any interest in the California Powder Works? A. Yes.

Q. How much did it have? A. It purchased shares from the E. I. du Pont de Nemours & Company under the original purchase before 1903, and acquired further shares after that, but I can not name the date of the acquisition, or how much. 207

Q. Did the Powder Company own any interest in the Chattanooga Powder Company. Yes.

Q. How much? It owned its original purchase in 1903, and subsequently acquired, I think, all of that stock.

Q. Did it have any interest in the Consumers Powder Company? A. I think not, but I am not certain.

Q. Did the Powder Company have any interest in the Eastern Dynamite Company? A. Yes.

Q. How much? A. It had the original purchase from E. I. du Pont de Nemours & Company, and

afterwards acquired substantially all of the stock I believe. I am not sure of that.

Q. Now, when after that, was that? A. I can not name the date.

Q. Now, are you able at this time to say what interest the Eastern Dynamite Company controlled at the time when you controlled or acquired all of the stock of the Eastern Dynamite Company? A. They owned interests in various corporations, but I can not name them.

209 Q. Can you furnish a list of the corporations that were owned by the Eastern Dynamite Company at the time when you acquired the stock of the Eastern Dynamite Co.? A. I can, yes, sir.

Q. Will you? A. Yes.

Q. Now, did the Powder Company own any interest in the Enterprise Powder Manufacturing Company? A. I believe not.

Q. Did it ever acquire any interest at any time? A. No, I think not.

Q. Did the Powder Company at any time have
210 any interest in the Equitable Powder Manufacturing Company? A. Yes.

Q. How much? A. It had the original acquisition from the E. I. du Pont de Nemours Company, which was about 23 per cent. and eventually acquired up to 49 per cent.; but I can not name the date.

Q. You know whether it had that interest of 49 per cent, during the years of 1903 to 1908—September 18, 1908? A. No, I do not know.

Q. Will you ascertain that fact? A. Yes, sir.

Q. And bring the matter here? A. Yes.

Q. Did the Powder Company have any interest in what is known as the Fairmont Powder Company? A. I believe it had the whole of its original purchasef rom the E. I. du Pont de Nemours Company.

Q. And did it ever acquire any interest, in addition to that at any timed uring its existence and down to and previous to September 18, 1908? A. I can not answer that question. I am not certain.

Q. Did the Powder Company at any time have any interest in the Indiana Powder Company? A. Yes.

Q. How much? A. It had the original purchase from the E. I. du Pont de Nemours & Company, and afterwards acquired substantially all of that stock, I believe. 212

Q. Do you know the date when you say that it acquired substantially all of that stock? A. I do not know.

Q. Did the Powder Company at any time have any interest in the King Mercantile Company? A. Yes.

Q. When did it acquire that interest? A. It acquired the interest of the E. I. du Pont de Nemours & Company in 1903. I am not certain if it acquired any further interest or not.

Q. Is the Laflin & Rand Manufacturing Company a different corporation from the Laflin & Rand Powder Company? A. I do not know the Laflin & Rand Manufacturing Company. It is the Laflin & Rand Powder Manufacturing Company. 213

Q. It is the Laflin & Rand Powder Manufacturing Company? A. It is an entirely different proposition.

Q. What corporation is that? What does it represent? A. It represented a Powder factory in Pennsylvania.

Q. Did the Powder Company have any interest in that corporation? A. No, I think not.

Q. The Lake Superior Powder Company—did the Powder Company have any interest in that? A. Yes, it acquired part of the stock—in part of the stock

the E. I. du Pont de Nemours Company in 1903, and subsequently acquired, I think, all of the stock.

Q. And the Mahoning Powder Company? Did the Powder Company have any interest in that? A. Yes. It acquired 50 per cent interest from the E. I. du Pont de Nemours & Company.

Q. Did it continue to use that interest down to September 18, 1908? A. The Mahoning Powder Company was dissolved, and the Powder Company
215 purchased all of its assets, but I do not know when the dissolution took place.

Q. Now, the Northwestern Powder Company—did the Powder Company ever acquire any interest in that? A. Yes.

Q. When? A. From the E. I. du Pont de Nemours & Company in 1903, and subsequently acquired a further interest. I can not state the date.

Q. The Ohio Powder Company? Did the Powder Company acquire any interest in that company? A. I will make the same answer to that, that it acquired part of the stock of the E. I. du Pont de
216 Nemours & Company in 1903, and subsequently acquired the whole of the stock.

Q. Do you know when it acquired all the stock? A. No, I do not.

Q. The Oriental Powder Mills? Did the Powder Company have any interest in that? A. I make the same answer: It acquired part of the stock—that part of the same du Pont de Nemours & Company stock, and subsequently acquired additional stock of the company.

Q. Was that subsequent to September 18, 1908? A. I can not state the date.

Q. The Phoenix Manufacturing Company. Did they acquire any interest in that company? A. Yes, from the du Pont de Nemours & Company in

1903, subsequently the whole of the stock, at a date that I can not recollect.

Q. Now, I will ask you, in view of the numerous answers which you have given to the questions which I have propounded to you with reference to the interests which the Powder Company had in the various companies, that you will prepare a statement showing all of the interests owned by the Powder Company in any of the corporations which I have named to you, as well as all other powder manufacturing companies, between the time 218
of the incorporation of the Powder Company and September 18, 1908. Will you do that?

By the Court (after objection and argument) to the Witness:

Q. Do you know, Mr. Witness, whether the same conditions prevailed on September 18, 1908, as these exhibits show on this date later in October, 1909? A. No, I do not.

By Mr. Abbott: 219

Q. You do not? A. No.

The Court: You want to show what the situation was on September 18, 1908?

Mr. Abbott: In obedience to the Court's suggestion, and on the request of defendant's counsel, that he bring the time mentioned within the date limited, September 18, 1908 —if the situation as to these matters is the same, then that is satisfactory to us. Otherwise, we are in the dark.

By the Court:

Q. Will that help you any in your reports, Mr.

220 Witness, by simply going back from October, 1909, to September 18, 1908, and ascertaining whether the conditions were in——? A. I think I would have to work from the other end, to make sure of it, to know accurately.

Q. You are willing to make the effort, as I understand it? A. Yes.

Q. Very well. A. Well, may I have that question again, to be sure that I understand it?

221 Mr. Abbott: Well, it will be in the record.

The Witness: It seems to me the reports of what is asked for before as to what was wanting was those dates.

Mr. Abbott: Shall I put the statement in a general way, so that the witness may see what it is that I desire to know?

The Court: You have it in the record now, Mr. Abbott.

Mr. Abbott: Very well, if it is understood.

222 Q. Now, Mr. du Pont, at the time when you took over the interest of the du Pont Company, had you any knowledge of any of the affairs of the du Pont Company between the year 1802 and the year '99 when it became an incorporated company? A. I had practically no knowledge of their affairs.

Q. Did you have any knowledge at any time of any agreements which had been entered into by the du Pont Powder Company and the du Pont partnership with any other explosive companies, with reference to what is known as the Gunpowder Trade Association of the United States?

Mr. McCarter: I object to that. The agreement should be produced.

Mr. Abbott: I am only asking whether this

witness knows anything about this agreement.

Mr. McCarter: He does not purport to say that there was one yet.

The Court: I would suggest that you put in the words "if any."

Q. Well, "if any"? (Objection overruled.) A. I had no knowledge of any agreement.

Q. Had you any knowledge of an agreement known as the "Fundamental agreement," if any? 224
(Objection overruled.) A. No, I had no such knowledge.

Q. Had you any knowledge of the Gunpowder Trade Association, if any such Association existed? A. No, I had no such knowledge.

Q. Did you ever attend the meetings of the Association which was called the "Gunpowder Trade Association"? A. Not, I think, prior to 1902; March, 1902.

Q. Well, did you at any time ever attend any such meetings? A. I do not remember any meetings of an Association by that name. It may have 225
had that name.

Q. Did you ever attend any meetings of the Association known as "The Gunpowder Trade Association"? A. I cannot say that I did; no.

Q. I will ask you whether you attended such a meeting on the 2nd day of October, 1902? A. I cannot say that I did; not at this time.

Q. I show you Plaintiff's volume 6 for identification, and refer you to page 1467, and ask you to state whether upon examination of that document, you can refresh your memory so as to be able to answer the last question more definitely? (Objection overruled.) A. I find nothing on this page that refers to the Gunpowder Trade Association.

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Mr. McCarter: Now, you see, there it is. It is not in issue here.

The Court: That answer is conclusive, but another question may be asked.

Q. Now I am going to ask you whether or not you attended a meeting, an annual general meeting of the Manufacturers of gunpowder, held at No. 99 Cedar street, New York City, on the 2nd day of October, 1902? A. I have no such recollection.

227 Q. After examining this reference, your memory is not refreshed? A. No, it is not.

Q. Were you at any time a member of any body or Association of Powder manufacturers, for any purpose, previous to the time when you became an officer in the E. I. duPont de Nemours Powder Company? (Objection overruled.) A. I do not think that I was; I am not certain.

Q. Did you ever attend any meeting, at which there were present representatives of the E. I. duPont de Nemours Powder Company, E. I. duPont de Nemours & Company, the Hazard Powder Com-

228 pany, the Laflin & Rand Powder Company, The Oriental Powder Mills, The American Powder Mills, The Austin Powder Company, The Miami Powder Company, The Ohio Powder Company, The Marcellus Powder Company, Chattanooga Powder Company, The Equitable Powder Manufacturing Co., Phoenix Powder Manufacturing Co., The Schaghticoke Powder Co., the Lake Superior Powder Company and the Birmingham Powder Company? (Objection overruled.) A. I believe that I did; yes, sir.

Q. Well, where were those meetings held? A. In New York.

Q. Do you remember what place in New York? A. I think, at the office of the Laflin & Rand Powder Co.

Q. Do you know what number that was; what street? A. That was, then, 99 Cedar street.

Q. Now, do you know what name, if any, that Association, or that body of representatives of Powder manufacturing companies whose names I have read to you, went by?

Mr. McCarter: Was it a body? I object to it.

Q. Well, if it was not a body, then I will ask 230
you to state for what purpose you attended any such meetings? (Objection overruled.) A. I cannot say the purpose, unless it was to learn of what was being done there.

Q. Well, now do you remember whom you represented, if anyone, at that meeting? A. I do not think I ever represented any one; not officially; as an officer of the du Pont de Nemours Company I went there.

Q. Of the E. I. du Pont de Nemours & Company? A. Yes, sir.

Q. Now, do you remember what was transacted 231
—or, by the way, will you state when you attended any such meeting—what was the date? A. I can not state the date at all.

Q. Well, what year was it? A. Well, it was some time after March 1, 1902, but I cannot say how long afterward.

Q. But you did attend meetings of that character after March 1, 1902, didn't you? A. Yes, I attended more than one meeting, I think.

Q. Now, will you state how many such meetings you attended? A. I should judge three or four, possibly.

Q. Do you remember attending a meeting at which there was present at the time, Mr. T. C. du Pont? A. Yes, I think I remember it.

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Q. Do you know whom Mr. T. C. du Pont represented, if anybody, at that meeting? (Objection overruled.) A. The E. I. du Pont de Nemours & Company.

Q. And do you know whether he represented any other company? (Objection overruled.) A. No, I do not.

Q. Now, do you remember whether anything occurred at that time with reference to the change, or any change, of officers of the Association? A.
233 No, I do not.

Q. Do you remember who was the recognized head of that Association previous to October 2, 1902?

Mr. McCarter: It does not appear that there was an Association. He is assuming all the time that there was an association.

The Court: You are perhaps assuming more than has been shown.

Mr. Abbott: I think the question may
234 be objectionable for that reason. I will put it in this way.

Q. To the best of your recollection, what was the purpose of the organization or meeting of these manufacturers, and was or was not that Association governed by any rules or regulations or any other writing, in any manner?

Q. I will ask you to state whether the manufacturers or representatives of the various companies, whom you state were represented at that time, were controlled in their deliberations by any agreement, writing, or rules? A. Not that I know of, no.

Q. Did you ever know of the existence of any

rules or regulations which governed or controlled the conduct of those meetings? A. No, I think not.

Q. Did you know of any rules or regulations which governed or controlled these corporations and associations in any manner whatsoever with reference to the meeting to which you testified you attended? A. I can not say that I ever saw any such rules or regulations, no.

Q. Now, did you know of any agreement which was technically called the "Fundamental Agreement," that was in the first place spoken of in that 236
way? Did you ever know of any such agreement? A. I can not remember any name of that kind.

Q. Do you remember it as an agreement which was called "The Understanding?" A. No, I think not.

Q. Do you remember that agreement which was called "The Abstract"? A. No, I do not.

Q. Do you remember it as an agreement that was called "The Auxiliary?" A. No, I do not.

Q. Do you remember any rules or regulations which were called "The Compendium of Rules?" A. No, I do not. 237

Q. Do you remember it as an agreement known as the "1896 Agreement?" A. I have no recollection of seeing such an agreement, no.

Q. Do you recall whether there ever was an agreement which you know of that was—to which that title was given? (Objection overruled.) A. May I have the question read pleace. I think there was an agreement of 1896, yes.

Q. Now, do you know what the contents or terms of that agreement was or were? A. No, I don't.

Q. Would you recognize it if you should examine it? A. I don't know as I would know. I don't think I ever saw such an agreement.

Q. I refer you now to Government's Exhibit No.

7, which appears on page 110 of United States of America against E. I. du Pont de Nemours & Company, marked as Plaintiff's Exhibit 4, and ask you to look at page 110 and subsequent pages and state whether or not you can refresh your memory so as to be able to state whether that is the agreement which you have referred to. (Objection overruled.) A. This seems to be an agreement dated——

Mr. Graham: Never mind stating what it
239 is; answer the question.

The Court (to the witness): That is not the point; does this refresh your recollection?

The Witness: No; it does not.

The Court: He says no; it doesn't refresh his recollection.

Mr. Abbott: Yes; but I beg one moment, please, before we pass that.

Q. Does the subject matter in that agreement in
240 any way refresh your memory as to the subject matter of the agreement which you state you have some knowledge of, known as the "1896 agreement"? A. No; it does not.

Q. Does not refresh your memory in any way? A. No; I think not.

Q. Now, I will ask you to state whether this agreement, which you called the "1896 agreement" was in writing or was oral? A. Why, I suppose in writing; I do not know; I have never seen the agreement.

Q. I beg your pardon. I did not hear the witness. A. I don't remember ever seeing the agreement.

Q. You did not know the terms of the agreement in any manner? A. No; I don't.

Q. I will ask you whether it was oral or in writing? A. No, I do not know.

Q. Will you kindly state what it was that you had in mind when you answered that you believed there was such an agreement as the 1896 agreement? I only want you to state what you had in mind.

A. My recollection is that after March 1, 1902, when I came into the business that I was told there was an agreement, which was the one that I referred to; I do not know——

Q. What was the agreement you referred to? 242

Q. Was that agreement in writing? A. I was not told. I suppose it was.

Q. You supposed it? A. Yes.

Q. Now, do you know—you say you were told it was in writing? A. No, I was not told.

Q. Did you at any time ascertain in whose possession that agreement was kept? A. No, not that I remember.

Q. By whom were you informed that such an agreement was in existence? A. I don't remember who it was; I assume it was Mr. F. G. duPont.

Q. Mr. F. G. duPont? A. Yes. 243

Q. Where is Mr. F. G. duPont now? A. He has since died He was one of the former stockholders in the old corporation.

Q. What, if any, official position did Mr. duPont hold in the company, the old duPont Company? A. I don't know what position he held.

Q. Do you know whether he had possession of any of the records of that company? A. I think not.

Q. Mr. duPont, I would like to have you state whether I am correct in the statement that I will now make to you concerning the consecutive order in which the various corporations that represent that corporation.

the duPont interests were organized. As I under-

stand it, the first corporation which took over the duPont interests was called the E. I. duPont de Nemours & Company that was the duPont Company, the original duPont Company, is that correct? A. That is correct; yes.

Q. The next corporation was E. I. duPont de Nemours Company, whose name was afterwards changed to "& Co."? A. Yes.

Q. That was the corporation that you and Mr. T. C. duPont and Alfred I. duPont organized to
245 take over the duPont interests? A. That is correct.

Q. Now, the next corporation, as I understand it that took over any portion of the duPont interests was the Powder Company, is that correct? A. That is correct, the E. I. duPont de Nemours Powder Company.

The Court: That was a New Jersey corporation?

Mr. Abbott: That was a New Jersey corporation and the defendant in this case.
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Q. Now, I would ask you to state who E. I. duPont was, from whence you got the name of E. I. duPont? A. E. I. duPont was the founder of the duPont Explosives business in this country, who came to this country in 1802.

Q. What does the word "deNemours" mean? A. That was the name of the place from which duPont came in France.

Q. What is the object, if any, that you had, in carrying that name "E. I. duPont deNemours" into the various companies which were organized when it seems to be more or less confusing, to most of us? A. It had always been the name of the companies and the company's business was identified

with that name and it was a valuable name in the trade.

Q. In what respect was it a valuable name in the trade? A. In the same way a trade mark would be.

Q. Now, the other companies, which I understand were organized for the purpose of taking over some of the interests which afterwards were consolidated with the Powder Company, were in this order: First, the Delaware Securities Company—is that correct? A. That is correct, yes.

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Q. Now the Delaware Securities Company took over the interests of the Laflin & Rand which had already been acquired by the duPont interests, is that correct? A. No, not quite correct. It purchased the capital stock of the Laflin & Rand Powder Company.

Q. The entire capital stock? A. Yes.

Q. Now the next corporation, as I understand it, was the Delaware Investment Company? A. Yes.

Q. What was the purpose of that? A. It purchased part of the capital stock of the Moosic Powder Company.

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Q. And the Moosic Powder Company, where was that located? A. Its mills were located in Pennsylvania.

Q. Now, the next corporation, as I understand it, was the California Investment Co.? A. I think so, yes.

Q. And what was it that the California Investment Company acquired? A. It purchased the stock of the Judson Dynamite & Powder Company.

Q. And where was that located? A. In California.

Q. Then after these companies were all organized and had acquired the various interests which you have indicated the Powder Company came into existence and it subsequently acquired all of the in-

terests which these other corporations had held, is that right, all of that physical property? A. The Powder Company at first purchased the shares of these various corporations.

Q. Yes. A. The purchase of the property of E. I. duPont deNemours & Company carried with it the shares of the Delaware Securities Company and so on.

Q. Now the International Smokeless Powder Company—one of the defendants in this case—do
251 you know anything about that corporation? A. Yes, I do.

Q. Now, when was that organized? A. Somewhere between 1890 and 1900, I haven't the exact date in my mind.

Q. What was the general purpose of that corporation? A. Its chief purpose seems to have been the manufacture of smokeless powder.

Q. Was it engaged in that business? A. It did, yes.

Q. Was that company in existence at the time
252 when the Powder Company was organized? A. Yes.

Q. Did the Powder Company acquire any of the interests of that company? A. No.

Q. Not at any time during its existence? A. No.

Q. That is separate and distinct. Now the corporation known as the Eastern Dynamite Company, one of the defendants in this case—— A. Yes.

Q. ——when was that organized? A. In 1895, I think.

Q. And what was the general object and purpose of that corporation? A. The manufacture of dynamite.

Q. Dynamite, as I understood it was deemed a separate field, a separate explosives field, was it not? A. Quite separate from black powder.

Q. It had nothing to do with the original explosives business in this country? A. No.

Q. About when did the exploitation of dynamite as an explosive come into existence? A. It was between the year 1870 and '75.

Q. And this Eastern Dynamite Company; will you describe what the interests were that it had acquired when it began business? A. I can not name exactly; it acquired the stock of the Repanna Chemical Company and that of the Hercules Powder Company. 254

Q. And those two corporations were engaged in the manufacture of dynamite, were they? A. Those two corporations were both manufacturing dynamite and were both organized by the du Pont interests, if I am properly informed.

Q. Now, as I understood you yesterday the stock of the Eastern Dynamite Company was also finally absorbed by the Powder Company? A. Yes.

Q. So that after the Powder Company was organized it acquired all the interests in the explosive trade which were represented by the du Pont interests, by the Laflin & Rand interests, by the Eastern Dynamite Company and the interests which that company had in the dynamite business, is that correct? A. That is not correct. The E. I. du Pont de Nemours Powder Company acquired all the interests of the Laflin Rand Powder Company through the E. I. du Pont de Nemours & Company, unrelated when the E. I. du Pont de Nemours Powder Company was formed it acquired through the E. I. du Pont de Nemours & Company the Laflin Rand interests and the Eastern Dynamite interests. 255

Q. Referring to the E. I. du Pont de Nemours & Company again, which was the company which you organized—I will refer to it as your company

for the purpose of identifying it in the minds of the jury—I want to inquire again concerning the matter of the stock of that company and how it was originally issued; yesterday, I want to confess to you that I was somewhat at sea myself; I would like to ask if I am correct this morning. As I understand it—if I am wrong in this you will please correct me—after the organization of that company and it had turned over to the du Pont stockholders
257 the interests it had purchased of the original du Pont company, as I understand it, it paid them twelve million dollars in notes and twelve million dollars in stock. Is that correct? A. No, that is not correct.

Q. Well, then, will you explain that once more? You gave them twelve million dollars in notes, did you not? A. Yes.

Q. You paid twenty-four million dollars for the property, did you not? A. Yes.

Q. What was the payment, the difference between the twelve million dollars in notes and the
258 twenty-four million dollars which you gave for the property, what was that made up of? A. The transaction was made in this way: Mr. T. C. du Pont, acting for himself; Mr. Alfred du Pont and myself, had made a bargain with the former owners of the property by which they agreed to sell for fifteen million dollars, twelve million dollars in notes and three million dollars in stock; the corporation which we organized agreed to purchase that property for twelve million dollars in its notes and twelve million dollars in its stock. Mr. T. C. du Pont received the notes and the stock, turning over the fifteen millions to the sellers of the property, and he and Mr. Alfred du Pont and myself retained the balance of the stock.

Q. Well now, how much was that stock that you

three gentlemen retained? A. It was in the neighborhood of eight million dollars, I think.

Q. Now, $8,000,000 out of the total of how many million dollars, Mr. duPont? A. $12,000,000.

Q. So that you had in that way three-fourths of the stock which was issued for the stock which you had taken over—the duPont interests? A. I think the actual percentage was seventy-two per cent.; it was approximately three-fourths.

Q. Did you continue to retain the ownership of 260
that stock for some years? A. Yes.

Q. Did you retain it down to September, 1908? A. Yes.

Q. That stock had been issued and was in your possession? A. Yes.

Q. After the Powder Company was organized, which was the next successor of your company? Will you describe how that company took over the interests which your company had? A. At the time of the organization a complete appraisal was made of all of the properties of the E. I. duPont deNemours & Company, and of the corporations in which 261
it was interested, and the Powder Company paid for the shares of those various corporations according to the appraisal; each share was appraised according to the value of the property represented by it, and was paid for in the securities of the E. I. duPont deNemours Powder Company.

Q. Well, after the Powder Company had taken the stock—had taken over the properties of your company—which I designate as "your company"—you still retained your control over the stock which was received by you in exchange for those properties, did you not? A. This stock of the Powder Company was received by E. I. du Pont de Nemours & Company and retained in their treasury.

Q. Retained in their Treasury? A. Yes.

262 *Pierre S. du Pont—Direct*

Q. E. I. du Pont de Nemours & Company was under your control by reason of the fact that you held three-fourths of the issued stock? Is that correct? A. Under the control of Mr. T. C. du Pont, Mr. Alfred du Pont and myself; yes.

Q. I say "you" collectively; you three gentlemen? A. Yes, sir.

Q. That condition remained until September, 1908, did it? A. Yes.

263 Q. In other words you, T. C., and Alfred I. had entire control of all the du Pont interests which had been known as the du Pont interests previous to the organization of your company, and of all of the interests which had been previously known as the Hazard interests, and of all of the interests which had been known as the Laflin & Rand interests, and of all of the interests which had been known as the Eastern Dynamite Company, and of all of the interests which were thereafter known as the Powder Company interests, through your control of the ownership of the stock in your company; is that correct, down to September, 1908? A. Yes; but not through virtue of the formation of the Powder Company. That control was exercised prior to the Powder Company's formation.

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Q. Yes, but after the Powder Company's formation you still retained control of your stock and retained control of the properties which you had received from the Powder Company in payment for the properties which you had turned over to that company? A. That is correct, yes, sir.

Q. Did you ever know of an agreement which was designated the "European Agreement"? A. Well, not under any such name, no.

Q. Well, do you know about any agreement that has any reference to the foreign powder business, in which your company or any of your interests

were associated? A. Yes.

Q. What was the name of that agreement? A. I doubt if it had any name.

Q. How did you designate it in your own mind? A. As the "Nobel Agreement," from the fact that the Nobel Powder Company was a party to it.

Q. Did you ever see the agreement? A. No.

Q. You know nothing of the terms of the paper then? A. Not by examination of the agreement, no.

Q. I think that I did not yesterday ask you 266
whether you could give me the names of the various corporations which were owned or controlled by the Laflin & Rand Powder Company. Did I make that inquiry of you? A. Yes. I could not give them.

Q. I refer you to page 495, of the record which I called to your attention yesterday. (Vol. 1 of the testimony of defendant's records) and ask you to look at the marks there and state whether or not it refreshes your memory so that you can give a list of those corporations.

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Mr. Graham: I do not think that is the way to refresh a witness's memory.

Q. Well, what you see on that page then. A. I think from this that I can name the companies in which the Laflin & Rand Powder Company were interested.

Q. Will you kindly do so? A. The Birmingham Powder Company; the Chattanooga Powder Company, the Eastern Dynamite Company, the Fairmount Powder Company, the Laflin Powder Manufacturing Company, the Lake Superior Powder Company, the Mahoning Powder Company, the Marcellus Powder Company, the Monarch Powder Company, the Oriental Powder Mills, the Phoenix

Powder Manufacturing Company. Now, there are three companies named here but I'm not certain the Laflin & Rand Company were interested in, and it does not appear from this record—the Indiana Powder Company, the Northwestern Powder Company and the Oriental Powder Mills.

Q. Now, referring to this Association or to this meeting of manufacturers—which you say you had some knowledge of and attended their meetings—I will ask you to advise me, as I read certain
269 names, whether you have ever seen the persons whose names I read to you at any of those meetings, Mr. T. C. du Pont? A. Yes.

Q. Mr. Eugene du Pont? A. Not that I remember, no.

Q. Mr. W. S. Colvin? A. I am not certain about seeing him.

Q. Mr. A. J. Moxham? A. Yes.

Q. Mr. J. A. Haskell? A. Yes.

Q. Mr. A. W. Higgins? A. Yes.

Q. Mr. J. B. Coleman? A. Yes.

Q. Mr. E. B. Drake? A. No. I do not remem-
270 ber seeing him.

Q. Mr. Harry Ballou? A. Yes.

Q. Mr. A. Lent? A. Yes.

Q. Mr. E. L. Lawrence? A. Yes.

Q. Mr. W. A. Beecher? A. I cannot recollect. whether I have seen him there or not.

Q. Mr. F. H. Connable? A. Yes.

Q. Mr. F. W. Olin? A. Yes.

Q. Mr. J. H. Moulton? A. No. I do not remember seeing him.

Q. Now, would you know, or did you know, who any of those gentlemen represented at that meeting at any time, or in what capacity they appeared there? A. Only from knowing what corporation they were officers of.

Q. Now, I will ask you if you know whether Mr. T. C. du Pont represented the E. I. du Pont de Nemours & Company and the Sycamore Powder Company? A. I only know that he was an officer of E. I. du Pont de Nemours & Company, but I do not know who he represented. I suppose he was representing his own corporation.

Q. Do you know who Mr. Eugene du Pont represented? A. No. I do not remember having seen him there.

Q. Do you know who Mr. Colvin represented? 272
A. Well, if Mr. Colvin was at those meetings, he was president of the Hazard Powder Company, I would suppose he would represent that corporation.

Q. Do you know who Mr. Monham represented? A. He was an officer of the Hazard Powder Company also.

Q. Do you know who Mr. J. A. Haskell represented? A. He was president of the Laflin & Rand Powder Company.

Q. Do you know who Mr. A. W. Higgins represented? A. He was secretary of the Laflin & 273
Rand Powder Company.

Q. Do you know who Mr. J. D. Coleman represented? A. He was either president or vice-president of the Oriental Powder Mills.

Q. Do you know who Mr. Murray Ballou represented?

Mr. Graham: He said he didn't see him there.

Q. I thought you did see Mr. Murray Ballou there —very well. Did you see Mr. Drake, one or the other of those gentlemen? A. Mr. Murray Ballou was an officer of the American Powder Mills.

Q. Do you know who Mr. Lent represented? A. He was president of the Austin Powder Company.

Q. Do you know who—did you say you knew Mr. Lawrence was present at any time? A. Oh, yes; I think I recollect Mr. Lawrence being there.

Q. Now, do you know who he represented? A. I believe he was an officer of the Miami Powder Company.

Q. Mr. Beecher, do you know whom he represented?

Mr. Graham: He didn't say he knew he was there.

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Q. Did Mr. Connable—do you know whom he represented? A. If he were there, he was an officer of the Austin Powder Company.

Q. Mr. Connable, whom did he represent? A. He was an officer of the Chattanooga Powder Company.

Q. Mr. Olin? A. He was an officer of the Equitable Powder Manufacturing Company.

Q. Mr. Moulton—you said you didn't know whether he was there? A. I am not certain that any of these gentlemen represented these corporations or not, they were officers of the corporations.

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Q. I understand that. I will ask you to state whether Mr. A. J. Moxham, Mr. W. S. Caldwell, Mr. J. A. Haskell, and Mr. F. L. Connable have at any time been associated with you in any capacity in any of these other corporations with which you have been associated since you became interested in the Powder business? A. They have all been officers of several corporations, I think.

Q. Can you tell me what corporations Mr. Moxham has been an officer in? A. He is an officer of the E. I. du Pont de Nemours Powder Company, and he was either president or vice-president of the Hazard Powder Company.

Q. Was he an officer of the Delaware Investment

Company? A. I believe he was, yes—in the Delaware Securities. I am not certain about it.

Q. Do you know what position he held in those companies? A. My recollection is, he is vice-president of both those companies.

Q. Now, Mr. J. A. Haskell, has he ever been associated with you in any of these corporations? A. Yes.

Q. What position has he held? A. He is vice-president of the E. I. du Pont de Nemours Powder Company, and President of the Laflin & Rand Powder Company and President of the Eastern Dynamite Company. 278

Q. Was he interested as a member of the Board of Directors of any of the other companies in which you were interested? A. I think likely, but I don't recall with which companies.

Q. Now, Mr. Coleman, J. B. Coleman, what was he, was he interested in any way as an officer of any of the corporations in which you were interested? A. He was president, I think, of the Oriental Powder Mills.

279 Q. I meant any of these corporations organized after the taking over of the du Pont interests? A. I don't remember that he was connected with any of them.

Q. Mr. Connable, did he hold any official connection in any company after the taking over of those properties? A. No, his only position was an officer of the Chattanooga Powder Company.

Q. You stated, I believe, that he was connected with these companies in some capacity. In what capacity was it? A. Not in an official capacity.

Q. What was it? A. He was connected with the E. I. du Pont de Nemours Powder Company, manufacturing company, in the manufacture of black blasting powder.

Q. What is his official title, or what was his official title? A. I don't remember that he had any official title.

Q. Mr. Colvin, what position, if any, did he hold in any of these companies? A. He was president of the Hazard Powder Company. I knew of no others.

Q. Since that time? A. I think of no other.

Q. You say he was associated with you in what capacity? In what capacity has he been associated
281 with you since that time? A. Only as president of the Hazard Powder Company.

* * * * * * * * *

Q. Mr. du Pont, with reference to the International Smokeless Powder Company I will ask you to state whether or not, if you know where there is any other company manufacturing smokeless powder? A. Besides the International Company?

Q. Yes? A. The E. I. du Pont de Nemours & Company manufactures smokeless powder.

Q. Was any such company manufacturing smoke-
282 less powder previous to 1903? A. Previous to the organization of the Powder Company, yes. The E. I. du Pont de Nemours & Company manufactured it.

Q. Previous to the organization of that company? A. Oh, E. I. duPont de Nemours & Company, prior to the organization of the Powder Company?

Q. I am saying now previous to the organization of the E. I. duPont de Nemours & Company. Was there any other company or manufactory of smokeless powder except that which was owned by the International Smokeless? A. You are speaking of the corporation organized in 1902?

Q. What were the manufactories—where were the manufactories located that were engaged in

the manufacture of smokeless powder previous to 1902? A. The E. I. duPont de Nemours & Company manufactory, the Laflin, Rand Powder Company, the International Smokeless & Chemical Company, the California Powder Works, the Robin Hood Powder Company, the Kind Powder Company, the American E. C. Schultz Powder Company. I think that is all.

Q. Can you state who were the owners of the various manufacturing plants that you have just now named? A. Why, the corporations which I 284 have named?

Q. Oh, they were corporations? A. Yes.

Q. Did those corporations afterwards come under the control or management of any single corporation, if you know? A. The Laflin & Rand Powder Company by a purchase of its stock came under the control of the E. I. duPont de Nemours Powder Company; the International Smokeless Powder & Chemical Company sold their capital stock—their capital stock was acquired by the duPont-International Company; the California Powder Works, a large percentage of its stock was already owned 285 by the E. I. duPont de Nemours Powder Company—had been a great many years—and the King Powder Company was never owned by any one else that I know of; neither was the Robin Hood.

Q. Now what was done with the interests which the duPont Powder Company and the E. I. duPont —I should say the duPont Company of 1899 and the du Pont Company which you organized, had in these smokeless manufacturing plants, what has become of that interest? A. Those plants were eventually acquired by the E. I. duPont de Nemours Powder Company.

Q. So that the Powder company afterwards became interested in the smokeless powder manufacturing business? A. Yes.

286 *Pierre S. du Pont—Direct*

Mr. McCarter: After the period of September 18, 1908, as I understand it, right along, am I wong or right about it?

Witness: That is incorrect.

Mr. McCarter: Then I withdraw my objection.

Q. When did the Powder Company acquire those interests? A. I will take them serially. The Smokeless Powder business of the E. I. duPont de Nemours & Company was acquired with the bal-
287 ance of the property in 1903, the California Powder Works was already owned by the E. I. duPont de Nemours & Company; at the same time also passed to the E. I. duPont de Nemours Powder Company, likewise the factory of the Laflin & Rand Powder Company, and in 1903 the E. I. duPont de Nemours Powder Company acquired a controlling interest in the duPont-International Powder which in turn owned the control of the capital stock of the International Smokeless Powder and Chemical Company.

288 Q. And did the Powder Company retain that control down to September 18, 1908? A. Yes.

Q. Oh, I beg pardon, did I interrupt before you were finished naming the list, Mr. duPont? A. I think not; I think I named them all.

Q. Oh, yes, the American E. C. Schultz Company, the stock of that was acquired by the E. I. duPont de Nemours Powder Company? A. I cannot state the date, it was after 1903 though.

Q. Did the acquirement of that interest have anything to do with what I have designated as the foreign agreement and which you stated was known to you by some other name?

The Court: You used the word "Nobel."

The Witness: N-O-B-E-L. No; it had nothing to do with that.

Mr. Abbott: That is all.

Cross examination by Mr. Button:

Q. Mr. duPont, I understood you to say that the duPont interests were originally organized in 1802, and that it existed under the same name of E. I. duPont de Nemours & Company as a copartnership down to 1899, and then as a corporation for a couple of years under the same name, prior to the time you came into the business; is that correct? A. That is correct; yes, sir.

Q. Now, during that one hundred years I understand that for a long time they were the pioneer company in the business, and introduced the business into the United States, is that correct? A. That is correct; yes, sir. 290

Q. And at that time of course they had the whole of it? A. I believe so; yes, sir.

Q. And at that time, I understand, the principal explosive outside of military explosives was black blasting powder? A. Yes.

Q. And for many years thereafter, and, in fact, up to about 1875? A. That is correct, yes.

Q. And the business originally started as I understand it on the Atlantic seaboard near Wilmington? A. Yes. 291

Q. And as mining operations and the construction operations developed westward the business followed those operations, did it not? A. That is correct.

Q. And then the Laflin & Rand Powder Company and the Hazard Powder Company were also old corporations, were they not? A. Quite old. I think the Hazard Powder Company was organized about 1854 or 1856, and the Laflin & Rand, under another name, was doing business as early as 1820.

Q. Now then, as the development of that business proceeded westward did it become necessary from time to time either to build plants in the

292 *Pierre S. du Pont—Cross*

vicinity of the consumption of black powder, or to acquire interests in other plants, in order to hold the trade that had heretofore been established in that business? (Objection overruled). A. The E. I. duPont de Nemours & Company owned the factory at Wilmington. That was the only factory they owned from 1802 to about 1889 or 1890. As business progressed westward they purchased interest in other factories or companies manufacturing explosives.

293 Q. Well, my question was aimed to bring out the fact that it was necessary to do that. What was there in the situation that made it desirable or necessary to have those plants near the points of consumption. (Objection overruled.)

Q. Just describe the situation, Mr. du Pont. A. The freights on explosives were very high, the highest freight rates known. That means that the transportation from the factory on the eastern seaboard westward was very expensive, and it was necessary to have factories comparatively near the

294 point of consumption in order that the excessive freight rates might be saved. The E. I. duPont de Nemours & Company was always in control of the duPonts, who looked after their own manufacturing business at Wilmington. Their policy seems to have been clearly to have bought into other companies, rather than building factories at the various points for themselves. I suppose they divided the risk thereby and brought in other local interests who were valuable to the business.

Q. And in that connection, is it true that the Birmingham Powder Company and the Chattanooga Powder Company and the Indiana Powder Company, and these other various black powder companies that have been mentioned here did have plants largely scattered throughout the country,

contiguous to these various markets that had developed in this way? A. That is correct, yes.

Q. Now, were those plants valuable plants and well adapted to the furnishing of the trade in those respective localities? (Objection overruled.) A. I understand that they were all valuable plants, from the fact that they all continued operations for years, and have proved valuable and well adapted as to location for serving the trade.

Q. Now the Hazard Company, you say has been acquired by the duPont Company. Where was its plant located? A. Hazardville, Connecticut. 296

Q. Can you state whether or not the Hazard Company had established a trade in black blasting powder as far west as the Pacific coast? A. I know that they did sell powder on the Pacific Coast, yes.

Q. Do you know that they did ship powder around the Horn in sailing vessels for the western trade there? A. Yes.

Q. Prior to the time it was acquired by the duPont interests? A. I cannot say that, no. I do not know whether they did or not. 297

Q. Well, now, as I understand it the dynamite business was one that developed in the seventies. What did the duPont Company have to do with the development and introduction of that business? A. The dynamite business had started some years before the duPonts entered into the manufacture at all. They were much divided as to the merits of dynamite, and as to its dangers and so on, and finally in 1880 decided that they would enter into that business, but the partnership was not willing to take the whole burden, and therefore they divided the interests. They took a share and Mr. Lamonte duPont individually took a share and the Laflin & Rand Powder Company and the Hazard Powder Company, which were of course the duPont interests.

Q. Now, that was some years before the organization of the Eastern Dynamite Company, the interest which has been referred to here as the dynamite interests? A. About 15 years before, yes.

Q. Now then is it not true that at the time that that venture was made that dynamite in the eastern part of the United States was at least in a very much of an experimental state? A. That is very true; yes, sir.

299 Q. And the entry of the duPont Company into that business was in the nature of an original cash investment in several different companies at the time those companies were formed, was it not? A. They actually formed the Repauno Chemical Company. They did not buy into it. They organized it themselves, and the Smokeless Powder Company, I understood, had purchased stock, and also the Eastern Dynamite Company.

Q. Well, at the same time stock was also purchased, as I understand, by the Laflin & Rand Company on account of the reason you mentioned, and

300 by the Hazard Company, is that correct? A. Yes, sir.

Q. Therefore then the Eastern Dynamite Company came to be formed in 1895. It is by a combination in at least a very large measure of this original investment which has been made 15 years before? A. Nearly entirely as I understand it.

Q. In other words, it was an amalgamation of previous interests, and of course at that time the Eastern Company itself was owned by the people who had put in the money to form the Rampauno and the other company in 1880, is that correct? A. That is correct, yes.

Q. Therefore, in a measure it was true that as an original proposition, the Laflin & Rand Company and the duPont Company did co-operate with the

defendants in the extension of the various lines of explosive business, is it not? A. That is correct, yes. I would like to state in regard to the Eastern Dynamite Company when that was formed there were minority stockholders in that corporation; that the entire capital stock was not in the Laflin & Rand Company.

Q. But they controlled it, did they not? A. Yes.

Q. Now then, you were asked about the amount of the capitalization of the corporation in 1889, 302 that the old duPont partnership formed for the purpose of taking over the assets of the partnership, and I believe it was the E. I. duPont de-Nemours & Company. I would say it was in 1890, however. You state that that was $2,000,000, and I believe you stated that that capitalization had no reference to the actual value; in other words, it was more or less nominal. Now, how many partners were there in the co-partnership that immediately preceded that corporation? A. Six.

Q. And as I understand the operation, you simply turned your property over to this corporation, 303 and took back in the same proportion the stock of that corporation, is that correct? A. That is correct; yes, sir.

Q. Therefore after the operation they then owned the respective portions in that property that they held while it was in the co-partnership form? A. That is correct; it was simply a transfer.

Q. And for that reason it was entirely immaterial whether the capitalization was $2,000,000 or a hundred million, so far as the respective interests were concerned? A. Quite immaterial, yes.

Q. Now you were inquired of in reference to the nature of the assets that were taken over by you in the company. Is it not true that in addition to the assets that you mentioned, there were a large

value taken over in good-will, etc., and in tangible assets of that class? A. Well, of course, yes; all the trade marks of the former corporation and the good-will of the customers, and the patents owned by them as to the secret processes, which are still held valuable, were all transferred. The new corpoation took over everything, tangible and intangible, belonging the the old corporation.

Q. Well, was a large body of the property of that character? A. Yes, there was. It is an in-
305 tangible amount and it cannot be definitely defined and valued.

Q. The accumulation of a hundred years? A. Yes, surely. The old corporation kept nothing in that line.

Q. Now, it is true that there was an organization running each one of your plants at that time, is it not, with skilled hands and experts in the manufacture of explosives? A. Yes, a very large number.

Q. That organization was taken over, was it? A. Yes, all of the men were taken over.

306 Q. Was there any department in that business established with reference to the development and the art and science of the manufacture of explosives? A. It had always been the policy of the duPonts to experiment largely in new forms of development, and devices for safety, and that policy was continued and has been continued until to-day.

Q. Well, now, as I understand it you and these two associates of yours formed the new corporation and took over that propety. At that time or later than that did you make an investigation, or more careful investigation of the nature of the property that had been transferred to you, than you had previously made? A. There were two investigations made. About March, 1902, when I first became interested, I made as exhaustive examination as I

could from the company's records as to the value of the property and was satisfied that the values placed on them first were correct, or reasonably so. In 1903, when the E. I. duPont de Nemours Powder Company was formed, as there was a large minority interest which was coming into the company, we thought it best to have a detailed appraisal made of everything in which the minority stockholders should have representation, if they choose. And these committees were appointed to 308
appraise, and everything was carefully gone into and an accurate appraisal made.

Q. Well, now, you discovered that the tangible property which was taken over consisted of four plants, together with the quick assets of one sort and another, and a line of stocks in these various corporations scattered throughout the country that has been mentioned. Can you state approximately how large a portion of the value of the property taken over was comprised in these stocks of other corporations? A. My recollection is that the stocks of the other manufacturers of explosives were 309
valued at about sixty per cent. of the total assets.

Mr. Abbott: We object to the witness' answer to this question unless he furnishes a statement giving in detail his information as to how this appraisal was brought about. We think that the witness' recollection of the matter should not be permitted at this time, in as much as he has indicated that there was a formal appraisement made of the properties, and we ask to have the appraisement itself, as the best evidence.

The Court: What have you to say, Mr. Laffey?

Mr. Laffey: Why, I think it is unneces-

sary to produce the appraisal for the simple purpose of showing the proportion. All that I am going into is to show the property that was held in the shape of capital stock, and not the property held in the shape of plants. I am asking what the prospective purchasers were.

The Court: Well, it does not seem to me that that is necessary, Mr. Abbott, to produce the appraisal.

311 Mr. Abbott: You will recall that on the direct examination I endeavored to draw out of this witness something with regard to the appraisal of the various properties taken over, and he would not and did not give me any answer at that time concerning the matter, and it was more or less objected to on the other side. Now, I have no objection at all to go into the matter of the appraisal provided we have definite information upon that subject, so that we may be able to take it up.

312 The Court: Is he not simply bringing out what you tried to bring out yourself?

Mr. Abbott: Yes, but he is bringing it out on the oral testimony of this witness.

The Court: You may re-examine if necessary and you may move to strike out the witness' testimony and ask for the production of the appraisal.

Mr. Abbott: Very well.

Q. Then the sixty per cent. of this property in value was held in the shape of powder stock of these corporations scattered through the country. Did you have a majority of the stock in any of those companies, outside of the Hazard Company? A. Did we have?

Q. Yes, did you have? A. I think we did in some of them, but I cannot name which ones.

Q. Well, in most instances, it was a minority interest, was it not? A. Yes, it was less than fifty per cent.

Q. Did you find out who the other stockholders in those same corporations were that made investigation? A. Yes.

Q. And who did you discover them to be, the principal stockholders, other than yourselves? A. E. I. du Pont de Nemours & Company was the 314 largest stockholder, and I think in almost all of the corporations, and the Laflin & Rand Powder Company was the next largest stockholder.

Q. Was that the condition of affairs which you had known at the time that you bought these properties? A. No.

Mr. Abbott: That is objected to; it calls for a statement of the witness regarding this written exhibit—I should say this appraisal.

The Court: Why, I do not think it is necessary to have the appraisal here, the witness 315 can speak from his own recollection. It may be partly due to this.

Mr. Abbott: I do not understand that that is a fact; the appraisal, as I understand it, was made afterwards.

Q. Now, that being the fact, Mr. du Pont, what did you determine to do in regard to those corporations and what were your reasons for doing it? A. The determination was to purchase, if possible, further stock in these corporations or to make a plan by which the minority stockholders should have common interests in the whole concern.

Q. Why did you do that? A. It was from our

point of view practically impossible to manage a business so widely scattered, when there were so many different interests that could not be harmonized in any other way. The du Pont Company was largely interested in all the corporations—in fact, was the controlling factor from the virtue of the fact that they were the largest stockholders and were best versed in the line of business in which the companies were engaged. Many of the minority stockholders were not practical men or had nothing
317 to do whatever with the business.

Q. Going back for a moment to the old du Pont Company, you bought that property, as I understand it, shortly after the death of Eugene du Pont, who had been the manager of it practically for some years? A. That is correct; yes.

Q. Was there anybody else connected with that end of the business who at that time was capable of taking up that management? A. As far as I know, Mr. Eugene du Pont did all of the administrative work; no one else was well acquainted with it.

Q. Now, then, in the case of the Laflin & Rand
318 Company, did you find out from this investigation who the principal stockholders of that concern were? A. Yes.

Q. Who were they? A. There were three principay stockholders who together owned 54 per cent of the stock—Mr. Riker, Mr. Boies, Mr. Parsons.

Q. Now, were Mr. Boies and Mr. Riker people of advanced age? A. They were both men of, I imagine, 65 to 70 years at the time, and neither had been active in business for some little time; Mr. Boise had within comparatively recent years, but he was anxious to retire.

Q. Had Schuyler Parsons ever been active in the management of the Laflin & Rand Company? A. Not that I know of.

Q. Therefore, the situation in regard to the internal affairs of the Laflin & Rand Company were somewhat similar to those of the old du Pont Company at the time you purchased it, were they not, in those regards? A. Yes, excepting the de..... of no partner or stockholder had precipitated matters.

Q. Well, you did buy the Laflin & Rand Company by organizing the Delaware Securities Company and having that company take it over, did you not? A. That is correct. 320

Q. And in that way you did acquire a majority of the stock in a good many of these black powder companies that have been mentioned and also in the Eastern Dynamite, did you not? A. Yes.

Q. And your reason for doing so—did you have any other reasons than those which you have mentioned? A. I cannot say that we had excepting that we realized, or thought we did, that the investment in the explosive industry was a good one.

Q. That is, you found yourself owning a part of a large industry and that part which you owned was 60 per cent of your whole property? A. That is correct. 321

Q. And in your judgment at that time was it necessary for the protection of that investment that you already had acquired, these other interests that you did acquire from the Laflin & Rand Company? A. That is difficult to say; whether it was absolutely necessary, but it certainly was very advisable.

Q. Well, now, after you had acquired them, they were taken over by the company you had organized, the E. I. du Pont de Nemours & Company, were they not, the actual stocks? A. Of the Delaware Securities Company you speak of?

Q. Yes. A. Yes.

Q. Now, a little bit later you formed the present

defendant, the E. I. du Pont de Nemours Powder Company, to which eventually was transferred the actual plants and physical assets which were owned by these various corporations with possibly one or two exceptions, is that correct? A. Not all together; the first purchase of E. I. du Pont de Nemours Powder Company was the stocks of the——

Q. I said eventually. A. Eventually the corporations were dissolved, went out of business, and the E. I. du Pont de Nemours Powder Company ac-
323 quired directly all of the property.

Q. But your object in organizing that company which is the present defendant was for the purpose of eventually vesting in it the absolute title to all the plants and have it manufacture all the explosives and have it sell them all, was it not? A. I cannot say that the first idea was that the E. I. du Pont Powder Company should directly own everything, but it was intended it should directly operate them all; actual ownership was not thought of especially.

324 Q. Well, as it worked out you did adopt that plan, transferring everything to the Powder Company? A. We did.

Q. Now, then, will you state what economic advantage there was in changing the situation from an ownership of stock in a lot of these corporations into a corporation which actually, at least operated the plants, and as a matter of fact, did own them? A. It is only a question of more simple management. It is much more easy to operate properties when they are directly owned than through the instrumentality of another corporation.

Q. Prior to that time it had been necessary to keep a separate organization for each of these companies? A. Yes, until the actual time of their dissolution they had their officers and directors and regular meetings.

Q. And separate sets of books and so on? A. Of course, yes.

Q. All of which, I suppose, entailed duplication of work and large expense, is that correct? A. Well, it is quite to a large extent, yes, I think there was an actual duplication of every entry that was written.

Q. Then, as a matter of fact, did that operation result in a great simplification of the management of the business? A. Yes; a very great simplification. 326

Q. And a great saving of money in the management of the business? A. Well, my judgment is yes; I cannot prove that, but it certainly must have.

Q. You were asked to examine some page in one of these books in reference to certain percentages of trade that were there, and I am not sure that you made the matter entirely plain.

Q. Those percentages, that is, it was stated there that the Laflin & Rand Powder Company had some percentage of trade, did that refer in any manner to the trade of the country, Mr. du Pont, as you recollect? A. The figures I have in mind refer to 327 the trade of the Laflin & Rand Powder Company, of the E. I. du Pont de Nemours & Company and the corporations in which they were jointly interested, had no reference to that trade of those corporations in which they were not interested or in which the Laflin & Rand Powder Company was interested alone or the E. I. du Pont de Nemours & Company were interested alone.

Q. In other words, it was a statement of the various proportions as between the Laflin & Rand and du Pont and these other companies? A. Yes; those figures had added 100 per cent——

Q. But they had nothing to do with the total business of the company? A. No.

Q. Do you remember ever attending any meeting of these other powder men you have mentioned after 1903? A. I have no recollection of the dates of any meetings that I attended.

Q. Well, can you give a date after which you are sure you did not attend any such meeting? A. I could be almost certain that I have not attended any after January 1, 1904.

Q. As I understood you to say you attended three or four previous to that time? A. I did attend that
329 number, yes.

Q. Do you know of any such meeting being held after the 1st of January, 1904, that you did not attend? A. No, I could not place any.

Q. And then in 1908, we will say up to September, or at that date, the situation was, with minor exceptions that the defendant Powder Company actually owned the assets, manufactured the explosives and sold them for all of the plants which it controlled, is that the situation? A. That is correct.

330 Q. All of the sales organizations and any other organizations were simply in reference to all of the property? A. Yes, the sales organization and all the parts of the organization was with the E. I. du Pont de Nemours Powder Company alone.

Q. Could you give me an approximate date when the actual manufacturing of powder was begun by the defendant, the big company, the E. I. du Pont de Nemours Powder Company? A. You mean in its own name?

Q. Yes. A. No, I don't remember the exact date.

Q. Do you know whether these acquisitions by the du Pont interests of the other corporations had been for cash or otherwise? A. May I have that question again?

Q. (Repeated). I refer to this list of subsidiary

corporations in which it held minority interests. A. You are speaking now of the corporation organized in 1899 as prior to 1902?

Q. Yes, that list of minority stocks that was owned by the old du Pont Company which you took over, do you know whether they paid cash for them or how they did? A. I know from the records that they paid cash for some of them, and I might say they must have paid cash for the balance, because they issued no securities of their own in payment for them. 332

Q. Then practically this situation was true after the acquisition by you of the du Pont interests, that is the acquisition by the new company of the Laflin & Rand interests and the consolidation with them with one or two others, the California Company and the E. C. Schultze, those that you have mentioned into the present defendant, into the actual owner of them and actually sold the entire output? A. That is practically it, yes.

Q. That is practically the situation? A. Yes.

Q. When was this appraisal made, Mr. du Pont? A. During the year 1903. 333

Q. Do you know of any other of these corporations besides the Eastern Dynamite Company and the Repona Chemical Company which were originally organized by the du Pont Company and the Laflin & Rand Company? A. The corporations, of which the Eastern Dynamite Company owned the capital stock, were largely incorporated or organized by the du Pont and Laflin & Rand interests.

Q. That is, they had gone into that enterprise practically at the same time, the Laflin & Rand, and the du Pont had, as you understood it, had joined? A. I don't understand that question.

Q. I say the investment made in those corporations by the du Pont and the Laflin & Rand respec-

tively, had been a joint investment, made practically at the same time, as you understand it? A. Yes.

Q. In each instance? A. Yes, in every case.

Q. Can you state what the relationship between yourself and any of these co-partners in the old du Pont de Nemours Company was? A. Yes, Mr. Eugene du Pont, Mr. Alexis I. du Pont, Mr. F. G. du Pont are my father's first cousins; they were
335 brothers, those three. Col. H. A. du Pont was also my father's first cousin. Mr. Arthur I du Pont was my first cousin.

Q. Was your father the du Pont that you mentioned as being one of the pioneers of the dynamite business? A. Yes.

Q. And what relation to you was the founder of the company, E. I. du Pont? A. He was my great grandfather.

Q. Now, Mr. T. C. du Pont also was related by blood to these old co-partners? A. Yes, sir; he is my first cousin, also related in the same way to the
336 co-partners.

Q. Was it the desire of those co-partners that the company should be continued in the same name of "du Pont de Nemours"? A. Yes, it was very much their desire, yes.

Q. As well as your own, when you came into the company? A. Yes.

Q. Was it a valuable name so far as for trade purposes were concerned? A. It was of great value as a trade name.

Q. Had powder been sold under the name of "du Pont Powder" during the entire time of the 100 years? A. Yes, sir; during the entire time from 1802.

Q. Now, do you recall at what time the present method of manufacturing blasting powder, so far

as its present constituent parts are concerned was actually entered into? When was nitrate of soda introduced as the principal constituent in the manufacturing of blasting powder? A. In the year 1858 or thereabouts.

Q. Can you tell what any one of these duPonts had to do with that improvement in that way? A. The duPont Company was the first one that used nitrate of soda in blasting powder. That was really the beginning of the great blasting powder interests. The saltpeter powder, so-called, was very 338
much more expensive than the other and the introduction of the nitrate of soda into the manufacture of blasting powder was really the beginning of that industry and it has been manufactured with that constituent part now for many years.

Q. Was not your father very largely instrumental in that development? A. He was; I think he invented the press, the powder press which was used for pressing powder for the first time.

Q. And did he take out a patent at that time? A. Yes, there is a patent on it. 339

Q. Your father is now dead, is he? A. Yes.

Q. When did he die? A. In 1884 he was killed in an accident at one of the plants.

Q. As the result of an explosion of one of the powder factories? A. Yes, sir.

Q. In 1908, what plants did the company have in the State of New Jersey? A. In 1908?

Q. Yes, say September, 1908? A. They had the smokeless powder plant, Carney's Point, the Repona plant at Gibbstown, the Haskell plant at Haskell, the Wayne plant at Wayne, the Forcite plant in the northern part of New Jersey and also the Kenville plant, also in the northern part of New Jersey.

Q. Where is the plant of the International Com-

pany located? A. That is also in New Jersey near Parlin.

The Court: Near what?

The Witness: Parlin.

Mr. Button: I think that is all, Mr. duPont—If you will allow me (addressing Mr. Abbott). Mr. Graham suggests that this situation of the International Powder Company is not quite clear.

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Q. Now, as the situation stood, the duPont Company owns no stock directly in the International Smokeless Powder and Chemical Company? A. That is correct; yes.

Q. That is a corporation which has at the present time many outstanding stockholders who are not connected with the duPont interests? A. That is correct; yes.

Q. But the majority of the stock is owned by the duPont International Company, which in turn is controlled by the Powder Company? A. That is correct; yes.

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Re-direct examination by Mr. Abbott:

Q. In regard to the last question just propounded to you, Mr. duPont, are you in a position to give an exact list of the stockholders and the stockholdings of the International Smokeless Powder & Chemical Company? A. No; I suppose that is obtainable; I don't know as I could obtain it.

Q. Could you obtain such a list for us? A. Well, only as a stockholder of the company. It is a New Jersey corporation; I think I could obtain a list in that way.

Q. Will you endeavor to obtain such a list?

Mr. McCarter: What is the reason you ask that?

Mr. Abbott: The reason I ask that is——

Mr. McCarter: You yourself can do that, this is a New Jersey corporation and there is a proper place in New Jersey where that can be secured.

Mr. Abbott: We haven't any right, we are not stockholders of the company.

The Court: What is the purpose of it?

Mr. Abbott: The purpose is, this witness 344
has testified to certain outside stockholders in this company, evidently with a view of showing that the main corporation, the defendant in this case, has control over the affairs of the International Smokeless Powder Company. If that is so, we would like to bring out that fact more definitely and I think that can be done best by getting hold of an official list of the stockholders of the company.

Mr. Button: We have shown that we 345
owned a majority of the stock. The object of the inquiry was to show that that company was a distinct entity with other stockholders.

The Court: That is what I understood.

Mr. Abbott: That is all right. I didn't understand why Counsel made that inquiry after he had shown that this Company had control. But he had some purpose in mind, evidently, and I wanted to get a correct list.

Mr. Button: The purpose was to differentiate it from the other corporations.

Q. What do you understand by the term "control"? Do you mean a stock control of the Powder

Company—that the Powder Company had a stock control of the International Smokeless, the defendants did control it that way? (Objection overruled.) A. I understand the question refers to the meaning of the word "control"?

Q. Yes. A. As I have used it throughout, I mean the control of the majority of the stock of the corporation without reference to the directors or officers or anything of that kind.

347 Q. Now you referred to certain agreements, that you denominated the "Riker and Boies" contract. Are those contracts in writing?

Mr. Button: I didn't understand the witness to refer to any contract.

The Court: I didn't understand so. They were holders of the Laflin & Rand, weren't they?

The Witness: Yes.

The Court: That is what I understood.

Mr. Abbott: And he referred then to "certain interests."

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Q. You referred to "certain interests" which you purchased and known as the "Riker" and "Boies"? A. Yes, their control was in the Laflin & Rand Co.

Q. Were those interests purchased under any agreement to purchase them, or did you go out in the open market and buy them? A. No, they were purchased directly from the owners.

Q. Under an agreement? A. By direct negotiations with them.

Q. Was there an agreement entered into for the properties—to purchase those interests? A. Not as I understand your words. There were direct negotiations with the owners, and they agreed to sell at a price, and we agreed to buy.

Q. Well, then, will you tell——

Mr. Graham: Let him finish.

A. (Continuing) They agreed to sell at a price, and the purchaser agreed to buy, and the transaction was carried out. I don't know that there was any written agreement in regard to the terms. Doubtless it was reduced to writing.

Q. Was there an agreement in writing or was it oral?

The Court: He said it was doubtless in writing.

A. Why doubtless it was so, in writing, but I have no recollection of seeing the document.

Q. You have no recollection of seeing that document? A. Doubtless I have seen it if it existed.

Q. Well, I will ask you then to examine Government's Exhibit No. 234, found on pages 982 and several successive pages of Volume 4 of Petitioner's Exhibit in the case I have called your attention to, and ask you to state whether or not anything there refreshes your memory as to the agreement to purchase the stock of those tentatively. (Handing book to witness). A. Well, this agreement which I note was executed——

Mr. Graham: The question is not what the agreement says.

Mr. McCarter: The particular inquiry, as I understand it, Mr. du Pont is this: Whether after reading that you, independently now recall the fact from your own knowledge, apart from anything you find there, that there was a written agreement. That is as I understand the Judge made the ruling yesterday on an inquiry of this kind

as to the refreshing of the witness's memory, is that right?

The Court: Substantially so.

A. No, this does not refresh my memory.

Q. You refer to the fact that the interests which you denominate "the du Pont interests previous to the time when your company acquired them, included certain plants in various parts of the United States, and among those you mentioned the Indiana Powder Company and the Chattanooga Powder Company, did you not? A. Yes they owned certain of those corporations.

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Q. You stated that in some of your answers to the inquiries made to you by Counsel as to certain plants favorably located for the manufacture of powder—didn't you so testify and isn't that correct? A. Yes sir.

Q. Did you have—have you anywhere a list of the plants which were owned by the du Pont interests at the time when you took over those interests and the places where they are located in the United States? A. The plants owned directly?

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Q. Owned or controlled with a majority of the stock interests.

Mr. Button: At what date?

Mr. Abbott: At the time when Mr. du Pont's company—the 1902 company—when that company was organized to take over the du Pont interests.

A. I think I can name them; yes.

Q. Very well? A. I can name those plants now.

Q. Very well, you can just give them and the location. A. The plants owned directly were at Wilmington, Delaware, Carney's Point, New Jer-

sey, Wapwalopen, Pennsylvania, Sycamore, Tennessee. I am not certain whether owned directly by the corporation or not. Then they controlled the stock of the Hazard Powder Company; that is located at Hazardville, Connecticut. The Oriental Powder Mills Plant at—I have forgotten the place in Maine. That company also organized a corporation which had a plant at Fairchance, Pennsylvania, which was controlled indirectly, it being necessary to have a Pennsylvania corporation to hold real estate in Pennsylvania; and the Phoenix Powder Manufacturing Company was also controlled through majority stock ownership I think; it had three plants, one at Belleville, Illinois, one at——

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Q. Will you give the name of the one at Belleville, Illinois—excuse me for interrupting you. A. It was the Phoenix Powder Manufacturing Company's factory at Belleville, Illinois. There is one in New Jersey; the third one was in Ohio, I believe.

Q. What was the name of the Ohio plant? A. I can't recall the name for the moment.

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Q. Can you state where it was located?

Mr. Button: It was at Huntington, West Virginia, wasn't it?

A. It was possibly in West Virginia, it was that district, I can't remember the name of it, it has gone from me.

Mr. Button: Was it Kellogg?

The Witness: Yes; Kellogg was the name.

Mr. Button: Mr. du Pont, didn't you omit the Mooar plant in Iowa?

The Witness: Beg your pardon, I did, that is owned and controlled by the E. I. du Pont Company.

Q. You had no other plants at that time, as I understand it? A. I think that list is correct.

Q. Now after the du Pont interests passed into the hands of your company—— A. Yes.

Q. ——what other plants did you acquire, and if you can name them and their locations, why do so at the present time.

Mr. Button: I don't think you referred to black powder plants exclusively?

359 Mr. Abbott: I am referring to all the plants that you brought out and made inquiry concerning?

Mr. Button: I understand.

Mr. Abbott: In other words (so the witness may understand what I am getting at), counsel drew out from the witness the theory that it was necessary for him to have various plants in various parts of the country for the proper transaction of its business. Now I want to find out for future purposes in this

360 case, exactly where those plants were located, and what their names were. Therefore he has now told us the plants which the du Pont interests controlled that it took over and I would like to know now what the plants that any of the other interests which he afterwards took over, were and where they are located; and I will say if the witness is not able to give that now I won't ask him to do so. I think it is straining his memory very much to ask him to do that from memory.

A. I would prefer to furnish that list later.

Q. Will you kindly give us a statement covering that answer, covering that inquiry? A. Yes.

Q. Will you also cover the answer to the question so as to bring down the location of all the plants which were subsequently acquired by the du Pont Powder Company, after its organization in 1903, and from that time down to September 18, 1908? A. Yes.

Q. With the location of the plant? A. Yes.

Q. I understand you to say that after you took over—after the Powder Company took over the various interests in various corporations, a large number of those corporations were dissolved and 362 their organizations were disintegrated, and everything was consolidated into the hands and under the management of the Powder Company, is that correct? A. That is correct; yes.

Q. Now I show you—are you able to give a list of those names from memory, those corporations? A. That were dissolved?

Q. That were dissolved. A. No; I cannot.

Q. I show you the complaint or declaration in this case, and ask you to look at paragraph 4th, on pages 6, 7 and 8, and examine the matters set 363 forth there and state whether or not this is or is not a correct list of the corporations which were taken over by you and afterwards dissolved. (Handing paper to witness.) (Objection overruled.) A. All those corporations were owned, or the stock of them, indirectly or directly by E. I. du Pont de Nemours Powder Company, and so far as I can judge from the list, I think they all have been dissolved and the assets acquired by the E. I. du Pont de Nemours Powder Company. I would add also that the du Pont interests organized a great many of those corporations themselves for special purposes.

The Court: I didn't get that last.

364 *Pierre S. du Pont—Redirect*

The Witness: Those are not all corporations in which the du Pont Company bought interests. They organized a great many of those corporations themselves for special purposes.

Q. And these corporations had all been operating and conducting some part of the explosive business, had they not and were subsequently dissolved, and all of the business which they had formerly trans-
365 acted was taken over by the Powder Company? A. That is correct.

The Court: That is what he said.

Mr. Abbott: But I wanted to make sure, Your Honor.

Q. Very well. You have stated then that you did not attend any meeting of the association after January, 1904? A. I believe that is correct.

Q. Then, you say you haven't any recollection of attending any meetings of manufacturers of ex-
366 plosives after the year—after January, 1904? A. Yes.

Q. Do you know when the manufacturers of explosives whose meetings you attended previous to 1904 ceased to hold those meetings? A. Well, I cannot state that.

Q. You cannot? A. No.

Q. Now, you referred to the fact that your father had been killed in an explosion in the mills? A. Yes.

Q. Now, you stated that the organization of the previous—that the organizations of these various companies were all eliminated and everything was consolidated into one corporation, and into one name for the question of minimizing the expense

and for conducting the business more economically? A. That is it; correct.

Q. And that applied also to the development business of the various corporations that these various corporations had been engaged in? A. Yes, there is only one development department now. I doubt if there was more than one or two before. I think the Laflin & Rand Company and the duPont Company were the only ones that maintained a very large development system.

Q. You have referred also to the fact that there 368
was a detailed appraisal of the various properties which you acquired at the time those properties were taken over by you. Was that appraisal in writing? A. It was reduced to writing; yes, sir.

Q. By whom was it made, if you know? A. There were two committees who appraised the factories. The black powder committee, I think, of Mr. Charles Patterson, Mr. Frank L. Connable and W. K. du Pont. I am not certain of those names. And the dynamite committee, O. R. Jackson, Irenee A. du Pont and I don't recall who was the 369
third, I think, there was three on each committee.

Q. When was this committee named? A. In the year 1903.

Q. Will you produce that appraisal?

Mr. McCarter: We object to that Your Honor. The inquiry was made which provoked the answer that there had been an appraisal made in 1903, that inquiry was "after your preliminary examination into the assets of this business, did you make any subsequent examination." He said, "Yes, there were two subsequent examinations, one was at "such a time and later in 1903 an appraisal was made. Now I don't think

370 *Pierre S. du Pont—Redirect*

there is anything in that that makes it proper or germane or relevant to bring out what these appraisals amounted to. And again all that I stated yesterday to the Court in regard to the effort and purpose of getting at the values of stock and assets relatively, we conceive to be utterly ungermane and irrelevant to the controversy; and we don't conceive that any inquiry that was made on the cross examination of this
371 witness made proper a departure from that pdinciple, namely, the question whether or not there was an appraisal made or was there an appraisal or was it made by the Pope or by somebody who knew something about the business and no doubt the purpose of the inquiry is——

The Court: The mere fact that a written appraisal appears to have been adopted in making the appraisal of the assets does not allow you to have it produced. What is the
372 purpose of it.

Mr. Abbott: The purpose of the inquiry is, if Your Honor please: That we want to show the methods that this witness and others associated with him in the powder business have used in appraising property which they have acquired for their own purposes; and I will make my purpose clear since Counsel has several times intimated that there was something ulterior about it, for the purpose of showing that these powder manufacturers had a definite way of valuing properties which were based almost altogether upon the earning capacity of those plants, so that we may later on be able to show from authoritative sources and out

of the mouths of these defendants themselves what is the fair and true valuation of our property, when we have reached that point—what was a fair and true valuation.

Now I desire to have the production of this exhibit, of this list for several reasons:

First, because it was matter which was brought out by the defendants themselves. The witness has testified as to some facts and as to some matters which that writing contained, and he has testified that there were other facts in connection with that matter which he is not able to state from his memory; and we desire to have the document itself so that we may have access to any fact which may appear to be pertinent.

Now, I do not wish it understood that we propose to offer any document here and limit it to any specific purpose, unless we do state what that purpose may be. I am stating now the purpose of the inquiry which relates to this particular document, and if it should be admitted, we want it distinctly understood that we may be able to use it for any purpose which may appear to be relevant under the orders of the Court.

The Court: The mere fact that they have taken a certain method of ascertaining the values of properties they took over, would not be evidential on the question of the value of the property you say was destroyed.

Mr. Abbott: It would have this value, if Your Honor please, it would show the methods adopted by the only people who were capable of giving us information upon that point.

The Court: You surely can show it yourself.

Mr. Abbott: We might be able to show it if Your Honor please, but then Your Honor will recall that the powder business, the business of explosives in this country is a peculiar business and that is in evidence as already shown without any denial.

The Court: Without prolonging the argument, you are in position to show the peculiarity of the business?

Mr. Abbott: We may be more or less.

377 The Court: At the present time I see no reason why this witness should be required to furnish a written appraisal.

Mr. Abbott: I think we are entitled then to have stricken from the record any reference this witness may have made to the appraisals of the property which are based upon this writing.

The Court: I see no reason for that now. The witness simply says that the appraisals were made more complete upon the second examination in 1903 and was put into writing. The fact that he mentioned that is no reason why this testimony should be stricken out.

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To which ruling the plaintiff's counsel then and there excepted and said exception was allowed.

Pierre S. du Pont—Recross
Arthur J. Moxham—Direct

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Recross-examination by Mr. Button:

Q. You have been shown a list of companies in this complaint and asked if these companies were dissolved and their assets taken over by the Powder Company. Now is it or is it not true that a number of companies were organized by the du Pont Company itself for the purpose of doing certain portions of business that the du Pont Company then possessed? A. That is correct, and the corporations in which it was interested also organized companies for special purposes.

380

Q. That is in that instance they would be corporations actually organized by yourself and not acquired from any one else and which did not acquire any property from any one else, is that it? A. That is correct.

Witness excused.

ARTHUR J. MOXHAM, a witness produced on behalf of the plaintiff, having been duly affirmed, estified as follows:

381

Direct examination by Mr. Abbott:

Mr. Moxham, where do you reside? A. Wilmington, Delaware.

Q. How long have you resided there? A. Since the fall of 1902.

Q. And what is your occupation? A. I am one of the vice-presidents of the E. I. du Pont de Nemours Powder Company among other things.

Q. When did you become vice-president of the Powder Company? A. Shortly after, if not at once on its organization.

Q. That was in 1903, I believe? A. I think.

Q. When were you elected to the vice-presidency of that association?

Mr. McCarter: He did not say that he was

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elected to the vice-presidency of the association, but of the Powder Company.

Mr. Abbott: I want to correct myself as to that.

A. I was elected vice-president of the E. I. du Pont de Nemours Powder Company at the time of its organization.

Q. Now, previous to the organization of the E. I. du Pont de Nemous Powder Company did you
383 hold any office in any of the companies which preceded that company? A. I was president of the Hazard Powder Company.

Q. Do you know anything about the company known as the E. I. du Pont de Nemours & Company? A. In a general way, yes.

Q. Were you an officer of that company? A. I was not.

Q. Were you connected with it as director, on the Board of Directors? A. No.

Q. Do you know of any association of powder
384 manufacturers which obtained or existed previous to and subsequent to the organization of the E. I. du Pont de Nemours Powder Company? A. That there was such an association I know. I do not for the minute remember the name of it.

Q. Did you ever attend any of its meetings? A. I attended the meetings of one association, the one that was in existence at the time that I became president of the Hazard Powder Company.

Q. Can you recall what that association was? A. I cannot.

Q. Do you know what its general purposes were? A. Its general purpose was to exchange information as to the trade of the country and matters allied to the general business of selling powder.

Q. Did any of those matters have any relation to the fixing of prices? A. Yes.

Q. Did they have any relation to the allottment of business between the members? A. I think so. My memory is very vague as to the association. It was complicated. I knew nothing of the business when I joined it. It lasted but a very short time. I could not speak confidently about the details of its purposes of its organization. 383

Q. Do you know anything about the manner in which the business of that organization was carried on—that is, whether by board or what was the executive body, if any, of that organization? A. My recollection is that it consisted of meetings of all the powder men that were interested in the association. I cannot speak as to its particular organization. 386

Q. Do you know anything about a committee called the "Advisory Committee"? A. I know there was such a committee.

Q. Did you ever attend any meetings of that committee? A. I think so, but I am not quite sure.

Q. Do you know anything about a committee called the "Finance Committee"? A. Yes, sir. 387

Q. Did you ever attend any of the meetings of that committee? A. I think so.

Q. Were or were not you a member of that committee? A. I think possibly I was, if I attended the meetings.

Q. Tell us the general purpose and purport of the business of that committee? A. I do not know. I do not remember.

Q. Do you remember at any time making a report or a speech, addressed to the members of the association, or to the members of this committee? A. I remember a so-called speech to the association I have alluded to as being the one that I had either joined or was present at. I think I was a member of it.

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Q. Do you remember when it was that you delivered that report or speech? A. What date?

Q. Well approximately what year was it? A. It must have been the early part of 1903, I take it.

Q. As early as 1903? A. I should think so.

Q. Have you a copy, or have you the original, of the speech which you delivered—or, in the first place, was this speech in writing? A. Typewritten.

389 Q. Have you got the original of that document? A. I have not.

Q. Do you know what has become of it? A. I have not the remotest idea.

Q. Do you know what you did with it after you finished with it? A. I think I gave my copy of it to Mr. R. S. Waddell, if I remember right.

Q. Have you seen the document since? A. No.

Q. Do you know where it is? A. I do not.

Q. I show you Government's Exhibit No. 29 in a volume which is marked United States of America petitioner, vs. E. I. du Pont de Nemours
390 & Company, defendants, and called Petitioner's Record of Exhibits, Vol 1, on page 207, and ask you to examine that page and subsequent pages and state whether or not that is a true and correct copy of that speech as near as you can at this time state. (Handing to witness.) A. I think that is, as well as I can remember the date, a correct copy of the speech that I made at that time.

Q. Have you examined the Exhibits attached to that, 1, 2, 3, 4 and 5? A. I will do it now, but they recall to me almost nothing. They are applicable to the remarks in the speech and by that perhaps they can be—I can state them to be possibly correct, but from my own memory, not otherwise.

(The same offered and objected to; objec-

tion overruled; admitted and marked Plaintiff's Exhibit 22 for identification.)

Q. Now, Mr. Moxham, do you know anything about a system or compilation of rules or regulations known as "the Compendium of Rules"? A. I don't.

Q. Do you know anything about any rules or regulations which governed the proceedings of this association? A. Except in a very general way, no.

Q. I will ask you whether or not there were any 392
rules that were at any time called to your attention regulating the affairs of the Association? A. There may have been the rules, and they might have been called to my attention. To-day I do not remember that it was so.

Q. What do you recall with reference to the rules, if anything? A. I don't know that I can recall anything in reference to rules. I can remember the meeting, perhaps more than one, with the Association. That there was some system, I was perfectly aware. If there were a compendium of 393
rules, I don't think I ever read them though.

Q. At these meetings which you attended, do you recall who was present at any time? A. I can recall some of those present, yes.

Q. Will you name such as you can recall? A. I can remember Mr. Olin.

Q. Whom did Mr. Olin represent? A. I don't know. Mr. Lent.

Q. Do you know whom he represented? A. I think the Austin Powder Company. I can remember Col. Henry duPont. Mr. Haskell.

Q. Whom did Mr. Haskell represent? A. At that time I believe it was Laflin & Rand. I think upon one occasion I remember Mr. T. C. duPont being there. There were a good many others, who,

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at the time, were strangers to me who I saw very little of afterwards, besides those that I have named.

Q. Do you recall—do you know Mr. A. O. Fay? A. No.

Q. Did you ever see Mr. Pierre S. du Pont at any of those meetings? A. I don't think so.

Q. Do you have any knowledge of your own at this time, as to who were the various members of the association, and give the names of any of the
395 persons with whom you associated, I mean corporations or associations? A. I don't understand the question.

Q. Can you give the names of any of the Powder Manufacturers, be they corporations or individuals, who were members of this association which you have stated—whose meetings you state you attended? A. I can't.

Q. None of them at all? A. My memory of the association, per se is so vague that I am not in a condition to testify that even those gentlemen I
396 testified of are members. I presume they were.

Q. Now you attended those meetings? A. Yes, sir.

Q. Whom did you represent at those meetings? A. I represented the Hazard Powder Company.

Q. Now, haven't you any knowledge at all as to whom any of the other gentlemen represented? A. Not beyond what I have given you. Mr. Lent of the Austin Powder Company and Mr. Olin I don't remember.

Q. Do you know when that organization went out of existence, or ceased to have meetings? A. I know it was very shortly after I joined, the date I can't give.

Q. By "shortly afterwards" would you indicate whether you mean a year or two years? A. I should think within the year 1903.

Q. You yourself attended no meetings of the association after that period, did you? A. I don't like to tie to exact dates. After the association was dissolved, no.

Q. Now, can you state why the association was dissolved? A. I think that I was very much to blame for that. It was dissolved, because like all so-called pools of that kind, it utterly failed in carrying out the purpose for which it was formed; and I believed that our company would reach far greater success by following the true economical 398 trade laws. They were trying to create artificial ones which could not be lived up to. I spent most of my time in urging, at that period, its dissolution. I think I was largely instrumental in having it dissolved.

Q. The dissolution occurred after the Powder Company had the complete organization? A. As I say, I can't remember the exact date of it. The policy of dissolving it, I, according to my present recollection, was urging before we reached our complete organization.

399

Q. But you didn't finally dissolve it until after? A. That I can't answer.

Q. Well, you state that you attended some of the meetings for about a year after you became an officer of the Powder Company, is that correct?

A. I don't know whether it lasted a year or not. It was within a year that it dissolved, and how much of the year it lasted, I am not prepared to say.

Q. Now, at the time this association was dissolved, at your instance, as you have indicated, had the Powder Company acquired the interest known as the Laflin & Rand interest? A. Don't misunderstand me about this, I was only one factor in its dissolution.

Q. You stated it was largely due to your idea? A. Particularly so, largely so, yes. I don't remember whether the Laflin & Rand was part of our organization at that time or not.

Q. Do you know whether the Hazard interest had at that time became a part of your organization? A. The Hazard at that time was an independent organization, all the stock of which was controlled by the du Pont interests.

401 Q. And by du Pont interests, what do I understand you to mean? A. Well, I am ashamed to say I can not tell you; we have so very many companies interlaced with each other, that the exact resting place of that I do not know, whether it was—well, I needn't speculate, I don't know.

Q. Have you any knowledge of your own Mr. Moxham, as to what companies engaged in the manufacture of explosives and were acquired by the du Pont Powder Company, the defendant in this case, immediately after its organization; do you know anything about the details of that matter yourself? A. I know something about the de-
402 tails of the Laflin & Rand, and something about the details of the International—du Pont—International Powder Company, in a very vague way, a very little about a good many others whose names even I didn't remember,—there was something at that time, something somewhere between 100 and 110 different companies, and I, a perfect stranger to the business—they were gone almost before I had learned to remember their names.

Q. By "gone" what did you mean? A. Dissolved; that corporations dissolved.

Q. Now, what was the purpose of dissolving those companies? A. The fact that we could save a very great deal of money by having a plain, simple organization, that we could have a very much more

efficient organization, that there was no earthly reason for the existence of the mere shells of the corporations after de facto all the assets, the mills, the stocks, and everything else had been consolidated into one piece of machinery as being more efficient than the scattered organizations.

Q. Now what was that one piece of machinery? A. I have forgotten the name of the company; we had one company to whom all the assets and all the stocks were turned over, of the subordinate companies which we controlled. 404

Q. Well, was it the E. I. du Pont de Nemours Company, or was it the E. I. du Pont de Nemours Powder Company? A. I am not clear to-day which of the two it was. It was ultimately the E. I. du Pont de Nemours Powder Company.

Q. Yes; well, now, by ultimately—when did that period arrive? A. Well, the dissolution of these companies was a continuous thing covering quite a long period of time, perhaps it may have taken two or three years before they were all finally dissolved, all that we could dissolve.

405

Q. Do you know anything about the company known as the Delaware Securities Company? A. A little, yes; I was president of it.

Q. What was the purpose of that compnay? A. That company was organized, if my memory is right to-day, as a means of paying for the purchase of the Laflin & Rand interests.

Q. And how did you pay for the property which you acquired from the Laflin & Rand? A. We issued bonds, and the bonds—and if my memory is right, a small percentage of the stock—was used to pay for the purchase of the Laflin & Rand Companies, if not in whole, in great part, I think in whole.

Q. What was the capital of the Delaware Securities Company? A. My recollection is that the

bonds were four million dollars; the common stock I am not quite sure of, I think about two million and a half.

Q. How was that paid up? A. That I don't know.

Q. Did you pay cash for the assets which you purchased of the Laflin & Rand? A. That I cannot answer.

Q. Now, do you know anything about the Delaware Investment Company? A. The Delaware In-
407 vestment Company was closely allied in purpose and organization with the Delaware Securities Company. There was some divergence of interests, as to which I am not clear to-day, and the purpose was better served by two companies than one.

Q. Do you know whether or not the Delaware Investment Company secured any property during its existence? A. It did.

Q. And what property was that? A. My recollection is it was the Mossic Powder Company.

Q. Where was that property located? A. Somewhere in Pennsylvania.

40[illegible] Q. Did it have a plant or mill—— A. Oh, yes.

Q. ——manufacturing powder? A. Yes.

Q. Was it a large or small concern? A. I don't know.

Q. Do you know anything about the California Investment Company? A. That was a company organized for the purchase of some California interests, just what they were I am not clear.

Q. Do you know what the purposes of acquiring those interests were? A. I know that over there we had a very large interest already in some of the powder works and my recollection is that it was deemed more economic to try and concentrate all of them as we were concentrating all of our other companies, and all of our interests that we

possibly could, and I think that we bought the remaining oustanding interest.

Q. Well now by "we," what do I understand? A. The general du Pont interests, that is about the best definition I can give you; if you want an exact definition I cannot give it to you, sir.

Q. Well, do you include within that term, the E. I. du Pont de Nemours Powder Company? A. I cannot remember whether at that time the E. I. du Pont de Nemours Powder Company was involved in it; I mean as part of the organization, or whether it was later. 410

Q. Well, does the term include the E. I. du Pont de Nemours & Company? A. That I cannot answer.

Q. Well, you use the term "we," and as I understand it you were not an officer of the E. I. du Pont de Nemours & Company, but were an officer of the Hazard Company; now what relation did the Hazard Company sustain with these other companies, so that you felt that also generally included within the term "we"? A. When—the period of the California Investment Company was after the period that I had—no—the Hazard Powder Company assets were put into the du Pont de Nemours Powder Company some little time before the Hazard Company as such was ever dissolved. I was at the time an officer of the E. I. du Pont de Nemours Powder Company, at the time of the California Investment organization, I think the period overlaps. 411

Q. Yes; now, as I understand you, you finally absorbed, that is the E. I. du Pont de Nemours Powder Company finally absorbed and put out of existence, dissolved them, about 100 different corporations, is that true? A. I cannot quite acquiesce in that statement of it; the method of procedure was first of all the E. I. du Pont de Nemours Powder

412 *Arthur J. Moxham—Direct*

Company or possibly some other company first of all organized for that purpose——

Q. Yes. A. But ultimately the E. I. du Pont de Nemours Powder Company took over all the assets, plants, stocks on hand, and so on of these various companies and manipulated these various companies as one going concern. Now, the dissolution that I speak of wa smerely the dissolution of the shells of the remaining corporations.

Q. Now, these 100 corporations that you speak
413 of, did they relate back to a period anterior to the time when you came in contact with the du Pont interests in 1902, as you say? A. Almost all of them.

Q. Do you know how far back they related? A. Some of them, very, very far back—no, I don't know how far back.

Q. Well now, by very, very far back, will you indicate to the best of your knowledge about how far back they did run? A. Well, the Hazard Powder Company was a very old concern, forty or fifty years old, I think, I suppose that that, barring the
414 du Pont interests itself, was one of the oldest.

Q. Then when you say 100 companies, you mean companies that were included in the Hazard Powder Company interests, is that right, which had been organized previous to the time when you came in contact with the du Pont interests in 1902? A. In part.

Q. And you include within that term also corporations which were part of the du Pont interests before they became incorporated in 1899, is that correct? A. I do not remember the 1899 corporation, but it means the du Pont interests of a long distance back.

Q. Now, does it also include the interest known as the Laflin & Rand interest as far back as they

were known as such? A. As far—one minute, I don't believe the Laflin & Rand as such has been dissolved yet. 415

Q. Well, the various corporations that the Powder Company acquired which were known as Laflin & Rand corporations, were included in this list? A. In large part, yes.

Q. Is the Laflin & Rand Powder Company doing business now? A. I do not know.

Q. Is it owned or controlled by the Powder Company, whatever stock stock or interest it may have? A. It was owned, but for some reason or other, according to my present recollection, the organization was kept alive; what that reason was for the minute, I don't know and I am not quite sure of its present status. 416

Q. Now, you said you knew something about the International Smokeless——

The Court: du Pont-International, I think he said.

Q. Yes; du Pont-International? A. Yes. 417

Q. What was the purpose of the du Pont-International Company? A. The purpose was to purchase a controlling interest in the International-Smokeless and Chemical Powder Company.

Q. Is that corporation still in existence? A. Yes.

Q. The interests which that corporation acquired were not included within this list of 100 companies? A. No.

Q. Now, do you know anything about the Eastern Dynamite Company? A. Only in a general way; that principally antedated my connection with the company.

Q. Was that company one of the companies which you included within the one hundred? A. Yes.

Q. That has been dissolved? A. That is my recollection.

Q. And included in that were the companies which were owned and controlled by the Eastern Dynamite Company, is that correct? A. Yes.

Cross examination by Mr. Button:

Q. I understand what you have stated, Mr. Moxham, that the Hazard Powder Company stock and
419 the du Pont interests has been indefinite as to what is meant by those interests. Do you mean that practically all of it was owned by one of the du Pont corporations, as you understand it? A. I don't remember to-day, Mr. Button, whether it was vested in a corporation or partnership or what it was; I do know that all the stock was owned in some shape or form.

Q. You know also that it is an ownership that had extended back a great many years, do you not? A. Very, very far back in the past.

Q. Now, in reference to this list of 100 or 130
420 corporations which you say were dissolved, and their properties consolidated into the Powder Company, was it not true that many of those corporations were concerns that had been organized by the du Pont Company and didn't have plants, but had been used for various phases of their business? A. A very large number were so.

Q. That is as you expressed it once, the du Pont interests had formed corporations for various purposes? A. I think it is very likely I did use that expression; I do not remember.

Q. Therefore, that 100 or 130 corporations——
A. 110, Mr. Button, was my limit.

Q. 110—I thought you said 130—well, that 110 corporations did not represent 110 independent con-

cerns that had been taken into this organization? A. By no means; no.

Q. And I understand at the present date the situation of the defendant here, the E. I. du Pont de Nemours Powder Company, is that it is a corporation that has title to the various properties that it has purchased and is operating them—or I will confine the question to September, 1908, which is the time in issue——

The Court: September 18th? 422

Q. Yes; September 18, 1908; at that time was it practically the situation that the defendant company owned these various plants which have been purchased and was manufacturing its various brands of explosives and itself selling them to the trade? A. Yes.

Q. When you came into the business in 1902, Mr. Moxham, had you ever had any previous connection with the powder business in any way? A. No.

Q. Was it an entirely new proposition? A. Entirely new. 423

Q. And that is likewise true of two of your principal associates, Mr. P. S. du Pont and Mr. T. C. du Pont? A. It is true of Mr. T. C. du Pont; I think Mr. P. S. du Pont had something to do with powder previous to that time, the manufacturing end of it, if my memory is right.

Q. Do you know whether he had anything to do with the internal affairs of any of these corporations? A. I think not.

Q. He had been engaged, had he not, in some previous years as a chemist in one of the factories? A. Yes.

Q. Outside of that, do you know of any previous connection he had had with the companies? A. I do not know of any.

Q. What was your business in a general way prior to 1902? A. Iron and steel.

Q. You are not familiar with the details of the California Investment Company in all its phases, Mr. Moxham? A. Certainly not in all its phases; I have only a very slight knowledge of it.

Q. And had these 110 corporations been in the condition of shells as you express it for some considerable period prior to the time that they were disorganized—dissolved? A. They had.

Q. And during that period of their being such shells, the du Pont company owned all the stock of each of those corporations practically? A. Yes; and very, very many of them if my memory is right, long before that.

Q. Then, so far as the dissolution of those corporations went it did not at that time represent any change, actual change of the control of any assets? A. It did not even create a ripple in the market in any shape or form.

Redirect examination by Mr. Abbott:

Q. Mr. Moxham, can you name the companies which were part of these 110 companies that did not own separate plants? A. No; I am afraid to venture to give you the names; there were several selling companies pure and simple; I am not sure, but I think there were one or two purchasing companies.

Q. One or two what? A. Purchasing companies.

Q. Oh, yes; well, now, you have said several selling companies and one or two purchasing companies; now, what other companies were there that were not operating? A. That were not operating companies?

Q. Yes; operating or manufacturing companies. A. I understand; I don't know of any, but those three classes.

Q. Those were the several that you mentioned and then these two or three?

Q. Now, have you any means by which you could prepare or submit a list of the 110 companies that you have in mind that you have testified regarding to-day? A. I have no record whatever in my office that would help me. If the powers that be were willing to surrender to me such list I suppose I could produce them. 42

Q. You evidently have in your mind a list of 110 companies. I would like to obtain as definitely as possible the names of those companies, and such of them as were operating companies, such as selling companies and such as had plants and such as didn't have plants, as you yourself have already indicated; will you state how with the least inconvenience you could furnish me such a list? A. I don't know that I can do it at all, but if that list is still in existence and for the minute I don't know where we could search for it; I could only ascertain it in quite a long continued search and inquiry of all our different people. 429

Q. Will you state then what you mean by the word "several" as applied to the companies which you say were operating companies, how many companies do you include in that term? A. I don't know I can give you only a very rough guess to-day; I should think out of a hundred companies there were perhaps not more than 10 or 15, maybe 20 at the outside, operating companies.

Q. Well, the rest were what kind of class? A. All sorts and kinds in selling and purchasing; and some—frankly, I do not know what they were organized for. They were mere names.

Q. Do you know a company by the name of the Forcite Company? A. That was before my day. I know it by name.

Q. Was it one of these one hundred? A. That I do not know. You must remember, Mr. Abbott, I came into this thing absolutely green; right into this mess of an infinite number of combinations, and my memory was never very clear about them.

Q. I am only trying to find out what you have in mind as to those one hundred companies. Now,
431 you say you cannot recall that the Forcite company was one of them? A. No, I do not remember whether the Forcite was one of them or not.

Q. Do you remember whether the Indiana Powder Company was one of them? A. I cannot.

Q. Do you recall whether the Chattanooga Powder Company was one of them? A. I think it was.

Q. Do you recall whether the Oriental Powder Company was one? A. I think it was.

Q. Do you recall whether the Ohio Powder Company was one? A. I think it was.

432 Q. Do you recall whether the Phoenix Powder Company was one? A. Yes, I think the Phoenix was one of them.

Q. Can you recall whether the Birmingham Powder Company was one? A. Yes.

Q. Can you recall the California Powder Works was one? A. Yes.

Q. And the Judson Powder Company? A. Yes.

Q. And the Vigorite Powder Company? A. I am not sure about that, the Vigorite.

Q. And the Hercules Powder Company? A. Yes. May I qualify that? I think the Hercules was merged into the Eastern Dynamite, was it not after the period I am speaking of? I do not know; I would not state positively about that.

Q. The Eastern Dynamite was one? A. The Eastern Dynamite was one. 433

Q. The Hazard Company was one? A. Yes.

Q. Now, all the names—all these companies whose names I have indicated to you, were important operating companies and owned plants, did they not? A. I do not remember as to the Vigorite. The others——

Q. Was the Southern Powder Company one of the plants—was it not—owning a plant at one time? A. I do not remember the name. I don't know. 434

Mr. Abbott: That is all.

CHARLES L. PATTERSON, called and sworn as a witness for the Plaintiff, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Patterson, where do you reside? A. Wilmington, Delaware. 435

Q. What is your business? A. I am Vice President of the—a vice president of the duPont Powder Company.

Q. How long have you been such? A. Since 1907.

Q. What was your occupation prior to that, as far back as 1903? A. I was assistant to Mr. Haskell, who was a vice president.

Q. Previous to 1903, did you have any connection with the powder business? A. High explosives.

Q. With that corporation or company? A. The Repauna Chemical Company.

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Q. Where was that located, where was the business carried on? A. Wilmington.

Q. Do you know anything about the company known as the Eastern Dynamite Company? A. Yes, I know something about it; I think I do.

Q. Did you sustain any official relation to that company? A. No.

Q. What business relation, if any, did you have with it previous to 1903? A. With the Eastern Dynamite Company?

4:17 Q. Yes. A. I worked, as I remember, for the Repauna Chemical Company, which was owned by the Eastern Dynamite Company—controlled by the Eastern Dynamite Company.

Q. After the Repauna Chemical Company was absorbed by the Eastern Dynamite Company, did you still continue to be employed by the Repauna Chemical Company? A. Yes.

Q. Not by the Eastern Dynamite Company? A. That is my recollection.

Q. After the organization of the Powder Com-

4:18 pany, the E. I. du Pont de Nemours Powder Company, did you become, immediately, associated with that company? A. No, sir.

Q. How long did you then continue with the Repauna Chemical Company after the organization of the Powder Company? A. Well, I continued as the representative of the high explosives for a year or so after—perhaps a year or two after the organization of the Powder Company, but my work was with high explosives.

Q. You say "representative of the high explosives," whom do you represent? A. I helped Mr. Haskell.

Q. As Mr. Haskell's assistant? A. Yes.

Q. Now, did you have anything to do with a department of the Powder Company known as the

Sales Department at any time from 1903 down to 1908? A. Yes, sir.

Q. What position did you sustain at that time with reference to the Sales Department? A. The position that I occupied after, I think 1904, I think my title was "Director of Sales" under Mr. Haskell.

Q. As "Director of Sales" what were your duties? A. Subject to Mr. Haskell's approval, I had —I should say the principal executive officer under Mr. Haskell in the sales department. 440

Q. Well now then, will you describe generally how your duties as principal executive officer affected the trade of the Powder Company throughout the United States? In other words, how far did they extend? Tell us generally, in other words, what your duties were as "Director of Sales?" A. Well, the country was districted into territories, and those territories were in charge of managers.

Q. Now, then, describe how those territories were made out, how the country was districted? A. We had an office in Chicago; a branch office in 441 St. Louis and Birmingham, Alabama; Pittsburgh, New York, Philadelphia, Denver and California, and one in Duluth; and I think one in Holton. I don't know, Mr. Abbott, if I have named every one, if I have not I will be perfectly willing to give it.

Q. I wish you would tell the Jury just how the country was districted? You have given us the location of your offices and agencies, and I wish you would say now over what territory each one of those branch offices had jurisdiction? A. Well, I could not tell you that without bringing you a map. I could show you on a map how the country was divided.

Q. Just generally, now, at this time. A. My recollection is that the New York office had charge

of the sales of the New England States, and New York State, and perhaps New Jersey.

Q. Now, did you call that any special district, what was it known by? A. That is known as the New York district.

Q. As the New York district? A. Yes, sir; and so we districted the whole country in that way in charge of managers in branch offices.

Q. Was there what was known as an "Eastern District?" A. In charge of an assistant, I think
443 there was; yes.

Q. Was there what was known as a "Western District?" A. Yes; "Middle West;" "Far West."

Q. Under whose charge, or in charge of what kind of a representative was the Western District, we will say? A. An assistant at Wilmington.

Q. Where was he located. A. At Wilmington.

Q. At Wilmington? A. Yes.

Q. What territory did that Western District cover? A. You mean the "Far West?"

Q. You said it was divided—— A. The "Far"
444 or "Middle West," do you mean?

Q. You say there were two divisions? A. Yes, sir.

Q. What was the territory known as the "Middle West?" A. The territory?

Q. Yes. A. You mean the states?

Q. Yes. A. My recollection is that the "Middle West" district comprised—I am not sure whether they call that the "Middle West" or "Central," but it took in the country from Chicago, the branch office was located in Chicago, one in Chicago and one in St. Louis.

Q. How far west did that territory extend? Will you give me the line of demarcation? A. I could not give it to you accurately, Mr. Abbott.

Q. I am asking now in general. A. To the best of my recollection?

Q. Yes. A. Illinois, Indiana, Iowa—not all of Illinois, Southern Illinois, I think, reported to St. Louis; and I think either all or part of Michigan, but I am not sure about Kentucky, perhaps part of Kentucky.

Q. Now, what was the territory next to that on the western border called? What do you call that? A. My recollection is that we had an office at Kansas City to take care of the trade around the Missouri River, perhaps St. Louis took care of that, I am not clear on it. 446

Q. What did you call that district? A. Well, we called it, whatever the town or city in which the office was located, whether Kansas City or St. Louis; the St. Louis District or Kansas City District.

Q. Now, Denver, what district was that located in? A. That was the Rocky Mountain District.

Q. Was there a territory known at any time as the neutral belt? A. Yes, sir.

Q. What are the boundaries of that territory? A. That embraced Colorado, Arizona and I think Montana, a line north and south. 447

Q. The Rocky Mountain States? A. That is practically my recollection.

Q. The Pacific Coast territory, what did you call that? A. That was territory that was tributary to San Francisco and as far East as—what do you mean now exctly, Mr. Abbott?

Q. I am trying to get at—what I want to get at, at this time is for you to explain and give to the jury an understanding of how your territory was divided into districts between the Atlantic and Pacific coasts—between the Atlantic and Pacific Oceans, so that they may get an understanding of the system which you used in carrying on your Sales Department. A. Yes, sir. Well, I think the

country that reported to San Francisco took in California, and north to Washington, Oregon, Nevada and the Southwestern States, I think.

Q. In your position as director of sales, were you supreme as to making the prices? A. No, sir.

Q. Who had authority over you in that regard? A. Mr. Haskell.

Q. Was he supreme in that matter? A. That is my recollection, he was.

449 Q. Now was there any board or other organization of your Powder Company which had anything to do with making of prices or regulation of prices? A. At what time, Mr. Abbott?

Q. I am asking you now of the Powder Company, from 1903 to 1908, inclusive. A. Yes, we had a sales board.

Q. It was a sales board? A. Yes, sir.

Q. Tell us how that sales board was constituted? A. It was an advisory board whose positions were held by assistants who had charge of these different branch offices.

450 Q. Assistants who had charge of the branch offices? A. Yes, sir; and then we called in some other men in the department who were prominent in different divisions, so that all of the prominent men would have cognizance of what was going on in the different departments.

Q. Now, how many members did the sales board have? A. Well, I could not say, I can not remember that.

Q. Can you tell the minimum number and the maximum number? A. Well, I should say at least six members, and perhaps three or four more.

Q. Tell us what part of that number was made up of department heads? A. Well?

Q. You were one of the members, were you? A. Yes.

Q. What other department head was a member of the Board? A. Well, the assistant who had charge of the Eastern Division was one and the assistant who had charge of the Western Division was one and there were three or four of those assistants.

Q. Now, when a matter of prices was before that Board, what steps were taken to determine any question that might arise on that head; how did you go about it, in other words, to regulate prices to fix prices? A. Well, the request was always put 452
in before the sales board and threshed out very carefully.

Q. By whom was the request made? A. Beg pardon?

Q. From whom did the request come? A. It came from the branch offices, and to the branch offices from the salesmen in charge of the particular piece of trade.

Q. And when it reached your board, what did you do? A. Well, it was thoroughly discussed and passed on by the board, and if it was of importance 453
enough it had to go to Mr. Haskell for approval.

Q. Now did you have anything to do with a board at any time known as the "Advisory Board?" A. No.

Q. Did you know anything about the manner in which the business of the interests which were afterwards consolidated into the Powder Company were carried on? A. Well, now, Mr. Abbott, won't you please tell me which interests you mean?

Q. I am assuming that the business of the various interests which were afterwards absorbed by the Powder Company were conducted according to some general rule. I am trying to find out if you know anything about what that general rule was? A. You mean when it all came into du Pont?

Q. No, previous to that. A. No, I have no recollection.

Y. You weren't connected in any way with the sales board or the Advisory Board previous to 1903? A. No.

Q. Did the sales board at any time ever fix or issue a general price list of explosives? A. At any time?

Q. Yes; during from 1903 to 1908. A. Yes.

Q. Do you know when the first price list was
455 fixed? A. On black powder?

Q. Well, I asked you in regard to explosives. A. My recollection is that they did issue a price list, a schedule of prices, in 1907.

Q. Now that was the first price list then that was issued? A. My recollection is that.

Q. Did you have anything to do with making up and preparing that price list? A. Yes.

Q. When was the next price list prepared? A. I think the first price list was followed by another one the same year.

Q. In 1907? A. Yes, sir.

456 Q. And when was the next price list? A. We had two price lists—my recollection is, that followed, one on black powder and one on dynamite; that is to say, three, my recollection is that year. I may be wrong about that, but if I am, I can give it to you, Mr. Abbott, copies of it.

Q. Beg pardon. A. I say I can furnish copies of those schedules if I am wrong.

Q. Then I will ask you if you will furnish all the prices that were made while you were a member of the Board between 1903 and 1908? A. Schedule price lists published—yes we have those.

Q. Very well then, you will furnish me with copies? A. Yes, sir.

Q. Now you said something about a map that you

had in mind which would show the districting of the territory in the United States. Is such a map in existence? A. I don't know as to that, but I would not like to say. I could not answer your question, you know, Mr. Abbott, accurately unless I had the map here, in the event we have one, and figure it out yourself.

Q. Well, have you in your office or accessible a map that shows how the country was districted during the years 1903 to 1908, inclusive, for the purposes of trade? A. If we have not one, I think I can make one. 458

Q. Well, I will ask you to do that then, if you will, and present that? A. From 1903 to 1908? Well, Mr. Abbott, could I have a memorandum giving me just what you want, so I won't overlook them when I go home?

Q. Assuredly. I will be glad to furnish you the information. A. Because I have not that memorandum myself.

Q. Now, did you have any lists known as "accounts of sales"? A. From agents, do you mean? 459

Q. Well, you have a definite document, have you not in your office called "accounts of sales," a series of documents, in which you keep a record of your sales? A. Yes, sir; do you mean the daily sales?

Q. Well, I am only asking you now for a definite term, the term which covers the accounts of sales. Do you know of any such documents that are known generally accounts of sales? A. I don't recall.

Q. How do you keep the records of the sales which you make, the prices, the parties to whom you make the sales, and so on? A. Well, we get this from the branch offices, the sales that they make are sent in daily or, every day or two.

Q. Well, now, what were these reports that are made, giving you an account of the sales? What

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are they called in your office? A. "Sales accounts"; daily sales accounts.

Q. Then that is what they are called, "sales accounts" and not "accounts of sales"? A. I should say so.

Q. Now those sales accounts show what? A. They show the transactions of the branch offices as they occur.

Q. Do they show the prices? A. Yes, sir.

461 Q. And are they transferred to any permanent record when they reach your office, or are they simply filed away? A. They are filed away. I may not be sure of that.

Q. Who has charge of those files? A. I think they are charged to the accounting department. I would not be sure whether we keep the copy of it or not, but Mr. Corne can tell you that.

Q. Did the prices which were indicated or shown upon these price lists, which you state were issued from time to time—were they always observed, or were they from time to time deviated from? A. The schedules, do you mean?

462 Q. Yes. A. I think they were deviated from. That is my recollection.

Q. Generally speaking. What was the reason for any deviation from the figures or prices—the general prices—which were shown upon your price lists? A. I should say it was competition.

Q. To meet competition? A. Do you mean the lowering of our prices?

Q. Yes. A. I should say when we had to do it. It was competition, yes.

Q. By "comeptition" you mean when some person was endeavoring to get a particular customer, you made a lower price in order to obtain the business of the customer? (Objection sustained.)

Q. What was meant by the term "competition"

as you have just now used it? A. Well, I understand that competition means that other powder companies make a drive for trade, making a lower price, and to meet it, I call that competition, the lower price then that we made.

Q. Did you ever make a lower price first A. I think not, Mr. Abbott; not knowingly.

Q. Not knowingly? A. No, sir.

Q. Now, did you ever endeavor to find out what the other prices were that were made by any competitor? A. Yes, sir. 464

Q. How did you proceed to find that out? A. We get exhaustive information, we think, from the branch offices.

Q. Now, what is the nature of that information? A. Well we get it through the trade reports and letters.

Q. That is contained in your trade reports? A. A great deal of it.

Q. What methods do you take to acquire that information? A. Our branch office managers are positively instructed that they must use every 465 means in their power to get information and give it to us along those lines.

Q. Now, do you know anything about the means that are used from time to time for that purpose? A. Only as I have explained to you.

Q. Beg pardon. A. Only as I have explained to you.

Q. Now, as to the means which you used from time to time, and particularly those which you used during the years 1903 to 1908, I would like you to specify all the details, all the means within your knowledge that have been employed by your agents to get the information which you say they are urgently instructed to get. (Objection sustained.)

Q. Well now, Mr. Patterson state in detail the

means which you instructed your agents and other representatives to use in obtaining any information with reference to a competitor's business so that he might know what prices to make with regard to its particular trade. A. The means that we have conveyed to our minds the necessity of making a different price from that which was in effect was suggested through trade reports and letters.

The Court: That is, what came to you?

467 The Witness: That is what came to me.

Q. Now, what instructions did you give through which these reports were to be made? What eminated from you? What did you send out to your agents in the way of instructions, how do you proceed? A. As to making a certain sale? I do not quite catch what you mean.

The Court: In general you mean.

Mr. Abbott: I do not know how I can make the question any more definite.

468 The Court: Well, suppose you read the question.

(Question repeated by Stenographer).

A. We told them to go and see the customer and visit them frequently, and get all the information he could as to the conditions, those were the instructions.

Q. Did you tell them anything about the methods that they were to use in connection with any particular customer and the particular steps that they were to take in order to find out this information which you wanted to get? A. I have no recollection of giving them any specific instructions as to any particular customer.

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Q. Now, I will ask you to state whether you, of you own knowledge know of any methods which were adopted by any of your representatives in order to obtain the information which you insisted they should obtain for you? A. I have no recollertion.

Q. I will ask you, Mr. Patterson whether you received reports from your agents, stating what they did in response to the orders which you gave them to get this information? A. Well, I think they all came in the regular order or in the regular course of business.

470

Q. Yes, well now tell us what was the regular course of business? A. The regular course of business was we got this data from the trade reports and then we instructed the agents what to do, or what not to do.

Q. Where are those letters and reports now? A. Oh, I couldn't say.

Q. Where do they go after they are received? A. Oh, they are in the files in Wilmington, I take it.

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Q. Did you ever adopt any means for checking up the reports made to you by your agents to see whether or not they had done all that you had instructed them to do, so as to obtain the information you desire? A. I have no recollection of that.

Q. Were any letters written at any time calling attention to the fact that enough had not been done in order to obtain certain information and you wished them to take certain other steps? A. I have no recollection of that.

Q. You have no recollection of that. Now, I will ask you whether or not there were at various times during 1903 to 1908 inclusive certain districts which you called "disturbed districts" and certain other districts which were "undisturbed," you remember such a designation as that? A. My

recollection is the whole country was disturbed pretty much, Mr. Abbott.

Q. Well, were there certain districts which you designated as "disturbed districts," not merely what the whole country might have been, but I want to know what you so designated?

The Court: Your classification of the districts——

473 A. I don't know.

Q. Did you ever hear the term "disturbed districts" used in connection with your business? A. No, I never heard that term.

Q. Were there certain districts in which competition was more keen than in other districts? A. Yes.

Q. Were there certain districts in which you had no competition at all? A. I think we had competition in every district.

Q. Will you state what your competition from 1903 to 1908 was in the Eastern Districts? A. Well, 474 there was a good deal of competition in the Eastern districts.

Q. Well, that is what I want you to tell A. A good deal.

Q. Who were your competitors at that time? A. 1903 to 1908?

Q. Yes. A. Well, there was the Black Powder—the Burton Powder Company——

Q. Where was the Burton Powder Company located? A. In Pittsburg.

A. The Burton Powder Company's location is in Pittsburg; and there was the Standard Powder Company, I think their location was in Pittsburg, and there was a Powder Company at Fairchance, I don't know when they did blow up, but I think at

that time they were located in Fairchance, from 1903 to 1908, I won't be positive, but I think so; and then there was the Senior Powder Company in Ohio, they came to that country, and there were a number of small competitive mills in the anthracite district, Pennsylvania. 475

Q. Is that all? A. That is all I remember now; there may have been one or two others.

Q. Well, I didn't want to interrupt you, but I would like to have you now designate where those various plants were located. A. Well, I could tell better—I am more familiar with the location of their main offices. I don't think I could tell exactly the towns that they are located in. 476

Q. Well, tell us where the main offices were located? A. Well, I did do that. The Burton Powder Company's main office is in Pittsburg; is there still.

Q. You have answered as to two. I didn't want to interrupt you because I was told not to; but you did name some companies that you didn"t say where their plants were located, nor where their offices were located. A. I think the plant at Fairchance—I think their headquarters, if they were in existence at that time, I think they were, must have been Fairchance, and the Senior Powder Company's office was in Cincinnati. 477

Q. Now, during the years 1903 to 1908, inclusive, did you make any change in your regular prices in what is known as the Eastern District? A. Yes, sir.

Q. What particular district was it, or what particular location was it that you made change in your prices from your schedule? A. My recollection is that the prices all through the East practically—unless in the anthracite district were not included in the change.

Q. In the anthracite district? A. No, unless that might be excepted, I won't be sure of it, but other than that, my recollection is they were all changed.

Q. Now, was there a district in Pennsylvania known as the "disturbed district," or as a district where there was keen competition? A. There was keen competition; I don't recall the name "disturbed."

479 Q. Wasn't there a district in Pennsylvania known as a very keen competitive district for a time? A. Well, it was.

Q. Do you know a concern known as the Rockdale Powder Company? A. I know of them; yes.

Q. Didn't you have a keen competitive contest with that company? A. Well, they were competitors.

Q. Well, I am asking you if it was not a keen competitive contest? A. Well, I think they might be called keen, yes.

Q. Well, now, as a matter of fact, did the Rock-
480 dale Powder Company continue to do business after that contest was ended? A. I don't know when they did quit; I don't know.

Q. Well, did the Rockdale Powder Company continue to do business? A. No; they quit business.

Q. They quit business? A. Yes.

Q. Now, do you remember anything about a conversation that you had with Mr. W. I. Koller, who was one of the officers of the Rockdale Powder Company, in the presence of Mr. Haskell, concerning the competitive contest that was then going on between yourselves and that company? A. Only in a general way. I don't remember the——

Q. Well, do you remember a conversation between Mr. Koller, Mr. Haskell and yourself with reference to the competition in which you were en-

gaged with the Rockdale Powder Company? A. I remember being at a meeting in Mr. Haskell's office at which Mr. Koller was present.

Q. What was that meeting for, if you recall?

Mr. McCarter: I suppose what transpired is the point, Your Honor; not what it was for.

Mr. Abbott: Yes. Mr. Haskell—I think the record discloses that sufficiently—was one of the principal officers of the defendant. 482

The Court: What was Mr. Haskell's position?

The Witness: Vice President.

The Court: I will allow the question.

Q. What took place at this conversation or meeting? A. Well, I have no clear recollection of the conversation, Mr. Abbott; it was a long time ago and I took very little part.

Q. When was it? You say it was a long time ago. What year was it? A. Well, I don't remember that. 483

Q. Do you remeber who else was present at that meeting besides you three gentlemen? A. I think Mr. Macabee and Mr. Bloom.

Q. Who was Mr. Macabee? A. Well, I believe Mr. Macabee was the representative of his company, known as the Standard.

Q. The Standard Company? A. I think so.

Q. And who was Mr. Bloom? A. Mr. Bloom represents the Keystone interests.

Q. This Standard Company which you refer to was one of the companies you spoke of a while ago as you having been in competition with, is that correct? A. Yes, sir.

Q. Was the Keystone Company one of the companies you were in competition with? A. That was a dynamite company.

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Q. That was dynamite? A. Yes, sir.

Q. Can you recall at this time anything that was said at that meeting at all? (Objection overruled.) A. I don't recall specifically, Mr. Abbott, exactly what did happen.

Q. Can't you state generally, if you can't remember specifically; can't you state generally what was said at that meeting? A. No, I have no clear recollection just what was said.

485 Q. Do you remember anything about whether the meeting was arranged beforehand? A. Yes, sir.

Q. Do you remember who it was that asked for the meeting? A. No, sir.

Q. Who requested it? A. No, sir; I don't remember that.

Q. Who was the arrangement made with, then; was it made with you? A. No, sir.

Q. Who was it made with, you said it was arranged? A. My recollection is, there was a letter from one of these gentlemen, or someone representing the Association, the Powder Association, sent to

486 Mr. Haskell.

Q. Yes. A. I mean, Mr. du Pont—Mr. T. C. du Pont; this is my recollection, and he forwarded the letter, as I remember it, to Mr. Haskell for his attention.

Q. Where is that letter at the present time? A. I do not know.

Q. Did you ever see the letter? A. I don't remember.

Q. What was done with it after it was received at that time? A. I don't know.

Q. About what date was the letter? A. I don't recall.

Q. What is the year? A. I don't remember.

Q. Was its hortly before this meeting was held? A. I think so.

Q. Are you able to recall what year that was? A. No; I am not.

Q. You are not? A. No, sir.

Q. Do you remember who was the principal spokesman for that meeting on behalf of the other interests, not represented by yourself and Mr. Haskell? A. No; I don't remember.

Q. Do you remember who was the principal spokesman of the interests represented by yourself and Mr. Haskell? A. Mr. Haskell.

Q. Do you remember whether anything was said 488
at that meeting in reference to the pending contest between the Keystone Powder Company, the Standard Powder Company and the Rockdale Powder Company on the one hand, and the interests which you represented on the other. (Objection overruled.) A. No, I don't.

Q. Do you recall whether any effort was made at that meeting, by the interests which were represented, by the other gentlemen besides yourself and Mr. Haskll, towards a termination of that contest? (Objection overruled.) A. No, I don't 489
remember.

Q. Now, I will ask you whether at this meeting —I will endeavor to refresh your memory and ask you whether or not you cannot recall, after I have stated to you what I will state—whether Mr. Koller, as representing those interests which were in opposition to the interests which you represented, did not propose to you at that time some arrangement, whereby the keen contest which was then in progress could not be terminated so that both parties might live and make a fair profit on their business? (Objection overruled.) A. I don't recall at present.

Q. I will ask you whether at that time Mr. Haskell did not reply to that request that he was satisfied with the way in which the matter stood,

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and that he did not desire to make any arrangement of any kind whatever, or words to that effect? (Objection overruled.) A. I don't remember that.

Q. Now, I will ask you whether, as a matter of fact, that contest did not continue for some time after that, and whether as a matter of fact the Rockdale Powder Company was compelled to retire from business and did retire from business as a result of that contest.

491 Mr. McCarter: I object to that.

The Court: Strike out "was compelled."

Mr. Abbott: Strike out the words "was compelled."

A. My impression is that is so.

Q. Now, I will ask you to state whether or not at this conversation Mr. Haskell did not state to Mr. Koller that this was a question of the survival of the fittest, and that the contest would be continued, is that correct? (Objection overruled.)

492 A. My impression is that some such words as those were used by Mr. Haskell; I would not say that those were the words, Mr. Abbott.

Q. If you can't recall whether those were the exact words that were used, will you state as near as you can what words were used of the same import? A. You mean the interpretation of Mr. Haskell's meaning?

No, I don't ask for any interpretation of his meaning, you said you didn't know whether those were the exact words he used. I wish you would state as near as you can the exact words he used? A. I can't remember.

Q. You can't remember? A. No, sir.

Q. While you were in connection with the Sales Department, during the years 1903 to 1908, I will

ask you whether you know if the price was made on powder—on black blasting powder during the years 1905 and 1906 of 95 cents—a general price of 95 cents to the trade in what is known as the Illinois, Missouri and Indiana district, that territory in that neighborhood. (Objection overruled.) A. I would have to look up the records, Mr. Abbott, before I could state definitely as to that. My recollection is that there was such a price in part of that district, of 95 cents during part of the period, but I could not say definitely which of the 494 years.

Q. As I understood you a while ago, your first regular price list was in 1907? A. That is right.

Q. Now, this price I am asking you about was a price which was made in 1905 or in 1906? A. Prior to 1907.

Q. Prior to 1907? A. Yes.

Q. Can you recall any more definitely at this time about when that price was made which you have indicated? A. The length of the time—the duration of that price, you mean? 495

Q. First I would like to get you to state when it was that the price was first made? A. No.

Q. Can you recall when it was that the price was withdrawn, if it was withdrawn? A. I think it was when we got up a new schedule, that is my impression.

Q. That would be in 1907? A. That is my impression.

Q. Before you had this formal pricel ist which you said that you have—that you made in 1907, as far back as 1903, did you have any fixed or definite plan upon which you regulated your prices, this sales board? A. Yes, sir.

Q. Now, describe as near as you can how or what that plan was? A. There were two governing

factors: A fair return, if we could get it, on the money we had in the business; and of course we always were anxious to hold certain customers that we had for a number of years; but the matter was given very careful consideration indeed and every effort bent not to sell anything below cost, if we knew it.

The Court: Not below what?

The Witness: Cost.

497 The Court: Cost and what else?

The Witness: Or below other people, we never wanted to do that, if we knew it.

Q. When you first made up your price, for instance, on the cost of black blasting powder, how did you arrive at what was cost, and a fair price above that for the purposes that you have indicated? How did you determine what was a fair price for your powder, for your black blasting powder? A. Competition ruled the prices very largely about that time.

498 Q. Well, your price—as I understand it, (assuming there was no competition), you would want to have cost and something in addition to that? That would be a fair profit? A. Yes, sir.

Q. What did you call a fair profit in addition to cost? A. Well, we figured the mill cost, always, and the overhead expenses, of selling and administrating, put that all in.

Q. Yes? A. And then figured on a fair profit for the money we had invested in the business.

Q. What yould that fair profit be? A. Ten or twelve or fifteen per cent.

Q. How much would that amount to, per keg, twenty-five pound keg of black blasting powder? A. Well it would vary at different times, you know, the cost would vary.

Q. I am asking you now, not what your price was, but what you considered would be a fair profit per keg on your black blasting powder, over and above the original cost, together with the overhead expenses which you have named? A. Cents per keg?

Q. Yes. A. I should say ten or fifteen cents per keg.

Q. That would give you your profit? A. Net profit.

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Q. Net profit? A. Yes.

Q. Without including freight? A. That is net.

Q. Does making up the cost of the powder—did that include the freight, did you deliver your powder? A. Yes, that was all considered, yes, sir; when we figured on the basis that you are asking me now, how much we expected to get a keg.

Q. Yes. Well now then, in making these prices in 1903, can you recall at this time what was the price of black blasting powder in 1903? A. No, sir; I can't.

Q. Did it vary in the different districts? A. I might say it did, but I don't remember.

501

Q. Do you know what it was in 1904? A. No, sir.

Q. In 1905 and 1906, you think in the Middle West, you made this price of 95 cents? A. I think there was a time, during that time you mention, that the price that powder was sold at was 95 cents.

Q. Do you know anything about a company known as the Buckeye Powder Company? A. Only —I only know the company, that there was such a company formed.

Q. Do you know when that company began business? A. I think in 1903.

502 *Charles L. Patterson—Direct*

Q. Do you know how long it continued in business? A. I think until 1908, I am not positive.

Q. During this time, do you know anything about the territory or district in which the Buckeye Powder Company conducted its business? A. Yes; as relates to my business I do, the territory.

Q. What territory, what particular district was it that the Buckeye Powder Company carried on business, so far as you know? A. Well they carried on—they sold powder in a number of our
503 different districts, my recollection is.

Q. Name them. A. My recollection is they sold powder in the Chicago district; and in the St. Louis district; and I think they went as far as Montana, which would be in our Denver district; that is my recollection; and possibly went East to our Cincinnati, Ohio district, and possibly West Virginia, our Huntington district.

Q. Now this 95 cent price made on powder in 1905 and 1906—what district did that cover, and what district did it relate to? A. Mostly to the Chicago district, I think, Mr. Abbott.

504 Q. Mostly to the Chicago district? A. That is my impression.

Q. That is the district within which the Buckeye Powder Company was operating, is that correct? A. No; I think I will have to correct that, I think we did not get any higher net in our Pittsburg district than we did in our Chicago district, that is my recollection.

Q. What territory specifically do you include in the term "Pittsburg district," as you are now using it? A. The Pittsburg district comprises, according to my recollection, comprises Pennsylvania, West Virginia, and I think part or all of Ohio.

Q. What was the price of black blasting powder in the district which you described awhile ago as

being within the New York territory where your branches were? A. We sold very little black powder in that district.

Q. What was the price of powder in that district? A. I don't recall.

Q. What was the price of powder in your southern district, during that same period, the district in the southern states, you didn't describe that this morning but evidently you had a district there. Well, did you have a district known as a southern district? A. Yes, we had; yes. 506

Q. Well, can you tell what the price of powder was at the same time that this ninety-five cent rate was prevailing in the southern district? A. I don't recall at the present time.

Q. Can you tell what it was in the Kansas District? A. The prices got very low in the Kansas District.

Q. Can you tell what it was in the Denver District? A. No; I don't recall.

Q. Can you tell what it was in the Pacific coast district? A. No. 507

Q. Where would that information be in your office if it exists, in whose control? A. I should think in mine.

Q. Are you able to ascertain from your records the prices that prevailed in each of the districts which I have enumerated to you at each period during the years 1903 to 1908 inclusive. A. Am I in position to get it, you say?

Q. Yes. A. I think so.

Q. Will you do that? A. If I am so instructed.

Q. Well I ask you to do it. A. If the Court——

The Court: I see no objection to it; yes.

Witness: Now you won't forget to give me memoranda of this.

508 *Charles L. Patterson—Direct*

The Court: Oh, yes, counsel must furnish you with the data that he wants.

Mr. Abbott: Most assuredly, I assume that counsel on the other side have access to this same record that we have, but if they wish us to put it in definite form we will be very glad to do it.

Witness: When we talked about ninety-five cents my impression is—when we get this data it will show it—ninety-five cents
509 at the mill in that territory. Now I think that that is right, but when we get this data that will show that.

Q. Then this statement that you are going to furnish us will cover the entire territory in which you sold black blasting powder, showing the various prices that were made in each one of those districts including the distracts where the ninety-five cent rate prevailed? A. Yes.

Q. In regard to the ninety-five cent price, I will ask you to show, if you cannot now state from your
510 own recollection how long that price prevailed, when it was first made and when it was discontinued.

A. I will try to get it, I don't remember.

Q. I will ask you to state whether or not any authority was given to any of your agents at any time to exercise their own judgment as to prices. In other words, were they always restricted to the price that you fixed, the general price which you fixed, or did they under certain conditions have a right to use their own judgment as to the prices they would make? A. My recollection is they hadn't such authority.

Q. There never was a period when they could

exercise their own judgment? A. That is my recollection.

Q. They always had to make inquiry of headquarters. Will you state who was the agent in charge of the Chicago office during the years 1903 to 1908? A. I think Mr. Rice.

Q. What were his initials? A. E. C. Rice. He was agent, I think, at that time, in the early period.

Q. Who succeeded him? A. Mr. Oliver.

Q. How long did Mr. Oliver continue in the job? A. I don't recollect—George F. Oliver—I don't remember. 512

Q. Did Mr. Oliver continue as long as 1908? A. No, sir; I think not.

Q. Who succeeded him? A. I think our present agent succeeded Mr. Oliver, Mr. Bumstead, that is my recollection.

Q. Do you know where Mr. Rice is at the present time? A. No, sir.

Q. Is Mr. Oliver living or dead? A. Dead.

Q. Mr. Bumstead—— A. Still our agent.

513

Cross examination by Mr. Button:

Q. You have described somewhat the sales organization consisting of these divisions and branch offices. Now, that is simply the organization of the du Pont Powder Company, is it not, Mr. Patterson? A. Yes, sir.

Q. That is not an organization that takes in the representatives of the agents of any other powder company? A. No, sir.

Q. In any regard? A. No, sir.

Q. Nor is it an organization that consults with the sales representatives or other representatives of any other company? A. That is right.

Q. In other words, it is the internal sales depart-

ment of this defendant, the E. I. du Pont de Nemours Powder Company? A. Yes.

Q. Yes; having relation only to the sale of its own goods?

Mr. Abbott: I want to inquire whether counsel is asking now about the present form or merely——

Mr. Button: I am asking about the form during the entire period from 1903 to 1908,
515 which I understand is the period in question and the only one concerning which you have testified.

The Court (to the witness): That is the way you understand it?

Witness: Yes; I didn't have any authority in black powder matters until 1904.

Q. Well, then, we will confine it from 1904 to 1908. That is the condition you found there when you went into the sales department, is it? (No answer.)

516 Q. Now, then, as I understand it, there is at the head of that sales department a director of sales, who at that time was Mr. Haskell and whose position you have since stated, is that correct? A. Yes. I had that position until nineteen—Mr. Coyne is sales director.

Q. When did you quit as director of sales? A. 1907.

Q. So Mr. Coyne came in during the last year of this period you are speaking about, did he? A. Yes; that is right.

Q. Well, now, then, under this director of sales, you had what was called the sales board, as I understand it, that consisted of various employees of the du Pont company who were familiar with conditions in various districts of the country, is that

not correct? A. Yes, sir; the important employees of the sales department.

Q. And they simply got together as a board to adjust trade conditions, what prices you ought to charge for explosives and matters of a kindred substance, is that correct? A. Yes.

Q. And the director of sales had power either to adopt their recommendations or do as he pleased? A. Subject to Mr. Haskell's approval.

Q. Certainly; well, now, then, the actual sale of the powder in the field, as I understand it, was 518 continued under the jurisdiction of various general agencies or branch offices, of which there were some 12 or 15 possibly? A. Yes.

Q. And at the head of each of those offices there was a manager? A. A manager.

Q. You have, I believe, stated the locations of quite a number of those offices. Now, when it comes to these divisions of the company, is it not true that, we will say the Eastern division and the central division and the Western division, those are simply certain groups of these branch offices and the 519 territory attached to them, are they not? A. Yes.

Q. And at the head of each of those divisions there were an assistant director of sales or some other officer of that sort, was there not? A. That is right.

Q. That is, he was an intermediary between the director of sales and the managers of these respectie offices? A. Yes.

Q. Now, there were three divisions, were there not, the Eastern, the Central and the Western, at one time, and later another division added called the mountain division, isn't that correct? A. That is my recollection.

Q. Now, at any time during this period was there any division of groups of branch sales offices called the neutral belt division? A. No, sir.

520 *Charles L. Patterson—Cross*

Q. Now, each of these managers of the branch offices, I suppose, had travelling salesmen, did he not? A. Yes.

Q. And they were the people who travelled the country and scoured the country and came into actual contact ordinarily with the consumer who bought the powder, is that correct? A. Correct.

Q. Now, could you tell in the aggregate how many travelling salesmen there were during this period, just in a general way? A. I could get it,
521 but it would go into a large number, I should say, off-hand.

Q. And they are the people who gathered this information that eventually finds its way to this trade bureau, are they not? A. I think we have over 500 people connected with the sales department now.

Q. That is, these salesmen are instructed to visit all the consumers of powder in their respective territories so far as they know, are they not? A. Yes.

Q. For the purpose of endeavoring to sell explosives to those consumers? A. Yes.

522 Q. And they are also instructed to keep watch of the progress of construction work, the opening of new mines, etc.? A. Yes.

Q. And the development of any operations which may require the consumption of explosives? A. Yes.

Q. And having gathered that information, as I understand it, they are required to make a written report of it and send it into Wilmington? A. Yes.

Q. And is that the general nature of the information concerning which you were questioned? A. Yes.

Q. On your direct examination which is contained in these trade reports? A. Yes.

Q. I suppose that they are also requested to report all they find out as to the kind of powder a

particular man is using at that time, are they not? A. Yes.

Q. Whether it is du Pont powder or Buckeye powder or any other powder? A. Yes.

Q. Now, isn't that about the extent of the instructions that are given to those agents, Mr. Patterson? A. That is about the extent of it.

Q. To report on all conditions surrounding the trade in explosives? A. Yes.

Q. And I take it those reports are very numerous on account of the large number of salesmen, are they not? A. Yes; very numerous. 524

Q. And are these salesmen instructed to frequently visit the consumers of powder in their respective districts? A. They are expected to visit at certain periods certain trade and to make reports.

Q. The trade in black blasting powder is more or less fixed in this way, is it not: Take in the mining districts it is perfectly well understood by them what mines consume powder, is it not, that is a matter of easy knowledge, isn't it? A. Yes.

Q. So that the customers as a general thing, they are expected to visit, are pretty well known, is that correct? A. I should say so. 525

Q. Now you have been asked about the amount of competition during this period in these various districts which have been mentioned. To begin with I will ask you in a general way from your knowledge of the conditions, whether the competition in all lines, well in black blasting powder, I will say, has increased or decreased during the period which you have mentioned? A. Increased.

Q. Well, to what extent in a general way? A. Well in that period I think there were five large mills built in that field.

Q. Mills with which the du Pont companies' interests had nothing to do? A. Yes.

Q. Is that correct? A. Yes.

Q. And take the high explosive field, the dynamite business, did the competition largely increase during that period in that business? A. That is my recollection.

Q. Now you mentioned one or two companies; take the black powder companies, during this period do you remember that there was a black powder company known as the Black Diamond Powder Company that was competing for business,
527 a new company? A. In what field, you say; did you mention the field?

Q. No, I didn't. A. Well my recollection is there was a Black Diamond Company.

Q. Was that a company you had anything to do with? A. No.

Q. It was out after business, was it? A. Yes.

Q. Do you remember the Burton Powder Company, about when it was organized? A. No, sir, I don't exactly.

Q. That dealt in black powder, did it not? A.
528 First yes, and then dynamite.

Q. Where was it located? A. The main office is in Pittsburgh.

Q. Did they sell powder up through this territory that the Buckeye Powder Company was selling in? A. I think latterly they did; I won't be sure about that period.

Q. Now the Egyptian Powder Company was located where? A. The Egyptian Powder Company in Illinois.

Q. Was that a black powder company? A. Yes.

Q. Was that selling powder in this district that was covered by the Buckeye Company? A. Yes.

Q. Did the du Pont company have any connection with the Egyptian? A. No—you mean when it started.

529

Q. At any time? A. No, they didn't. They finally sold out to the Equitable and then the Equitable—the du Ponts have an interest—I perhaps ought to explain that, because I don't want to be mistaken.

Q. But they never had any direct interest in the Egyptian? A. No.

Q. Now where was the Excelsior Powder? A. Their main office is in Kansas City.

Q. And is that a black powder company? A. Yes.

530

Q. Selling powder in this district? A. Yes, I should say so.

Q. Now did the du Pont Company have anything to do with that concern? A. No, sir.

Q. In asking you if they did business in this territory, I mean during these years, of course, that we are talking about, from 1904 to 1908? Now the Locust Mountain Powder Company, do you know where they are? A. Yes.

Q. What was it? A. Black powder company.

Q. Where abouts? A. Pennsylvania.

531

Q. Was it competing with the du Pont Company? A. Have any interest in it? No, sir.

Q. The Nuremburg Powder Company, where was that? A. Pennsylvania.

Q. Did it manufacture black powder? A. Yes.

Q. Was it competing with the du Pont interests? A. Yes.

Q. Did the du Pont company have anything to do with it? A. No, sir.

Q. The Rand Company of Tennessee, do you know about that company? A. Yes.

Q. Where was that located? A. That was at Dorsett, Tennessee.

Q. Did it sell powder in this district during that period? A. I think they did, yes.

532 *Charles L. Patterson—Cross*

Q. Black powder? A. Yes.

Q. And did the du Pont Company have anything to do with it? A. No, sir.

Q. The Senior Powder Company was located where? A. Ohio.

Q. Do you know about when that was organized? A. Well, I think about 1904.

Q. And did it sell powder from then on in this district that was in whole or in part covered by the Buckeye trade? A. I think it did.

533 Q. Did the du Pont Company have anything to do with the Senior Powder Company? A. No, sir.

Q. The Standard Powder Company was located where? A. Pennsylvania.

Q. Did it manufacture a black powder? A. At the start, yes; they started with black powder.

Q. Did it compete with the du Pont Company? A. Yes.

Q. Did it have anything to do with it, ownership in it? A. No, sir.

Q. The Tennessee Powder, do you recollect that

534 concern? A. I think there was such a company; really I have forgotten.

Q. Do you know where it was? A. Well, if I am right it was located in Alabama, but I am not sure.

Q. You don't remember? A. No.

Q. Where was the United States Powder Company? A. They were located in Indiana.

Q. Covering part of this field that was covered by the Buckeye Company? A. I should say so.

Q. And did the du Pont Company have anything to do with it? A. No, sir.

Q. That company manufactured black blasting powder? A. Yes.

Q. Now isn't it true that all of this list of companies that I have mentioned up to date were or-

535

ganized since the organization of the Buckeye Powder Company or shortly thereafter? A. I think that is practically correct.

Q. And isn't it true that they are practically all doing business to-day? A. Yes, sir.

Q. And isn't it true that during all that time they had been competing with each other and with the du Pont company? A. Yes, I think that is correct.

Q. Now, in addition to these companies that have been organized since 1904, were there other companies competing for the black blasting powder trade in this territory tributory to Peoria, Illinois, older companies? A. Yes, sir.

536

Q. Was the Austin Powder Company selling black blasting powder in that territory during those years? A. It is my impression they were.

Q. And were they competing with everybody else there? A. As far as I know they were.

Q. Was the Olney Company doing likewise? A. I think so.

Q. Was the King Company doing likewise? A. The King Company?

537

Q. King Powder? A. I think they were most of the time.

Q. Now, do you remember a company by the name of Rand Company of New York state? A. Yes, sir.

Q. Was that selling black blasting powder? A. Yes, sir.

Q. And was it competing with the du Pont Company there? A. Yes.

Q. Was there another company at Fairchance? A. Yes, sir.

Q. In what state? A. Pennsylvania.

Q. Was that selling black blasting powder? A. Yes.

Q. Did the du Pont Company have anything to do with either of those concerns? A. Not that I know of.

Q. Now, in the high explosive trade were there a large number of companies during this period that were in active competition with the du-Pont Company and in which they had no interest whatsoever? A. Yes.

Q. There were? A. Yes.

539 Q. I call your attention to the following list of companies. To begin with are you familiar with the high explosive business during that period enough to speak of these——A. I think so.

Q. Do you recollect the Allentown Non-freezing Powder Company? A. Yes.

Q. Was that competing? A. Yes.

Q. Where was is located? A. I think they were near Allentown—I don't know——

Q. Pennsylvania? A. Yes.

Q. American High Explosive Company? A. I don't know, I don't remember about that one.

540 Q. The Emporium Company? A. Yes, Pennsylvania.

Q. Competing? A. Yes, sir.

Q. Did the du Pont Company have any interest in it? A. No, sir.

Q. Illinois Powder Company? A. Yes.

Q. In Illinois? A. Illinois.

Q. Du Pont Company have any interest in it? A. No, sir.

Q. The Jefferson Powder Company? A. Yes.

Q. Where abouts? A. Alabama.

Q. Did the du Pont Company have any interest in it? A. No.

Q. Messerite Company? A. Pennsylvania.

Q. Du Ponts have any interest in it? A. No, sir.

Q. The Monquagon——A. No, sir, I don't know of that.

Q. The Pluto Powder Company? A. Yes.

Q. Where was that located? A. They had a plant in the Lake Superior region.

Q. Did the du Pont Company have any interest in that? A. No, sir.

Q. It was competing with them? A. Yes.

Q. Potts Powder Company? A. Yes.

Q. Did the du Pont company have any interest in that? A. During that period? 542

Q. Yes? A. No, sir—they have now.

Q. During that period? A. No, sir.

Q. That was in Pennsylvania? A. Yes, sir.

Q. The Puget Sound and Alaska Powder Company? A. Yes.

Q. Where was that located? A. I think that was in Washington.

Q. Sinnamahoning Powder Company? A. Yes, Pennsylvania.

Q. Was that competing? A. Yes.

Q. Did the du Pont Company have any interest in it? A. No. 543

Q.The Texas Dynamite? A. Yes, in Texas.

Q. Did the du Pont Company have any interest in that? A. No.

Q. The Trojan Powder Company? A. Yes.

Q. Where was that located? A. I think that was in Pennsylvania, but I won't be sure of that.

Q. Did the du Pont Company have any interest in that? A. No, sir.

Q. West Pennsylvania Dynamite Company? A. West Penn., yes, that is in Pennsylvania.

Q. Did the du Pont Company have any interest in that one? A. No.

Q. Are those companies practically all doing business now? A. Why, I think practically all are.

Q. And during all of this period were they competing with each other and the du Pont Company?

Q. But during all of that period were they competing with each other and the du Pont and other companies, during all of that period? A. Practically, yes.

Q. Now, on the West Coast was the Giant Powder Company? A. Yes, sir. That is in California.

Q. Was that competing? A. Yes, sir.

Q. Making black blasting powder and dynamite?
545 A. Yes, sir.

Q. And was also the Equitable Powder Company selling black blasting powder during this period in this district? A. Yes, sir.

Q. And that is a company in which the du Pont Company has a minority stock interest, is it? A. Yes, sir.

Q. Where did the Equitable have its mills located? A. They had a mill near East Alton, and another one near Fort Smith.

Q. What State? A. Arkansas.

Q. Arkansas? A. Yes.
546

Q. Is there an Illinois Dynamite Company? A. Yes.

Q. Was that doing business during this period? A. Well, I would not like to say positively whether it was.

Q. The Illinois Dynamite Company? A. I am not sure as to that.

Q. It was a late company, was it not? A. Yes, comparatively.

Q. Now, in regard to the situation, I will ask you, who organized the Buckeye Powder Company, if you know? (Objection sustained.)

Q. Do you know who the officers of that company were? Objection overruled.) A. Not of my own knowledge. I have heard that Mr. Waddell was president; I do not know.

Q. Do you know what Mr. Waddell's business had been prior to that time? (Objection sustained.)

Q. Now, in regard to this interview that you had with some gentleman by the name of Koller and some other gentleman, was it not a fact, or was it the fact, that they represented the Rockdale Powder Company? Did they represent a large number of companies, or claim to do so? A. Well, I can not say—these three gentlemen represented or were either officers or owners of the three interests. I do not know. 548

Q. Well, what I was getting at, there was not a conversation in reference to the contest that had been directed against the Rockdale Powder Company, was it particularly? A. I have no recollection of it.

Q. In fact, it was an occasion in which some of these people came to you and tried to get you to enter into a price agreement with them, was it not, Mr. Patterson? A. My impression is that that was Mr. Haskell's understanding of it.

Q. And the result of it was that you said you would not make any price agreement. Was not that the result of the conversation? A. He may have said that. 549

Q. Now, this 95 cent price, you can't locate the date of it any more correctly, can you, Mr. Patterson? A. No, only in answering, Mr. Abbott, my impression is that that price did prevail during part of the period mentioned.

Q. Well, would you say as early as 1905? A. No. My impression is that—but I would not say positively.

Q. What caused that price? A. What?

Q. What caused that price? A. Competition.

Q. Competition at the hands of what companies? A. A number of companies.

550 *Charles L. Patterson—Cross*

Q. Including the Buckeye? A. I should say so.

Q. Who started the price-cutting in those years?

Question objected to and objection overruled.

To which ruling the plaintiff's counsel then and there excepted and said exception was allowed.

551

(Question repeated by the Reporter).

The Court: Speak of your own knowledge.

A. I could not answer that question, Mr. Button, definitely. I know what I think.

Mr. Abbott: We object to what the witness thinks.

The Court: You may have his best recollection, of course.

552

A. My best recollection is that the Buckeye Company did it.

Q. Well, now, you were cognizant of the operations of this sales board and the sales at that time. I wish you would state what the policy of that organization was during these years in reference to prices, and as to what considerations entered into the fixing of prices by which you sold your powder? A. The very important consideration that entered into the fixing of prices was with due consideration to profits, so far as we could make them, and to hold what we considered was a fair volume of our trade.

Q. Now, then, what information did the sales board have which fixed these prices, in reference

to the prices that were being charged by other companies, say the Buckeye Powder Company, or the Senior or any other companies? What information did they have before them when they were considering what prices they would sell for? A. Letters and trade reports.

Q. Yes, this trade information that you have previously mentioned? A. Yes, sir.

Q. Now, then, did that board have, so far as you know, information of prices named in some way, 554
that were below your best information that you had in that way, as to what your competitors' prices were? A. I think not. That is my recollection.

Q. Well, now, why didn't you? Why didn't you consider it necessary? A. Our managers and salesmen were always anxious to get authority to make equal prices with all competitors, believing that they could hold their own if they had equal prices.

Q. Why did your board consider that you could hold that trade, or a reasonable part of it, by doing no more than at least meeting the prices? A. Well, 555
the du Ponts had an established trade, and we felt that the customers would keep the du Pont Powder, as a rule, if they could not do better with someone else.

Q. What do you mean by doing better? A. Better prices, or lower prices.

Q. That is, by equal prices——? A. They could hold their own.

Q. Well, now, I suppose it would sometimes occur that the information of this character that you had might be incorrect, that this competitor might have been selling powder as low as those reports indicated; is that true? A. Possibly.

Q. But so far as your information went, that was the policy they had, was it? A. Yes, that is my recollection.

556 Q. During this whole period? A. That is my recollection.

Q. Now, in the matter of meeting prices, supposing the competitor went away down, was there a point at which it stopped following him? A. Yes.

Q. What was that point? A. Well, we fixed the limit, and we lost a great deal of business, from my recollection.

Q. What were the considerations that fixed that
557 limit, below which you would not go? A. Well, the limit of profit.

Q. In other words, you would not sell below cost; is that it? A. That was our aim.

Q. And so far as you know, you never did, did you, Mr. Patterson? A. Over the whole country, do you mean?

Q. Yes. A. No, sir.

Q. During this period? A. No, sir; taking the country as a whole, I think we never did.

Q. Didn't this Pittsburg District, which you have mentioned, also include a large and important sec-
558 tion of the state of Maryland? A. I think it did.

Q. In which there was a great deal of consumption of black powder? A. A good deal of black powder.

Q. Did you name the general territory through which the Buckeye Powder Company operated? A. Well, I tried to outline it as well as I could remember. Where I knew the Buckeye Powder Company was selling.

Q. Did you mention Kansas? Did they operate in Kansas? A. I think it sold some powder in Kansas.

Q. And Colorado? A. And Colorado, that is my recollection.

Q. And Indiana and Iowa and Ohio? A. I think so.

Q. And Missouri? A. And Missouri, I think.

Q. And Nebraska? A. Well, I do not remember about Nebraska. I think they sold some in Montana, if I remember rightly.

Q. And of course in Illinois? A. And Illinois.

Q. Now, during your experience with that sales board, did they ever make any competitive drives against any particular competitor, Mr. Patterson? A. I have no knowledge of anything of that kind being done. I have no recollection.

Q. Was there during those years of 1904, 1905, 560
1906 in the Middle West a great scramble for business in the black powder business? A. Yes, sir.

Q. Was the capacity of the general lot of mills for the production of black powder at that time much greater than the consumption? A. Yes, sir.

Q. And there was a continuing increase of capacity, as compared with consumption, was there not, during those years? A. Well, it was surely up to 1906.

Q. Was there an independent powder company 561
that I did not mention, or a dynamite company? A. Yes, sir.

Q. The Joplin? A. The Joplin.

Q. Do you know when that company started in? A. No; I don't.

Q. Did the du Pont Company have any interest in it? A. No, sir; but they have been operating for quite a few years.

Q. Well a period during the period in question? A. Certainly, lots of it, or a good deal of it.

Mr. Button: That is all.

562 *Charles L. Patterson—Redirect*

Redirect examination by Mr. Abbott:

Q. You stated a moment ago that taking the country as a whole you thought you never had sold below cost? A. That is my impression, Mr. Abbott.

Q. Will you state in what particular portions of the country you may not have sold below cost? A. In what?

Q. In what particular portions of the country do you think you may have sold below cost? A Well
563 I think it was a pretty close question whether they would run on the prices made, considering the business that we had in the anthracite district. I think including the rest of the country we made money.

Q. Can you give any particular instance in which you sold below cost? A. No, sir; I cannot.

Q. Can you give any particular state in which you sold below cost? A. No, sir.

Q. Can you give any particular customer to whom you sold below cost? A. No, sir.

Q. Upon what do you base your impression that
564 you did sell below cost at some time or some place? A. I think my recollection is that from the net result of the business in 1906, Mr. Abbott, we made a very small margin of profit, but we did not lose money.

Q. That was on your whole business? A. On the whole business, yes, sir.

Q. That was on the business where you sold at a profit as well as on the business that you sold at a loss? A. Taking it as a whole; yes, sir.

Q. Now, then, I wish you would specify the particular occasion that you have in your mind, when you made a sale below cost? A. I have not any.

Q. Then, why did you state that taking the country as a whole you thought you did not sell below cost? A. I said we made some money.

Q. Why did you state that you thought you did not sell below cost, if it was not in your mind that you may have sold below cost under some circumstances? A. Well, I think that there must have been some instances where we were mighty close to cost, because we did not show much profit.

Q. Where were those instances? A. I do not remember any specific instances.

Q. Were any of those cases in the State of Illinois? A. I think that district was very close to cost, because of the competitive condition; yes, sir. 566

Q. Do you know of any cases in the state of Missouri? A. No, I do not.

Q. Do you know what year it was that you sold below cost? A. I do not know that we did sell below cost.

Q. Well, coming to your own statement, what year was it when you think you may have sold below cost in this business? A. What year?

Q. Yes. A. Well, I think 1906 was the closest year we had.

Q. That was the year that this price of 95 cents prevailed? A. That is my impression. 567

Q. Now, you stated a while ago that from your best recollection the Buckeye Company first cut prices, is that correct? A. That is my impression.

Q. Well now, upon what do you base that impression? A. I do not see how any concern can start in business and get along, except by cutting prices. I have no specific case in mind.

Q. You have not mentioned any amount in which the Buckeye Company cut prices? A. Not at present.

Q. Then, your answer was purely an imaginary one? Is that right? That they might have done it, if they wanted to, in order to get business? A. I do not see how it could get business if it did not.

568 *Charles L. Patterson—Redirect*

Q. Now, is that the sole reason that you stated that the Buckeye Company was the one which started the price cutting, in order to get business? A. That is my impression. I have no specific case in mind.

Q. Now, what was the particular business that you lost? You stated that you had lost a good deal of business. What business did you have in mind that you lost? A. I do not remember that. I remember saying that a great many new mills started
569 in that business.

Q. Well, I am trying to get out as to what business you lost. You say you lost a good deal of business. I want to know what business it was that you lost? A. I cannot say specifically.

Q. Well, then, why did you make the answer that you lost a good deal of business, unless you knew what business it was you lost? A. We could not help losing business if a good many new mills started.

Q. I want to get at the fact now, what business
570 was it that you lost, what customers? A. I cannot state that.

Q. Well now, do you know of a single customer that you lost? A. Not specifically, no.

Q. Mr. Patterson, you stated that during the years 1903 to 1908 there were five large mills built. What were those large mills? A. My recollection is there was the United States Powder Company——

Q. Will you speak a little louder? A. Yes. The United States Powder Company, Egyptian Powder Company, the Senior Powder Company and the Miami Powder Company built a new mill down Phebes, according to my recollection, that is four. And the Excelsior Powder Company was built in that time.

571

Q. Where was the Excelsior Powder Company? A. Near Kansas City.

Q. Where is the Black Diamond Coal Company or its property located? A. Pennsylvania.

Q. How large a plant is that? A. I think not a very large one.

Q. Well, how large? A. Well, I really don't know what the capacity is?

Q. Can't you indicate something about its capacity? A. No, Mr. Abbott, I could not.

572

Q. Don't you know definitely? A. I know it is a small mill. It does not make a very considerable amount of powder.

Q. Where is the Barton Powder Company located? A. Their main office is in Pittsburgh.

Q. I am speaking about their plant now. A. I don't recall, I don't know; I think it is over the line from Pennsylvania, right near the line.

Q. What is the capacity of that mill? A. Well, I don't know, but it is quite a producer.

Q. Have you any means of ascertaining? A. Yes, I think I could tell approximately; I should say, roughly, 1,000 to 1,500 kegs a day, but I would not say that positively.

573

Q. Will you verify that statement? A. I can't. I can look it up from the best knowledge we have.

Q. Upon what do you base that information? A. In a general way on how many wheels there are in the mills, and the capacity is generally rated by the number of wheels.

Q. Well, how many wheels are there in this mill? A. I don't know.

Q. Do you know anything at this time as to the capacity of that mill? A. Only what I have heard.

Q. Only what you have heard? A. Yes.

Q. What is the output of the mill? A. I think they run pretty full.

Q. Well, by "full" how much of an output? A. I don't know.

Q. You don't know that? A. No.

Q. Now the Egyptian Powder Company, how about that; what is the capacity of that mill? A. I couldn't tell you.

Q. Where is that mill located? A. It is in Illinois, I think, called Marion, but I won't be positive about that.

575 Q. Have you any idea as to what the capacity of that mill is? A. Not accurately.

Q. Is it a very large one or a small one? A. It is a good sized mill.

Q. What do you mean by a good sized mill? A. I should think it is a mill that makes a thousand kegs a day.

Q. Now, then, how many kegs a day does this mill make? A. I don't know.

Q. Who owns that mill? A. Yes—now, do you mean?

Q. Yes. A. That mill is owned by the Equitable
576 Powder Company.

Q. How long has it been owned by the Equitable Powder Company? A. I couldn't tell you that.

Q. I beg your pardon. A. I can't answer that.

Q. The Equitable Powder Company, any part of that owned by the company in which you are interested, the defendant in this case? A. Any part of the Equitable?

Q. Yes, how much? A. My collection is 49 per cent.

Q. Forty-nine per cent. of the Equitable Company is owned by the duPont Powder Company, the defendant in this case, and the Equitable Company owns the Egyptian? A. Well, not exactly, Mr. Abbott, my recollection is that the Equitable controls the Egyptian; doesn't own it.

577

Q. Well, it controls it? A. Yes.

Q. All right, I ask you as to the output of these other two mills, or rather as to the capacity, but I mean output when I say capacity. You will understand I mean output, will you? Do you know the output of the Burton Powder Company? A. The annual output—no, sir, I do not.

Q. Do you know the output of the Egyptian Powder Company? A. I do not.

Q. Do you know the output of the Equitable Powder Company? A. Only from hearsay. The Equitable——

578

Q. Yes. A. Well, now, are you speaking of the Egyptian?

Q. No, I am speaking now of the Equitable Powder Company? A. No, I couldn't answer that question.

Q. That is the company in which you are 49 owners? A. Yes.

Q. Now, the Excelsior Powder Company—what is the output of that mills? A. I couldn't answer that definitely.

579

Q. That is in the Kansas district? A. That is in the Kansas field.

Q. Have you any idea what the output is? A. I think it is above a thousand kegs, but that is just my idea of it.

Q. Have you any means of obtaining any information upon that point? A. Yes, I could get some information, but I don't know whether it would be accurate.

Q. Take the Locust Mountain Powder Company, how much of a mill, what is the output? A. I don't know; it is a small mill.

Q. Where is that located? A. Pennsylvania.

Q. Neurenburg Powder Company, how much of a mill is that? A. A small plant, Pennsylvania.

580 *Charles L. Patterson—Redirect*

Q. How small? A. Well, it is less than a thousand kegs a day.

Q. The Senior Powder Company of Ohio, how much of a mill is that? A. I think that is a good sized mill.

Q. Well, how much, what is the output? A. I don't know, I should say from what I have heard it is a thousand kegs; I don't know.

Q. The Standard Powder Company, how about that? A. I think that is a good sized mill.

581 Q. What is the output of that mill? A. I don't know.

Q. The Tennessee Powder Company, how about that? A. I think that is a good sized mill; I don't know its output.

Q. The United States Powder Company, what plant have they? A. They have got a large plant, I think.

Q. Where is that located? A. In Indiana, but I don't know the town.

Q. And what is the output of that mill? A. That
582 is more than a thousand kegs a day from my recollection.

Q. Now, then, this United States Powder Company, do you have any interest in that plant? A. My recollection is that when the Equitable bought the Egyptian plant that they got a small interest.

Q. The Equitable Powder Company owns an interest in the United States Powder Company? A. I think a small interest.

Q. And you own 49% in the Equitable Powder Company? A. Yes, that is right.

Q. Now, the Austin Powder Company, that is located in Ohio? A. Yes.

Q. You have an interest in that do you, how much of an interest? A. Some thirty odd per cent,

I think, perhaps thirty-three, something in that neighborhood.

Q. How long have you owned that interest? A. Long before—I couldn't answer.

Q. The Miami Powder Company, where is that located? A. They have two black powder plants.

Q. Where are they located? A. One near Xenia, Ohio and one near Phebes, Illinois.

Q. Who are those plants owned by? A. The Miami Powder Company.

584

Q. Have you any interest in that? A. No.

Q. No interest at all? A. No.

Q. What is the output of the Miami Powder Company? A. They are both large plants, I couldn't tell you what the output is definitely.

Q. How large? A. Well, my impression is more than a thousand kegs a day each.

Q. Now, the Rand Powder Company of New York, how much of a pant is that? A. I think that is not so large, I think it is a small plant.

Q. Where is it located? A. In New York State; I do not know.

585

Q. Is this the plant known as Widow Rand Mills? A. My impression is it is.

Q. Isn't is a very small plant indeed? A. Well, from our point of view it is small; but I could not say how many kegs they can make.

Q. Take the Fairchance—the Rand Powder Company of Fairchance, how much of an output has that plant? A. I think that has not very much of an output now, I think that plant has not any output at present.

Q. How much did it haved uring the year 1903? A. When it was operating it was quite a good sized plant.

Q. When it was operating, how much was it? A. I can not answer that.

586 *Charles L. Patterson—Redirect*

Q. Was it operating in 1903? A. I think it was operating then, that is my impression.

Q. Did it cease operating in 1903? A. I could not say definitely.

Q. Are there any other companies that you know of, any other powder companies that were in existence during 1903 to 1908, excepting those you have enumerated? A. In existence.

Q. Yes, that is that were in existence and as you say were competitors of yours? A. I can not
587 think of any now, perhaps there are some.

Q. Now then, what was the total amount of black blasting powder per year manufactured by all of these plants which you have enumerated in the United States during the year 1903? A. I could not answer that.

Q. You could not answer that? A. No.

Q. Do you know what percentage of the output of black blasting powder was manufactured at these mills, the total output in the United States during the year 1903? A. No.

588 Q. Have you any idea? A. No, sir, I could not give any idea.

Q. Was it as much as five per cent? A. I should say it was more than that.

Q. Well, how much more? A. I do not know.

Q. I want you to state now your best recollection? A. I do not know definitely; I could not say.

Q. Is there any way that you can get a table or statement or any data upon that subject, which would show the total output of these mills, during any of the years from 1903 to 1908, inclusive? A. I think so.

Q. Will you do so? A. If I am so instructed I will do so. (After colloquy between the Court and counsel.) You want the output, Mr. Abbott?

Q. Counsel has suggested he will get the infor-

mation, and I will arrange with him so that that matter will be put before you? A. All right.

Q. Can you get the information as to the total amount of the output of black blasting powder of all the mills which were under the control, either owned by or under the control of the E. I. du Pont de Nemours Powder Company during the same dates? A. Under the control?

Mr. Button: I understand by that, that is a statement of the sales and the amount 590
manufactured by the Powder Company? We will also furnish that.

Mr. Abbott: I mean all of the powder manufactured. My purpose being—so that counsel will see what I am desiring to get at: To show the relation between these mills and the mills controlled by the defendant in this case.

Mr. Button: I don't know of mills controlled except those that we own, if that is what you mean, we are very willing to fur- 591
nish that.

Mr. Abbott: All right.

Q. Now, then, the high explosives trade—take the mills of the high explosives trade, the Allentown Non-Freezing Company, how large a plant was that during 1903? A. I don't know.

Q. Where was it located? A. My impression is it was in the neighborhood of Allentown; I never saw it; I do not know.

Q. Don't know anything about its capacity? A. No.

Q. Take the American High Explosive Company, how much of a plant was that? A. I don't know.

Q. The Illinois Powder Company, how much of

592 *Charles L. Patterson—Redirect*

a plant was that? A. That is a moderate sized plant; I think that is quite a large one; I don't know its output.

Q. The Jefferson Powder Company—the Jefferson Powder Company I judge was the name?

Mr. Button: Jefferson was in the name. I don't know whether Jefferson Powder or Jefferson Dynamite Company, I don't know that.

593

Q. Do you remember such a company as the Jefferson Powder Company? A. Yes.

Q. How large a plant did it have, and what was the output? A. I could not answer that; I don't know.

Q. The Messerite? A. The Messerite, that is not in existence.

Q. When did it go out of existence? A. I could not answer that definitely.

Q. Was it in existence during 1903 and 1908? A. Part of the time, my impression is it was.

594

Q. Was it the early part or latter part? A. Well, I think, I feel quite sure it was in operation the early part.

Q. How much of a plant was that, what was the output? A. Not very large.

Q. Take the Pulto Powder Company, how much of a plant was that? A. Good sized plant.

Q. What was the output? A. I don't know.

Q. Where was that located? A. That was located near Ishpinning, Michigan.

Q. Take the Potts Powder Company, where was that plant located? A. They were located over in Tamaqua, Pennsylvania.

Q. How much of a plant was that and what was the output? A. That is a good sized plant.

Q. By that will you indicate how many pounds? A. I don't know how many pounds.

Q. Take the Sinnamahoning Company, where is that located? A. Near Sinnamahoning, Pennsylvania.

Q. How much of a plant is that? A. My impression is that is a good sized plant.

Q. By that you mean how many pounds? A. I don't know; but quite a large production.

Q. Now, this Puget Sound in Alaska plant, where 596
is that located? A. My impression is it is in Washington, but I never saw it and I am not sure.

Q. Do you know anything about that plant? A. No.

Q. As a matter of fact is not that plant owned and controlled by the E. I. du Pont de Nemours Powder Company? A. Not to my knowledge.

Q. Did it ever have any interest in it? A. Not to my knowledge.

Q. Do you know what the output of it was? A. No, I don't.

Q. During 1903 to 1909? A. No, sir, I don't. 597

Q. Take the Trojan Powder Company, where is that located? A. I think they have one plant in the East and one in the West, if I am not wrong about it.

Q. What was the output of that plant? A. I don't know.

Q. The Illinois Powder Company, where is that located? A. In Illinois.

Q. What is the output of that plant? A. I could not tell you, I don't know.

Q. Take the Giant Powder Company in California, how much was the output of that plant? A. I don't know, it is a large plant.

Q. Take the Joplin Powder Company—that is in Missouri? A. Yes, at Joplin.

598 *Charles L. Patterson—Redirect*

Q. What is the output of that plant? A. Quite a large plant.

Q. How large? A. I don't know.

Mr. Abbott: Now, then, can you furnish, on the same basis—I make it as a request, a statement showing the entire output of these companies which you have stated were independent companies of high explosives during the year 1903 to 1908 inclusive for
599 each year. I will ask Counsel on the other side whether they would be willing to make the same stipulation in regard to dynamite or high explosives?

Mr. Button: We can do that.

Mr. Abbott: Both as to these companies that have been named here and as to the companies controlled by the defendants in this case.

Mr. Button: What I understand you want is the percentage of the total trade done by this defendant and the percentage
600 that is done by people that are not controlled by it.

Mr. Abbott: As named by the witness.

Mr. Button: Including any others that there may be.

Mr. Abbott: If there are any others I would like to know it.

The Court: I think if he furnishes them that is all you are entitled to, not merely those that have been named, but any others that they may know of.

Mr. Abbott: If you will follow the names that have been given by this witness——

Q. Do you know of any other powder plants that

are not included in the list that I have named to you to-day that were supposed to be competing plants? A. I can't think of any now, Mr. Abbott, but if any such exists I can find them and give them to you.

Q. But so far as you know now the list which I have indicated to you is a full list? A. That is my recollection.

Q. Do you know whether any matter ever came before your sales board or before you as director of sales with reference to the means employed by any of the agents to secure information from your competitors as to the condition of others in business? A. I have no recollection of it. 602

Q. You have no recollection of it? A. No.

Q. Did you ever disapprove of any of the acts of your agents in securing the information which he was instructed to secure?

Mr. Button: I don't know whether they should be confined to matters so far as they were reported to him of his own knowledge. 603

The Court: Of course that is the limitation implied.

Q. (Continuing). I will incorporate that. A. I have no recollection.

Q. You mean you have no recollection of whether you approved or disapproved, or whether you ever disapproved, is that what you mean? A. Yes.

Q. Mr. Patterson, refresh your memory and state whether or not a plant known as the "Widow Rand" Mill has not been out of business for more than 20 years? A. I do not know. I know that there is a Rand mill in New York State. I do not know whether it is the "Widow Rand" Mill. Neither do I know how much it is making.

604 Q. Do you know where that plant is located? A. No, sir.

Q. Is it not a fact that the mill known as the Rand mill, at Fairchance, Pennsylvania, blew up a great many years ago, and has never been re-erected or re-constructed? A. Yes, sir.

Q. That is true? A. That is true.

Q. Now, I am talking about the "Widow Rand" Mill at Fairchance, Pennsylvania. This Allentown Mill— didn't it go out of business a great many
605 years ago, before the Powder Company came into existence? A. I don't remember.

Q. You don't know that? A. No.

Q. Will you kindly state why you included the "Widow Rand" Mill and the Allentown Mill and the Fairchance Mill as among the mills that were in competition with you during 1903 to 1908, when you now say that you do not know whether they were in existence or not? A. My recollection, Mr. Abbott, was that the Rand mill did not blow up until after that time. I may be wrong about the
606 time.

Q. You do not know that it was in existence between 1903 and 1908? A. I think it was.

Q. I will ask you to refresh your memory once more and state whether or not there are any other mills on this list of the names of mills that you have given here as being your competitors, from 1903 to 1908, which were not in existence during that period? A. I will give you the exact information if you will let me go through the records, Mr. Abbott, if that will be satisfactory?

Q. Well, from your best recollection at this time, you are not able to say whether there were any ther mills that were not in existence between the periods of 1903 and 1908, are you? A. I think the

list that you have mentioned is as near as I can remember.

Mr. Abbott: That is all.

Recross examination by Mr. Button:

Q. Wait a moment, Mr. Patterson, let me refresh your recollection as to the Rand Mill. Did not the Fairchance mill blow up by an explosion on the 25th day of September, either in 1905 or 1906? 608
A. I think it was after 1903, as I told Mr. Abbott.

Q. And don't you recollect that the Rand Mill in New York State, known as the Widow Rand Mill, has been running up to within two or three years of this date? A. That is my impression.

Q. So you have not intended to testify that any of these companies were out of business during the whole period from 1904 to 1908? A. That is my impression that they were operating.

Q. Out of business? A. No, were operating.

Q. Then you mean that you have not intended to 609
testify then, in answer to Mr. Abbott's last question, or that it is your present recollection that they any one of those mills was absolutely closed down during this whole period? A. No.

Q. Do you intend now to testify that these mills that you have mentioned, were not doing business during that period? A. Well, my impression was Mr. Button, that they were operating.

Q. (By the Court) And that is still your impression? A. That is still my impression, yes, sir.

Q. Now you have testified that the du Pont Company owns 49 per cent of the capital stock of the Equitable Powder Company and some thirty per cent of the Austin Powder Company. I will ask you whether, as a matter of fact whether the Pow-

610 *T. Coleman du Pont—Direct*

der Company exercises any control whatsoever over the policies, the prices or the operations of either of those companies? (Objection overruled.). A. They don't.

Q. Were those two companies active and independent competitors of the du Pont Company during this period? A. Yes, sir.

Q. As a matter of fact were they selling black blasting powder in this territory of the Middle West? A. I think they both were.

611 Q. Well, now, do you know of any individual instance of the selling of powder below cost in that territory or anywhere else in the United States in 1906? A. No, I don't.

Q. Your statement in that regard—I understood you to say was based on the fact that the margin of profit emassed here was very slight in the black powder business? A. Very slight.

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612 T. COLEMAN DU PONT, called and sworn as a witness for the plaintiff, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. du Pont you reside in Wilmington, I believe? A. Yes.

Q. You are the President of the defendant, the E. I. du Pont de Nemours Powder Company? A. Yes.

Q. How long have you been president of that company? A. Since it was incorporated.

Q. When was that? A. 1902 or 1903.

Q. What was your position before that, before you became president of the present company, the present defendant, the E. I. du Pont, de Nemours

Powder Company? A. Street railways, steel, coal mining.

Q. I am speaking of the immediate time preceding of the coming into existence of the defendant did you have any connection with any company that was engaged in the powder business? A. Oh, yes, when I came in the powder business I took the place of my cousin and there were quite a number of companies in which the du Ponts were interested.

Q. Now who was your cousin? A. Mr. Eugene du Pont. 614

Q. What position did he hold at the time when you took his place? A. He was president of the E. I. du Pont de Nemours & Company.

Q. He had died just previous to that? A. Yes.

Q. Now then when you came to take his place were you elected to succeed him as President of the corporations which he had been the head of? A. Well in many instances I was.

Q. What instances were you? A. Well, there was a new company formed to take—which purchased the E. I. du Pont de Nemours & Company and Mr. Eugene du Pont was president of some of the companies, I don't know how many, that were controlled by the du Ponts, and I think in most instances I was put in his place on those boards, sometimes as president and sometimes I was not. 615

Q. The du Pont interests that you have reference to had been a partnership for some time previous to your coming in? A. No, sir; a corporation.

Q. At the time when you came into possession of them, or rather succeeded Eugene du Pont, they were a corporation were they? A. A corporation, yes.

Q. What was the name of that corporation? A. The E. I. du Pont de Nemours & Company.

Q. Did you acquire any actual control over the affairs of that company? A. We did by purchase.

Q. Who do you mean by "we" ? A. The company that bought them out.

Q. What was the name of that company? A. The E. I. du Pont de Nemours Company.

Q. Now, how did you come to buy out those interests? A. Well, how do you mean, "how did we come to buy them out."

Q. Did anybody approach you to sell those in-
617 terests to you? A. Yes, sir.

Q. Who was that? A. My cousin.

Q. Who was he? A. Mr. Alfred du Pont.

Q. Did he make a proposition to you? A. Well I don't know that he exactly made a proposition.

Q. Did you enter into negotiations with him then for the purchase of the property? A. Well I entered into negotiations with him and others.

Q. Now state what those negotiations were? A. Well, at the time of Mr. Eugene du Pont's death none of the other members of the corporation felt
618 that they were able to take charge of it and take his place. Their training had been in the manufacturing line and they were all getting old, and they did not care to go on further, and they wanted to get out of the business, so we formed this company and two of my cousins and myself—and said, "if you gentlemen want to we will buy out this company from you."

Q. Now the two cousins that you referred to were Mr. Pierre S. du Pont and Mr. Alfred I du Pont? A. They were the two most importantly interested.

Q. Well, were there any others that were associated with you three gentlemen in organizing the E. I. du Pont Company? A. Oh, yes; the old board and the old people had a majority on the Board of Directors.

619

Q. Oh, they had a majority on the Board of Directors? A. Yes.

Q. Who were they; will you give me the names of those who constituted a majority of the Board of Directors? A. Why, Francis G. du Pont, Alexis I. du Pont, Henry A. du Pont, I do not remember whether Charles I. was or not at that time, but of the old company there were a majority, Pierre and myself being the only two that had not been there before. There were seven directors, Pierre, Alfred and myself.

620

Q. Did those old interests have a majority of the stock of the company, of the E. I. du Pont de Nemours Company? A. No, sir.

Q. Who held a majority of the stock? A. The majority was held by Mr. Pierre du Pont, Mr. Alfred du Pont and myself, but under an agreement that they should have control of the Board of Directors, a majority of the Board of Directors until certain sums of money had been paid.

Q. How long did that agreement continue? A. Until they were satisfied or that amount of money was paid. I don't remember, sir, just how long.

621

Q. Can you state whether it was one year or two years? A. I cannot.

Q. Can you state whether it was after the organization of the E. I. du Pont de Nemours Company, or before? A. Why, I would say the organization of the company was about the date it was changed.

Q. The payment of this amount that was dependent upon the agreement then depended somewhat upon the organization of the E. I. du Pont de Nemours Company? A. No.

Q. Well, you say it terminated about that time. After that did these gentlemen, any of them, appear on the Board of Directors of the new company? A. Oh, yes.

Q. Who of them came to the Board of Directors of the new company? A. Well, I think all but Henry A. duPont were on there until they died of the old members of the family.

Q. Now, Henry A. duPont is the United States Senator, is he not? A. Yes, sir.

Q. Wasn't he at that time? A. No, sir.

Q. Not in 1902? A. No, sir.

Q. What was the relative proportion of the interests in the stock of the E. I. duPont de Nemours
623 Company which you, Pierre and Alfred I. duPont held? (Objection overruled.) A. Which company was that, Mr. Abbott?

Q. I am referring now to the company which you organized to take over the duPont interests? A. We had about seventy per cent.

Q. Now, I am asking you as to the relative interests which you three gentlemen have, or have any one of you more than the other? A. Yes.

Q. Well, now tell me how that stock stood with regard to you three? A. Well, the three of us had
624 seventy per cent.; doesn't that answer the question?

Q. No, I want to find out how much you had, how much Pierre had and how much Alfred I. had. (Objection sustained.)

Q. Do you know anything about the organization which was known as the Gunpowder Trade Association? A. Well, when I got into the powder business——

Q. In the first place, will you kindly say yes or no to that, and then explain? A. I do.

Q. Yes, now then you can explain it. A. When I got into the powder business in 1902 I found that there was a good many organizations, and agreements and companies of every kind and description; in fact, I think there were over a hundred that were controlled by du Pont, and this was one of those organizations.

625

Q. This Gunpowder Trade Association was one of them? A. Yes.

Q. Did you yourself have anything to do with the business or affairs of that association? A. I attended quite a number of meetings when I first got into the business; it was, I think, the first of March, and I attended meetings for several months after that.

Q. Can you state what the date of the last meeting was that you attended? A. No, sir; I could not.

626

Q. Was it in 1903 or 1904 when you attended your last meeting? A. I don't know, I should say about a year, it might have been fifteen months, it might have been a year, I really don't know.

Q. Then, according to your best recollection it was about some time during the year 1903 when you attended the last meeting; is that correct? A. Well, I don't know; I think it was about a year afterwards.

Q. Then in order to find out exactly what you have in your mind I will ask you when you first attended a meeting of that association? A. Well, I would say in March, April or May, 1902.

627

Q. And that the last time that you attended was in March, April or May of 1903? A. Well, it might have been nine months, it might have been fifteen. I should say a year to the best of my recollection. You know it has been a good while ago.

Q. Now, during the time that you attended those meetings will you state what transpired? A. Why, at those meetings various matters were brought up and questions of prices here and there——

Q. What did you do with questions of prices that were brought up? A. I am going to tell you; say here a price to such and such a company ought to be allowed, or I might move that such and such

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a company ought to be allowed to make such a price to such and such a competitor. Now I think everybody sent on and telegraphed the association to cut prices. As far as I could find out that association was one of bluff, they didn't live up to what they were supposed to live up to at all.

Q. You attempted, however, to make arrangements to cut the prices which you maintained between yourselves for the selling of powder? Is that right? A. Well, I say this company, this or-
629 ganization, was formed for the meeting of certain people who were engaged in the powder business; and I went—and I felt before I had been in there one or two meetings that nobody lived up to the prices they made, and it was more of a farce than anything else.

Q. Was anything else done at those meetings besides the attempt to regulate prices? A. I don't recall anything.

The Court (after objection and argu-
630 ment): My impression is that this witness said they regulated prices.

The Witness: I said they attempted to.

The Court: The question whether they carried it out or not is what this witness says wasn't done. But that certainly is what they attempted to do at the meetings.

Q. I will ask you whether anything was done at those meetings for the purpose of adjusting the trade between each other? Did you make allotments? A. It seems to me there was something of that kind.

Q. In other words, didn't you parcel out the trade in the powder business of these companies—so much to one corporation and so much to an-

other? A. I couldn't tell you exactly, but it seems to me there was something of that kind in there. But I felt that nobody had paid any attention to it.

Q. In other words, they went there and made agreements, but did not live up to them, is that right? A. That was my judgment from the first.

Q. What steps did you take, if any, or did you think necessary to take in order to overcome that situation? A. Well, the first steps that were taken by me and those associated with me were to put all the du Pont interests into one concern. 632

Q. What steps did you take to bring about that desire? A. Well, in what way—we formed the company under the laws of New Jersey first.

Q. What was the next step that you took? A. And then that New Jersey corporation took in the various other concerns that were controlled by the duPont companies.

Q. The third step as I understand it then was the organization of the New Jersey Company, which is the defendant in this case, the E. I. duPont de Nemours Powder Company? A. That is right. 633

Q. Now did you attempt in any way to secure any of the other interests which were not known as the duPont interests which were in this Association, this Gunpowder Trade Association? A. Well, I think besides those that were controlled by the duPonts there were one or two in the west that did come in.

Q. What interests were those? A. The California Powder Works, which was not absolutely controlled by the duPonts in stock ownerships, but which was practically controlled by them, because the other stockholders were in no case, or in very few cases, much interested in the powder business and they always went more or less by what the duPonts wanted done, so that they really controlled that as much as if they really had owned it.

Q. What was the stock controlled—which you had in that company? A. The stock interests?

Q. What percentage? A. Forty some.

Q. Forty-seven? A. Forty something, I think. I am sure.

Q. All right. Now, if you will proceed with your answer—or had you finished? A. Well, I think I finished.

Q. Did you make any effort at that time to secure control over what were known as the Laflin &
635 Rand interests? A. Why, they came into the other company through concerns that had been formed that took them over.

Q. What concern was formed for the purpose of taking over the Laflin & Rand interests? A. The Delaware Securities Company.

Q. And was the Delaware Securities Company and its property afterwards absorbed by the Powder Company? A. Yes, sir.

Q. It was. What medium did you use for securing the California companies? Did you have a cor-
636 poration for that? A. They came in direct.

Q. Do you know of a corporation known as the California Investment Company? A. Yes.

Q. What was the purpose of that? A. The Judson Company came in through that.

Q. Where was the Judson Company located? A. California. That is the other company I mentioned in the west.

Q. Now, what other interests that were formerly associated under the Gunpowder Trade Association did you acquire? A. I don't know of any others——

Mr. McCarter: Objected to because it would appear from that question that the interests that were spoken of as having been acquired by the Powder Company had been

637

in the Gunpowder Trade Association, which is not a fact.

The Court: Yes, it does seem to be that way.

Q. I will go back and make that clear. I will ask you to state whether or not the gunpowder trade association, one of the members of that association was what is known as the Laflin & Rand Company? A. Yes, sir; I think they were.

638

Q. And what were the interests which were known as the Laflin & Rand interests? A. That I don't know.

Q. Well, those interests which you afterwards acquired through the Delaware Securities Company, were those interests members of the Gunpowder Trade Association? A. I don't remember whether they were or not. The Laflin & Rand was. I think that was the most important interest that the Delaware Securities Company bought out. I couldn't say about the others, sir.

639

Q. Did the California Powder Company have any interest in or relation with the Gunpowder Trade Association? A. I don't know.

Q. Do you know of an agreement known as the "California Agreement"? A. I don't recall it at this time, sir.

Q. Do you know when the California Powder Works made an agreement with the Gunpowder Trade Association? A. No, sir; I didn't know it was a party to it, though it may have been.

Q. You know of no agreement that was made at an earlier date than your coming into that Association between the California Powder Works and the Gunpowder Trade Association? A. No, sir. I know there were a lot of agreements, but I don't recall that one. However, it may have been.

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Q. Do you know of an agreement known as the "Fundamental Agreement"? A. I have heard of that, sir. That name is familiar to me.

Q. Have you ever seen the agreement? A. I don't remember that I ever have.

Q. Have you ever heard it read? A. Not that I remember of.

Q. Do you know of another agreement known as the "Foreign Agreement," or "London Agreement"? A. Yes, sir; I know that agreement, too.

641 Q. Did you have any relations with that agreement in any way? A. Yes.

Q. What relations did you sustain to it? A. After Mr. Eugene duPont's death I was made American Chairman of that—I don't know as you can say Chairman of an agreement, but that is what it was.

Q. Is that agreement in existence at the present time? A. No, sir.

Q. When did it go out of existence? A. 1905 or 1906.

642 Q. Do you know of your own personal knowledge that it went out of existence at that time? A. I do, sir.

Q. How do you know that? A. Because I went abroad and abrogated it myself.

Q. Did you have the original agreement present at the time when you say it was abrogated? A. Yes.

Q. Did you see the signatures to it? A. Yes.

Q. What was done with that agreement at that time? A. It was torn up and burned up.

Q. Torn up and burned up? Have you ever seen any copy of that agreement? A. Only the one you showed me the other day—and I don't know if that was a copy of it.

Q. I show you Government Exhibit 119 on page 1123 and subsequent pages of Petitioner's record of

exhibits, Vol. 2, in what is known as the case of The United States of America, Petitioner, vs. E. I. duPont de Nemours & Company. It is No. 280 in Equity in the United States Circuit Court for the District of Delaware; and I ask you to examine the same and state whether or not you can refresh your memory therefrom? A. I never read the agreement that I remember.

Q. Oh, you never did? A. No, not that I remember of.

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Q. Let me refer you then to another—I refer you to page 1132 of the same book and look at Government's Exhibit No. 120 on that page and ask you to state whether or not you know anything about that document? A. Well, I don't know that I ever saw it before.

Q. Do you know whether that document was written by you? A. No. I don't think it was.

Q. With your authority? A. Well, there was a man who was with us at the time by the name of Curlett, who I was told when I got into this, that Mr. Curlett knew all about the European agreement, and whatever Curlett—anything that came in about it was referred to Mr. Curlett, through Mr. Dunham sometimes, sometimes direct; and then what he asked me to do I did.

645

Q. And if you signed that document then you signed it because Mr. Curlett asked you to? A. Yes, either Mr. Curlett or Mr. Dunham.

Q. And Mr. Dunham is your private secretary, is he not? A. Yes, sir.

Q. Did you see him in this room to-day? A. No, sir.

Q. Now, in your capacity as American Chairman under this "Foreign Agreement," did you come into the possession of a fund known as the "Common or Syndicate Fund"?

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A. Personally I didn't. But I know there were a good many checks came in and went out, but I don't know that I saw any checks that came in and all I did was to sign those that went out.

Q. Now, when these checks came in, did they some addressed to you personally, or how did they come? A. I could not say, sir. I did not open any of the mail.

Q. Now to whom did you leave that business—with reference to these checks—to be transacted?

647 A. I could not tell you how the mail is opened—the mail is opened by two or three people, and it is distributed.

Q. And who were they? A. Well, Miss Smith, and Mr. Dunham, and Mr. Wilson, and someone else out there might have opened it.

Q. Do you know whether or not you received any remittances from a corporation known as the Austin Powder Company? A. Well, I do not remember it.

Do you know whether you received any remittances from a corporation known as the Aetna

648 Powder Company? A. Well, I presume if they were in the agreement, they sent them in, but I did not see any of the checks.

Q. If there were any letters or any documents, bearing your signature, with reference to disbursements of this fund, then you know nothing of those matters personally? A. No, except they said there were some things that came in under that agreement, and I was told to sign them, or to do certain things with them.

Q. I show you Government's Exhibit No. 134 and ask you to look at it and state whether or not you knew anything about that document. (Handing to witness.) A. No, I do not know anything about it.

Q. Do you know whose signature that is attached to it? A. That is my signature, by a rubber stamp.

Q. Was that affixed with your authority? A. I presume it was.

Q. In that connection I will ask you whether or not you generally sign your name on your communications with a rubber stamp, or allow it to be so signed? A. Yes, sir.

Q. Is it not a fact that you sign very few of your letters in your own hand? A. Well a majority is signed with that rubber stamp. 650

Q. Who has authority to affix the rubber stamp for you? A. Well, I suppose Mr. Dunham and Miss Smith both have authority, and when there are letters or things of that kind I presume they are stamped by anybody in the office that they have gone out through.

Q. Have you any idea at this time, Mr. du Pont, what the total amount was that was received by you as the American Chairman in this "Common or Syndicate Fund," while the "Foreign Agreement" was in existence? A. No, sir; I do not remember. 651

Q. Would it refresh your memory any if I would ask you whether it was as much as $750,000? A. It might have been or might not. I paid very little attention to it.

Q. Was there any sum of money paid by you at the time when this "Foreign Agreement" was cancelled, in consideration of the cancellation of that agreement? A. It seems to me there was.

Q. Do you remember how much that was? A. No, sir.

Q. I will ask you in order to refresh your memory, was it not about $148,000? A. I could not say. It seems to me it was a large amount paid at that time.

Q. Was it about that amount? A. I can not say, sir.

Q. Did you make that payment personally? A. I don't even remember that.

Q. Now I show you Plaintiff's Exhibit 122 to 134 inclusive, and ask you to look at the same and state whether or not they were written by you, or some of them received by you, or by your authority. (Handing to witness.) A. (Examining papers.) Well, I say that that was correspondence
653 in connection with the European agreement, but I do not remember at this time of ever seeing it before. Some of that I know I never saw before, this 122.

Q. That is the one you say you never saw? A. No, I never saw it. It looks like correspondence in connection with the "European Agreement," but I cannot identify any of them, never having seen them before.

Q. Does the E. I. du Pont de Nemours Powder Company have any interest in any powder or explo-
654 sives business in the Dominion of Canada? A. Yes, sir.

Q. How large an interest is that? A. I do not know. We have quite a holding in the Canadian Explosives Company, but I cannot tell what it is.

Q. Did the foreign interests which were formerly represented in this agreement have any interest in the Dominion—in this Explosives Company in Canada, that you have just mentioned? A. Well, I don't know just how to answer that. I do not know who the parties were to the "Foreign Agreement" on the other side, with one exception.

Q. Who was that? A. Mr. Nobel.

Q. Did any of the foreign manufacturers of powder have any interest in the Canadian Company to which you have just referred? A. Yes, sir.

Q. Is that interest a large or small one? A. Controlling, I understand.

Q. How much, 50 or 51 per cent? A. Controlling, I understand, that is my understanding.

Q. That is control, but you don't know how much? A. No.

Q. Do you know how much the interest of E. I. du Pont de Nemours Powder Company is in that company? A. No, sir; that is the question just asked me, I don't know what it was.

Q. I was asking you the interest of the foreign 656
company. A. Yes; the foreign company controlled and we have a large interest.

Q. Did you know anything about the terms or any of the conditions contained in that agreement —did you know any of the conditions? A. Not that I recall now.

Q. I show you Government's Exhibit No. 6 in Petitioner's Record of Exhibits, Volume 1, in the same case I called your attention to a while ago and I ask you to look at page 94 and subsequent pages and say whether or not the matter there 657
refreshes your memory as to the contents of that agreement, as far as you know what the contents of that agreement were. (Handing book to witness.)

A. (Interrupting) You want me to look through this book then and see what it says? I can read it through and see what its terms are.

Q. Yes; look it through. A. I have glanced through some of these but I do not say if I recognize them now, I cannot say that, but I will read them through if you wish.

Q. Just read them right now, and refresh your memory from that document which you see before you so as to determine whether there is anything in that which recalls to your mind what you under-

stood to be in this "Fundamental Agreement," which you say you believe existed.

A. (Interrupting) I want to say this, that when you say "Fundamental Agreement," that sounds natural, I have heard that before. I know I have heard about the "Fundamental Agreement." Now you ask me what it is and I do not know. I am perfectly willing to go through this and see if I can identify any of the terms of it as to what I have heard. It may take some little time to read
659 it through carefully to get the information, as I never read the agreement.

Q. Won't you take it and try? A. I will try.

Q. I don't wish to take up time unnecessarily, but I would like to have you, as near as you can, give us some statement as to what you understood to be the terms of that agreement, and if this document will help you, I would like to have you examine it? A. I never saw the agreement and never understood its terms at all.

Q. What is that? A. I never saw the agreement
660 and never understood its terms at all, but I am perfectly willing to go through this and see what it says if you wish me to.

Q. You stated at the beginning of your testimony that there were a number of agreements which you found in existence at the time when you succeeded to Mr. du Pont. Am I correct about it?

Q. You had heard of a number of agreements which were in existence? What was the nature of the agreements which you heard were in existence at that time? A. As I say, I heard they had agreements and as you use the term "the Fundamental Agreement" and you use the term "Gunpowder Association Agreement," I heard of those, and I heard of the "Foreign Agreement."

Q. Did you ever hear of anything called "the "Abstract"? A. No. That is a new one.

661

Q. The "Compendium of Rules"? A. Yes, I have heard of it.

Q. You have heard of "the Compendium of Rules"? A. Yes.

Q. Did you ever see the "Compendium of Rules"? A. Not that I remember of.

Q. Do you know what the "Compendium of Rules" was for—what its general purpose was?

A. I don't know anything about it except that the language is familiar, but I don't know a thing about it.

662

Q. Do you know Mr. R. S. Waddell? A. Yes, sir.

Q. How long have you known? A. Since about 1885, I guess, or 1886 or 1887.

Q. Did you ever have any business relations with him? A. Yes, sir.

Q. When did you first have any business relations with Mr. Waddell? A. Well, 1885, 1886 or 1887, along there.

Q. At any time subsequent to that did you have any relations with him? A. Yes.

Q. When? A. 1883 or 1882—I mean 1902 or 1903.

663

Q. What was the nature of the business relations you had with him in 1902 and 1903? A. Well, Mr. Waddell was general agent for the du Pont interests in Cincinnati, and had been for many years. I was agent under him in 1888, 1885, 1886 and 1887.

The Court: I understood you to say you were agent under him?

The Witness: Yes, sir.

A. (Continuing.) And then the agency was taken away. In fact, I understood at that time a great many small agencies of the larger concerns were closed and I suppose I saw Mr. Waddell, or his

representative occasionally buying powder until I got into the powder business, which was in 1902. Mr. Waddell was still in Cincinnati, in charge of the du Pont interests.

Q. In 1902, did you have any business relations with Mr. Waddell at Wilmington, Delaware? A. Yes, sir.

Q. State what those business relations were? A. When I got into the powder business I found that there were a great many of the ways in which the
665 business was being conducted, that did not agree with what I thought was up-to-date business methods; and, with my cousins, we outlined a policy for the company, and Mr. Waddell being one of the oldest employees, was offered and given the job of general sales agent, and brought to Wilmington for that purpose.

Q. How long did Mr. Waddell remain at Wilmington as general sales agent? A. About nine months, I imagine.

Q. What did he do then? A. Left us.

Q. So far as your interests were concerned? A.
666 He left us.

D. Did you have any—do you know what he did after he left you, I mean now in a general way, not specifically? A. Well, Mr. Waddell had been dissatisfied for some time——

Q. Just one moment, I am coming to that in a moment, but I would like to know whether after Mr. Waddell left your employ, if you know, whether he entered any other business? A. Well, he went into the powder business for himself, so I understand.

Q. Yes. Well, did you and he have any negotiations? A. Oh, yes, sir.

Q. Of any kind with reference to his going into the powder business? A. Yes.

Q. Were those negotiations in writing? A. Partly.

Q. I show you Government's Exhibits——

The Court: You are using the word "Government" once in a while, Mr. Abbott.

Mr. Abbott: Yes, this is a Government's Exhibit.

The Court: Very well, then.

668 Q. I show you Government's Exhibit No. 285, 286, 287, 288, 288-A, 288-B, 288-C, 288-D, 288-E, 288-F and 288-G, the same being found on pages 2105 to 2127 inclusive, in Volume 4 of Petitioner's Record of Exhibits in the case to which I called your attention some time ago and ask you to examine the same and state whether or not they are true and correct copies of the correspondence which you had with Mr. Waddell? (Handing book to witness.) A. I can answer that without looking at them, Mr. Abbott. I can say that——

Q. Will you look at them? A. I can say without looking at them. I can't say whether they are true copies or not, without comparing them. What was the starting number, please? 669

Q. 285.

By the Court:

Q. You say you can't tell, even after looking at them? A. No, I can't tell whether they are copies or not.

The Court: No use taking up the time then.

A. (Continuing.) Looks like correspondence there between Mr. Waddell and Mr. Hillis and myself, but I could not say whether an exact copy.

By Mr. Abbott:

Q. Will you glance over them hurriedly and state whether there is anything in this document that refreshes your memory as to the matter at all —not refreshes your memory, but in substance the same as the correspondence which you had with Mr. Waddell at that time? A. Well, I really could not tell that without looking at the original cor-
671 respondence. There is a letter here from Mr. Waddell putting in his resignation and there is another letter here with a suggestion for an agreement, and Mr. Waddell did put in his resignation, and there was a suggestion for some agreement; but whether these are the ones or not I could not say.

Q. Have you seen these documents recently? A. Yes.

Q. Did you make an examination of them recently? A. I think so.

Q. Do you know whether at the time when you examined them recently you were able to say
672 whether they were true and correct? A. Well, I think I gave you my answer the other day when I looked over them and stated that these looked like the correspondence between Mr. Waddell and myself.

Q. To the best of your knowledge, the document which I have just asked you to identify was a correct copy of the correspondence and other writings which passed between you and Mr. Waddell at that time? A. I could not say whether correct copies, Mr. Abbott; it looks like correspondence between us.

Q. I will ask you to state how the negotiations between you and Mr. Waddell at that time came to be entered upon? A. Well, Mr. Waddell had been

with the Powder Company many, many years; and I was told, and I think when I first got in the business I saw by his correspondence that he was dissatisfied; and in nearly every letter he criticized the way business was being managed before we got in; and I thought, "Well, now, Mr. Waddell is one of the oldest employees, the oldest man so far as I can learn of the company, and he ought to know the selling end of the line, and it is fair to him to offer him the position of general sales agent," and
674 we offered him that, and we brought him on here and offered him that position——

Q. Do you know whether——

Mr. Graham: Let him finish, please.

A. (Continuing.) He went in and for a month or six weeks I thought he was satisfied. After that he didn't seem to be paying a great deal of attention to his work; he was dissatisfied; and I don't know, six or eight months afterwards he said, "Well, my accounting can't be done by the account-
675 ing department, and I can't do purchasing by the purchasing department, and that is all nonsense and I am going to resign."

Q. During the time——

Mr. Graham: Wait a moment, he has not finished the answer to your question yet.

The Court: Are you through with your answer?

The Witness: No, sir—I beg your pardon, no, your Honor.

The Court: That is all right.

A. (Continuing.) We had a talk with Mr. Waddell and we said, "If you want to go into business, we will join you, we will help you; go in with you."

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Then there was suggestion backwards and forwards and he and our attorney, Mr. Hillis, were to get up an agreement as to how they would go into it and so forth; but these negotiations were never consummated.

Q. Have you finished? A. Yes.

Q. You did have some negotiations with him then for the purpose of entering into business with him? A. Yes, sir.

677 Q. From whom did the proposition for you to enter business with him first come? A. Well, my judgment is to-day, my memory to-day is from Mr. Waddell.

Q. He asked you, about joining him, did he, in the enterprise? A. That is my recollection, sir.

Q. You negotiated, then, with that end in view, did you? A. Well, I don't quite understand your question.

Q. Did you have negotiations for the purpose of seeing whether you could make some agreement to go into this powder business together? A. Yes,

678 sir.

Q. Were these negotiations in writing? A. Partly, and partly verbal, I think.

Q. Tell me what part was verbal, what part was not in writing? A. I don't remember off hand just what our conversation was, but I know we talked that over.

Q. Did you finally reach an agreement? A. No, sir.

Q. Can you state the reason you did not reach an agreement? A. No, sir.

Q. Is that a part of the writing, does the writing indicate why you did not reach an agreement? A. Part of what?

Q. The reason—is that part of the negotiations that were in writing, the reason why you did not

reach an agreement? A. That might be, I would have to look them up to see, sir.

Q. I will ask you to state whether or not the reason you did not finally come to a definite agreement with Mr. Waddell was that you desired to have a controlling interest in the corporation, in the new business, and he desired to have a controling interest, and you could not agree upon that point? A. Well, as I remember that now, Mr. Waddell wanted control, and for us to take his output and sell it or something of that kind. And I said to 680
Mr. Hillis, "I am perfectly willing that he should control, if in the agreement reached between us it is such an agreement that he will live up to what he says he will do."

Q. How did you want to have that agreement made effective? A. I don't remember.

Q. I will ask you to state whether there was not an arrangement between you, or a proposition that was discussed between you to the effect that you were to have 49 per cent., he was to have 49 per cent., and 2 per cent. of the stock of this company
was to be placed in a trust company over which 681
you had control, which was to be surrendered to you in case Mr. Waddell did not manage the business as you thought it ought to be managed? Is that correct? A. Well, it seems to me there were negotiations along those lines.

Q. Just a moment. A. (Interrupting.) But when you say "trust company over which we have control," if you leave out the "control," I would say yes.

Q. I don't understand the last answer. A. You said "trust company over which I had control," didn't you?

Q. I beg your pardon. A. You said "in a trust company over which I had control," didn't you?

Q. Yes, or over which you had control, which is the same, isn't it? A. Maybe I had some interest in it, the same as I have some interest in the Pennsylvania Railroad Company, in its stock.

Q. Well, you recall at this time whether that was a trust company which was known as the Wilmington Trust Company? A. Yes, sir, I recall it to be that.

Q. You had some interest in that company? A. A small interest.

683 Q. You and your associates—that is, the du Pont interests, had a considerable interest in the company, did they not? A. You mean the du Pont family?

Q. Yes. A. I think a good many of them are interested in it.

Q. Did they control, did they have the controlling interest, all of them? A. I think not.

Q. What salary, if you know, were you paying Mr. Waddell at the time when he entered your employ as general sales agent? A. I think ten thou-

684 sand or twelve thousand, but I could not be sure.

Q. You know whether there was any agreement between you for an increase of that salary as time should go on? A. There might have been, I don't remember it.

Q. What was the capitalization of the E. I. du Pont de Nemours Powder Company? A. At what time, sir?

Q. At the time when it was organized? A. Well, as I remember—it is the E. I. du Pont de Nemours Powder Company you mean?

Q. Yes. A. Authorized twenty-five common and twenty-five preferred.

Q. By "twenty-five" what do you mean? A. Twenty-five million shares of common and twenty-five million shares of the preferred was authorized.

Q. Was all of that stock issued? A. No, sir.

Q. What was done with it, how much of it was issued? A. Part of it was issued.

Q. How much was issued? A. I don't remember.

Q. How much of the preferred was issued? A. That I don't remember either. As I remember there was about sixteen million preferred and twenty-odd million common, but I am not sure.

Q. What was done with the sixteen million preferred, who was that issued to? A. Well, I don't 686
know as it was sixteen million that was issued at that time. But it was issued at that time to other companies in exchange for their stock.

Q. What other companies was it issued to? A. Well, the E. I. du Pont de Nemours, the Eastern Dynamite Company——

Q. That is the company you and Pierre du Pont organized? A. No, sir; well, yes, that is one of the companies, yes. Some to the Eastern Dynamite Company and to all the companies that came into the E. I. du Pont de Nemours Powder Company. 687

Q. What was the purpose of the issuance of that stock to those companies? A. In exchange for their stock.

Q. For stock? A. In exchange for their stock.

Q. In exchange for their stock? A. Yes—put your question again, Mr. Abbott, I don't know that I catch it.

Q. Read the question. (Question repeated by reporter.) A. What do you mean by that?

Q. You say you issued this stock, some to the E. I. du Pont de Nemours Company, some to the Eastern Dynamite Company, and other companies. I ask you now what was the purpose of the issuance of that stock to those companies, what did you get in exchange—the common stock of those companies—did you get their stock? A. Yes.

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Q. How much of the stock did you get of the E. I. du Pont de Nemours & Company of which you were the organizer? A. I don't remember; I can't give you any of those figures.

Q. You don't recall as to how much was issued to any one of those companies individually? A. No, sir.

Q. What was done with the balance of the preferred stock? A. Well, that that was not issued stayed in the treasury.

689 Q. Never was issued? A. No, sir.

Q. What was done with the common stock? A. That that was not issued was left alone.

Q. How much of the common stock was issued? A. I don't remember, as I say; but I do remember this and I can't state surely about it, but about twenty million, a little over twenty million.

Q. To whom was that issued? A. That was issued the same as the other was, to other companies for their stock.

Q. And when you issued, then, a block of stock—
690 of the preferred stock—in any one of these companies, it was accompanied by a block of the common stock? A. Yes, sir.

Q. In what ratio was the common stock issued with the preferred stock? A. I don't remember the ratio. Take the Eastern Dynamite Company or any other company, it will be all the same—one share of Eastern Dynamite Company came into E. I. du Pont de Nemours Powder Company and for it was issued a given amount of preferred and a certain amount of common.

Q. Did either of these companies to whom you issued this stock pay anything for it excepting the stock which they issued to you in return. A. By taking in the stock of any company, the Eastern Dynamite Company, for instance, the stockholders

and owners of the stock in the Eastern Dynamite Company turned their stock in and there was issued in place of that stock E. I. du Pont de Nemours Powder Company both preferred and common stock.

Q. Then instead of stock being issued to the company, it was issued to the stockholders of those companies, is that right? A. In exchange for the stock of that amount.

Q. It was issued to the stockholders? A. Yes, sir. 692

Q. And not to the company itself? A. No, it was issued for stock in the company to the stockholders of the company.

Q. You were a stockholder in the E. I. du Pont de Nemours & Company? A. Yes, sir.

Q. What did you obtain in exchange for any of your stock in that company from the Powder Company? (Objection sustained.)

Q. Will you kindly state how the stock of the E. I. du Pont de Nemours & Company, the company which you, Pierre and Alfred I. originally organized, was paid up? 693

Mr. McCarter: That we object to. That is covered by the same ruling, I think, which your Honor has already made.

The Court: I think that has been testified to; at least the subject has been testified to.

Mr. Abbott: I think I tried to bring that out from Mr. Pierre du Pont and there was objection made, very strenuous objection, and my reading of the record is that it was not left clear and I wanted to get that fact clearly stated if I could have it.

The Court: Read the question.

(Question repeated by the Reporter.)

Mr. Katzenbach: That was testified to by Mr. P. S. du Pont. He stated that was paid up by the purchase of the properties of the old E. I. du Pont de Nemours & Company, a corporation formed in 1899, the physical property was conveyed to this corporation.

The Court: I am not clear about it, but that is my impression that they issued this stock and the assets were taken over.

695 Mr. Abbott: I think that is what was intended, but I don't think that was clearly shown.

Mr. Graham: It was very clearly.

Mr. Abbott: Is that admitted on the other side?

Mr. Graham: If you want it admitted—it is clearly stated though.

Mr. Abbott: That it is clearly stated, you admit that?

Mr. Graham: We think it is clearly stated.

Mr. Abbott: Do you admit that that is the

696 fact?

Mr. Graham: What is the fact?

Mr. Abbott: That the stock of the E. I. du Pont de Nemours & Company was paid for only with the assets that were acquired from E. I. du Pont de Nemours Company, the original incorporation of the partnership interest.

Mr. Graham: It is perfectly clear on the record that that stock was issued for that physical property from that company with the exception of about one million dollars that was paid in in cash; and then there was twelve million of notes issued in payment.

The Court: That is my recollection.

Mr. Graham: That is all as clear as English can make it.

Mr. Abbott: If you say it is clear and will admit it all right.

Mr. Graham: That is the fact.

Mr. Abbott: We will then understand that much.

Q. Have you any knowledge, Mr. du Pont, of the number of powder companies, of the various powder companies throughout the United States 698 that were acquired by the E. I. du Pont de Nemours Powder Company at the time when you took over the partnership.

Mr. Graham: Wait a minute. He didn't take over the partnership interest, that leads to confusion.

Mr. Abbott: I mean the partnership interest taken over by the company which you spoke of.

Mr. Graham: I didn't say anything of the kind. 699

Mr. Abbott: See!

Mr. Graham: You say "see!" See what?

Mr. Abbott: We don't understand this situation alike.

Mr. Graham: The trouble is you don't try to understand.

The Court: What is the question?

Mr. Graham: The point is this sir, that my objection——

The Court: Let me hear the question first.

(Question repeated by the Reporter.)

The Court: Your objection is that it assumes facts not proven.

Mr. Graham: A little more than that. I

don't care about being proved, but the putting into this record such a multitude of ways of using names leads to confusion. The E. I. du Pont de Nemours Company did not take over the partnership; it took over the E. I. du Pont de Nemours & Company which was a corporation created in 1899.

The Court: And which did take over the partnership.

701 Mr. Graham: Which originally took over the partnership, and with which we have nothing to do and that goes to the objection that he is putting this personally, that "you took over."

Mr. Abbott: Then I understand the admission of counsel to go to this effect, that the stock of the company, which I will call Mr. T. C. du Pont's company for convenience, was paid up by the properties which it acquired from the old partnership interest.

702 Mr. Graham: No, not partnership interest, I never said that; you could never have misunderstood me so because the whole record you have proved previously the contrary. The partnership existed up to 1899.

Mr. Katzenbach: From 1802 to 1899 the partnership existed, and the partnership went out of existence in 1899, and the corporation was formed in 1899 which existed down to 1902.

Mr. Abbott: I know all that.

Mr. Katzenbach: Then T. C., Pierre S. and Alfred I. du Pont came upon the scene and bought up the corporation. Now I have said to you that the record shows that the corporation which they created took

over the assets of that corporation and issued its stock for it, and the twelve million of notes for it, and had one million of stock subscribed for and paid in in cash. Those are the facts.

Mr. Abbott: Counsel says he has taken over the assets of the company which took over the assets of the partnership.

Mr. Graham: Yes.

Mr. Abbott: So far as I can see that is the same thing that we have been inquiring about and that is the admission as I stated it. 704

The Court: Very well, if that is understood, you are satisfied.

Mr. Abbott: Now, I want to find out from this witness if he knows what those assets consisted of. That is the question I have asked him.

The Court: That is not exactly it. Now, you had better put it in better form if you desire it. What assets? 705

Mr. Abbott: I am asking him about the assets which his company acquired that were formerly in the E. I. du Pont de Nemours & Company which had formerly taken over the du Pont partnership interest.

The Court: Whether he knows what the assets were?

Mr. Abbott: That is all I am trying to find out.

The Court: All right.

A. Well, there were a good many powder mills, I don't know how many, a large number of stocks in other companies.

Q. Do you know where these powder companies were located? A. Some of them; yes, sir.

Q. Do you know what the common stock of the E. I. du Pont de Nemours Company represented so far as value was concerned? In other words did it stand for property, or did it stand for something else? A. Well, the stock of that company and $12,000,000 of notes was issued for all of the assets of E. I. du Pont de Nemours & Company.

Q. This is the common stock I am talking about? A. Yes; there is only one kind, sir.

Q. Of the Powder Company?

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Mr. Graham: No, you said E. I. du Pont de Nemours Company, if you read your question you will see. That leads to confusion.

A. It is pretty hard to get them separated.

Q. I am inquiring now about E. I. du Pont de Nemours Powder Company. What was the common stock of that company issued for? A. Now, Mr. Abbott, as I said, for one share of the stock of the Eastern Dynamite Company——

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The Court: He has testified to that.

A. (Interrupting). It is the third time, Your Honor.

Mr. Abbott: I am not asking, if Your Honor please, in general terms, but I wanted to get what he considered was the value of the stock so as to determine the questions I have to ask.

A. Did I misunderstand the question? Read it, please.

(Question repeated by the Reporter.)

A. (Continuing). The last question didn't put it that way. I thought you asked for value. Now,

as I said before, for one share of stock in the Eastern Dynamite Company, if you please, so many shares of preferred and so many shares of common. I will put it this way: For so many shares in the Eastern Dynamite Company, to the stockholder, we are issuing so many shares of preferred and so many shares of common in the E. I. du Pont de Nemours Powder Company, but I have forgotten in what ratio it was.

Q. Do you remember what the total valuation of the physical properties was which you acquired in 710
exchange for the stock of the powder company for the stocks of these other companies?

Objection overruled.

A. I don't know it in terms of physical value.

Q. You don't know anything about the physical value, or the value of the physical assets which were acquired in this manner? A. No.

Q. Was there any substantial increase in the value of the physical assets which you acquired be- 711
tween the time when you organized your company —for convenience I call it your company? A. Well, now, which one, the E. I. du Pont de Nemours & Company or the Powder Company?

Q. No, the E. I. du Pont de Nemours & Company—at the time when you organized the E. I. du Pont de Nemours Powder Company there was a substantial increase in the value of the physical assets during that period? A. In which company?

Q. (After argument). Mr. du Pont, was there any substantial increase in the value of the assets which you acquired—which the E. I. du Pont de Nemours Powder Company acquired—from the E. I. du Pont de Nemours & Company between the time when you organized the latter company and

the Powder Company? Is that clear? A. Not quite. I don't want to put the question, but is this what you want to say—I mean, maybe you can understand it better than I can.

Q. All right, you ask the question and I will see whether it is satisfactory. A. From the time we acquired the property of E. I. du Pont de Nemours & Company until the time the Powder Company was organized, was there any increase in the value of its assets?

713 Q. Yes, physical assets.

The Court: That is very clear, too, Mr. Abbott.

Q. Yes, all right; I thank the witness for making it clear. (Objection overruled.)

The Witness: Now, that is your question?

Q. Yes, I accept your question. A. If you mean was there a gain in the value of the assets between
714 the time we first bought out the old E. I. du Pont de Nemours & Company until the time the Powder Company was formed, there was.

Q. Well, now, state what that increase was. A. I don't know. Considerable increase, but how much I couldn't tell you.

Q. But you have said there was. You must have in mind what that increase consisted of? A. Our business grows each year; we build additional plants.

Q. What new plants were added in that time? A. I don't remember; it has been so long ago. I don't remember whether we built one or two or more.

Q. Well, did you acquire any new magazines

anywhere? A. I don't recall any, but I should say yes, because each year we grow larger.

Q. You have no knowledge of your own, then, of any specific cases of where the assets were different, have you? A. Oh, yes—you mean a single case? No, I know our total assets are larger.

Q. I am trying to get at now, where the assets were, so that we may form some opinion about it. A. Well, I would have to look that up; I couldn't tell whether it was a mill in the north or a mill in the south or a magazine or stocks—— 716

Q. What, in your judgment, was the difference in value of those additional physical assets? A. I couldn't tell you.

Q. Have you any idea? A. No.

Q. Was it $500,000? A. Well, I said I couldn't tell you.

Q. You cannot tell anything about it? A. It has been a good while ago and I would have to look into it very carefully.

Q. Now, what dividends did you pay the first year of the E. I. du Pont de Nemours Powder Company's existence? 717

Objection overruled.

A. I do not remember what dividends——

Q. What was it the second year? A. I do not remember.

Q. What was it the third year? A. I do not remember. A year ago——

Q. Wait a minute, I do not want "a year ago," please, at this time. What was it the fourth year? A. I do not remember at all.

Q. What was it the fifth year? A. I do not remember.

Q. Now that carries it down to 1908. Now, then,

can you tell what the total amount of dividends was that were paid by the E. I. du Pont de Nemours Powder Company during the years 1903 to 1908?

Objection overruled.

A. Not without looking it up.

Q. Do you know the firm of Harvey Fisk & Sons, 62 Cedar Street, New York? A. I know they are there and I know one of the members or maybe
719 more.

Q. Did they at any time ever represent you or the E. I. du Pont de Nemours Powder Company with reference to your stocks and bonds? A. It seems to me that Mr. Pierre du Pont had some arrangement with them about some of his——

Q. Now, I will ask you to look at a circular which purports to have been issued by that firm and refer you to the third page, which contains what purports to be a letter written by the E. I. du Pont de Nemours Powder Company and ask you to state whether you know anything about the contents of
720 that letter? This is with a view to assist you in answering the question which I have asked you. A. Do you want me to read it all?

Q. No, just examine it for your own information.

The Court: Refresh your memory on the question of dividends.

A. Well, I should say this was—was what the dividends were.

Q. I will ask you to state from that what the dividends were.

The Court: Not from that, from whether anything in that, recognized by him as au-

thority, refreshes his memory, his recollection.

Mr. McCarter: We object to that.

Mr. Graham: So that he can speak from his independent recollection.

A. Now, as I read here the five per cent. dividend upon preferred stock had been paid, now I was thinking, more from common stock, as I remember it that has been paid from the start and it is because the other dividends—— 722

Q. Are you able to state whether or not that statement as set forth there is a correct statement of the dividends paid by the E. I. du Pont de Nemours & Company? A. I am not.

Q. You do not know anything about that of your own knowledge? A. No.

Q. Do you know of your own knowledge about the dividends that have been paid by the du Pont Company at any time since its existence down to 1908? A. Well, I know it has paid dividends and I know it has paid 5 per cent. on its preferred, but I couldn't tell what it paid on the common in any year, until the last year or two.

Q. Do you know what the total amount of the dividends was that they paid between the years 1903 to 1908, inclusive? A. No, sir; I don't.

Q. Do you know what the common stock of that company was worth in the open market? (Objected to and objection overruled.) A. In 1903? I don't.

Q. Do you know what the common stock was worth in any of the subsequent years—without asking you in detail? A. Yes, I know that—well, I will say within—just before the Government's suit—a decision was rendered—it was about $200.

Q. About $200? A. Yes.

Q. Can you state what it was in 1904? A. No, sir.

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Q. In 1905? A. None of those years.

Q. None of those years. Now was the common stock of the Powder Company increased after the first issue? A. The common stock?

Q. Yes.

The Court: Of the Powder Company?

Q. Of the Powder Company? A. Well, what do you mean by the first issue?

725 Q. You have stated that it wasn't all issued at first? A. No.

Q. Was there any time during its existence when it was all issued? A. No, not that I know of.

Q. Was there any time when it was increased? A. As the various companies came in it was increased until—the Eastern Dynamite came in first, and another company came in afterwards, it was increased to take in the other company.

Q. By increase, do I understand that you increased your capital stock at any time, or that you simply increased your issued stock? A. Issued

726 more stock, I thought that was what you meant by "increase." It has never been increased that I know of.

Q. Did there ever come a time when all the stock of the Powder Company had been issued?

The Court: He said "no."

A. Well, now, wait; I ain't so sure about that; I don't know; I have an idea that there was a change, but I am not sure.

Q. I believe you stated you have been president of the company ever since its organization? A. Yes, sir.

Q. Will you examine this same circular to which

727

I called your attention a moment ago, under the head of "Capitalization," and state whether it refreshes your memory in any way concerning the amount of stock that was issued from time to time? A. I thought it was twenty-five—that is the only place. This says thirty was authorized, and twenty was outstanding. I thought it was twenty-five that was authorized and a little under that—a little under that—over twenty outstanding.

Q. Do you wish to change your testimony in that regard in any respect? A. This says thirty thou- 728
sand was authorized—this statement says there was thirty million authorized of common and twenty-five preferred. I thought it was twenty-five of each kind. This is twenty-eight outstanding.

Mr. Graham: Do you know whether that is correct or not? A. I don't.

Mr. Graham: Well, then, don't say anything about it. You are handed that paper to refresh your memory and to be able to state as your independent recollection what 729
the fact is. Now if you can do that, do it.

A. I started off by saying this paper states that—

The Court: You musn't do that, you see the paper can state for itself. He simply handed you a document and asked you whether it refreshes your recollection.

A. No, I must have been wrong if that document is right.

Q. Now, the other day when you were on the stand I was questioning you with regard to some negotiations which you had with Mr. R. S. Waddell, and I understood you to say that those negotiations

finally came to an end and you did not make any arrangement; now do you know what Mr. Waddell did after that, after he left you, do you know what he undertook to do? A. I understood he went into the powder business.

Q. Do you know whether or not after he left your employ the E. I. du Pont de Nemours Powder Company or any of its officers put detectives on his track? A. Well——

731 Q. Will you answer that yes or no, please? A. I understand there were.

Q. Those detectives from time to time made reports, did they, of their actions? A. I so understand .

Q. Do you know where those reports are? A. I don't.

Q. Did you see any of them yourself? A. Not that I remember of, I think they were addressed to me; I don't remember that I ever saw any of them.

Q. Now, what agency, if any, was employed to
732 send out those detectives? A. I think it was Pinkertons.

Q. And do you know where that agency was located? A. No, sir.

Cross examination by Mr. Graham:

Q. Mr. du Pont, will you look at these papers (handing witness papers) and say whether or not they are the reports of those detectives? A. I couldn' tell; I never seen them.

Q. They are addressed to you? A. They might be, but I never saw them.

Q. And covering the period of time from February 3d to February 26th? A. About three weeks.

Mr. McCarter: What year?

Q. Of 1903. What was the occasion of putting the detectives—— (Objection overruled.)

Q. Mr. du Pont, just answer the question, why was it done? A. Some of our people thought that Mr. Waddell——

Mr. Abbott: Now, if your Honor please

The Court: You see, you can tell why it was done, but cannot what led you up to it.

734

A. Why, it was done because our people felt that some of our employees were trying to be gotten away from us by Mr. Waddell, and after three weeks they found that it was not true they took them off.

Q. In order to see whether he was taking away any of your employees? A. Yes.

Q. When you found that wasn't true they were taken off. Mr. du Pont, you were ill for quite a long time, were you not? A. Yes; I haven't been doing much work for the Powder Company for about a little over four years.

735

Q. And during that time Mr. Pierre S. du Pont has been acting president? A. Acting president; yes.

Q. And you have been giving the matters but little attention? A. Very little indeed.

Q. Now, I want to just clear up two or three little matters and direct your attention back to the beginning of your connection with the powder business. As I understood you, that commenced in 1902? A. Yes, sir.

Q. That is right, is it? A. Yes.

Q. I understood you to say in answer to Mr. Abbott that in 1885, I think it was, you sold some powder to a Mr. Waddell? A. I had a little agency down in Kentucky under Mr. Waddell.

Q. Was that in connection with some coal operations there? A. Yes; I was in the coal mining business then; assistant superintendent of the coal mine.

Q. And you sold some powder—— A. In this little agency; yes.

Q. Had you prior to 1902 any connection whatsoever as manager or owner of the powder plant or any of its works? A. In no way whatever, except this agency, when I was quite a young man.

737 Q. Now, at the close of the session yesterday I was asking you about the agency that you had down in Kentucky, and the record seems to report me as asking you whether you did not sell some powder to Mr. Waddell. That is a mistake. You were selling powder in a small agency in connection with your coal operations? A. Yes, sir.

Q. Down there? A. Yes, sir.

Q. And that was in what year? A. 1886, 1887 and 1888 in there, about that time.

Q. About 1886 or 1887? A. Yes.

738 Q. And then we were following that up by showing that you had no connection with the powder business other than that until you made this purchase, is that correct? A. That is right.

Q. Now, this purchase was made in 1902? A. Yes.

Q. Now, what two gentlemen were associated with you in making that purchase? A. My cousins, Pierre and Alfred du Pont.

Q. Pierre and Alfred du Pont and yourself made the purchase? A. Yes, sir.

Q. Now, in the record in answer to Mr. Abbott's question I find you recorded as saying this: "He (referring to Eugene du Pont, your deceased cousin) was president of the E. I. du Pont de Nemours & Company when I took his place." Is

that correct or not? A. No; that is not quite correct, because he was president of E. I. du Pont de Nemours & Company, and that is the concern that we bought—the assets of the concern that we bought.

Q. Now, is it not the fact that he was dead before you began any negotiations? Is that not so? A. Yes, sir.

Q. And it was in consequence of his death, that the other owners were thinking of making a sale of their property? A. Yes, sir. 740

Q. Your attention was called to it; I think you stated to Mr. Abbott, by Mr. Alfred du Pont. A. Yes, sir.

Q. And then you and your other cousin joined him in making a purchase? A. That is right.

Q. Now, what you bought from the E. I. du Pont de Nemours & Company of 1899 was its assets, was it not? A. Yes, sir.

Q. You never were in any way connected with that corporation, were you? A. No, sir; that company was dissolved.

Q. Dissolved. And you and your two associates 741 organized a new E. I. du Pont de Nemours Company as it was? A. Yes.

Q. As called? A. Yes, sir; that is right.

Q. And the name subsequently being changed to the name of the old company which had been dissolved? A. Yes, sir.

Q. E. I. du Pont de Nemours & Company? A. After its dissolution, we put the "&" in our new name.

Q. Now, that was the new company which brought you first in touch with the powder business and with these du Pont interests in 1902? A. Yes, sir.

Q. Now, you have stated that you knew of an

association and attended two or three of its meetings? A. Yes, sir.

Q. Did you know of the existence of that association before your purchase of this property? A. No, sir.

Q. Didn't; it was one of the things that came as a burden on the property when you took it, was it not? A. Yes, sir.

Q. Now, you say you attended two or three of those meetings and ascertained what was, as far as
743 you could—noticed what was going on, and you were dissatisfied with it—I think your language in answer to Mr. Abbott was that it appeared like a farce, nobody did anything or lived up to anything. Now, what did you do in consequence of that; did you continue with them or cut loose from them? A. Well, it was broken up shortly after that; we paid no attention to it, as I say, I thought the thing was a farce as soon as I had been there three or four meetings.

Q. You abandoned your connection with it and
744 it was dissolved, was it not? A. Shortly after that I paid no attention whatever to it, because nobody else did.

Q. Yes, exactly; now, in answer to a question that was rather ambiguous and perhaps it seems so to me, you made this answer: "Oh, yes; when I came in the powder business I took the place of my cousin and there were quite a number of companies in which the du Ponts were interested. My cousin was Eugene du Pont." Now, that refers, does it not, to the time that you have just mentioned after your purchase of this property? A. Yes, sir.

Q. Now, the taking of the place of Eugene du Pont was merely filling some of the vacancies that existed in some of the subordinate companies? A. Yes, by reason of his death there were vacancies and I was elected to fill these.

Q. Those existed when you took the property over? A. Yes.

Q. And they were simply filed in the usual course of business? A. Yes.

Q. And were you elected to fill some of those places? A. Yes.

Q. You are recorded on the record as saying "We purchased that company." The context showing that the answer referred to the E. I. du Pont de Nemours & Company of 1899. I understand you to say now that you did not purchase the company, 746 but you purchased its assets? A. We purchased its assets, everything they had.

Q. You never bought the stock of that company? A. Oh, no; the company was dissolved.

Q. Yes; you were asked by Mr. Abbott were there any others associated with you three gentlemen in organizing the E. I. du Pont de Nemours Company. You answered, "Oh, yes; the old board and the old people had a majority on the board of directors." Now, in point of fact, was there anybody associated with you in organizing the E. I. du Pont de Nemours Company, the company that bought over the 747 old 1899 company—— A. No, sir.

Q. ——other than Pierre S. du Pont and Alfred I. du Pont? (Objection overruled.)

Q. Was anybody but those three associated with you in the organization of that company? A. Well, the company was formed by——

Q. Yes or no, first, then give your explanation, afterwards. Was there anybody? A. No.

Q. Well, now, what is the explanation? A. The papers were drawn by Mr. Hillis—he was among the other attorneys—in the formation of a company. Now, that company bought out the E. I. du Pont de Nemours & Company, bought its assets out. One of the terms or the conditions of the payments

was that the old people would have a majority on the board of directors until such time as we had made certain payments.

Q. Now, is that what you meant when you answered Mr. Abbott and said, "Oh, yes, the old board and the old people had a majority on the board of directors." A. Yes.

Q. They were to be on the board as a condition of the purchase until after certain payments were made so as to look after and protect their interests?
749 A. So they could control—stop anything that was going wrong.

Q. Then, I understand you to say distinctly they had no interest in organizing the new corporation whatever? A. No, sir.

Q. Then, in another part of the record—"when I got into the powder business in 1902 I found there was a good many organizations and agreements and companies of every kind and description. In fact, I think there were over a hundred that were controlled by du Pont, and this was one of those
750 organization." Now, in the context you were speaking immediately before that of this association. A. What was the question, Mr. Graham?

Q. I haven't the question here; I am just taking the context and the answer. I can turn to it if you want it, the previous questions were with relation to the association. Now, I ask you what you meant by that answer, whether it meant, and this was one of those organizations that had been taken over or whether you meant that it was an organization controlled by du Pont? (Objection overruled.)

A. You mean that Trade association——

Q. Yes. A. That wasn't controlled by anybody; that was one of the organizations that I found with this company.

Q. So that as a matter of fact the du Ponts did

not control that association, whatever it was? A. Oh, no; not that organization.

Q. Each member of it, if there were members spoke for himself? A. Yes.

Q. Now you stated in your answer to Mr. Abbott: "I found that before I had been to one or two meetings that nobody lived up to the prices they made; it was more of a farce than anything else; it seems to me there were some allotments made at those meetings." In other words, they went there and made agreements, but did not live up to 752 them? A. Yes.

Q. Then Mr. Abbott asked you this question: "Now what steps did you take if any, or did you think necessary to take in order to overcome that situation." "Well, the first steps that were taken by me and those associated with me were to put all the du Pont interests into one concern. In that way we formed the company under the laws of New Jersey first, the next steps were that that company took in the various concerns that were controlled by the du Pont interests, and the third 753 step was the organization of the New Jersey company which is the defendant." Now, at the organization of those companies did any part of those three steps that you have described have anything to do with the trade association of which you had been speaking? A. No; paid no attention to that whatever.

Q. In other words, you abandoned that, and this was the method that was taken to put your own properties in order in the new corporation? A. Yes.

Q. When you came into possession of these properties, as I understand it, and I am asking you if it is correct, among the assets that you took over there were about 60 per cent of them in stocks

in the various companies, is that correct? A. Well, something over fifty I should say about sixty.

Q. I don't care for the amount, but it was a large amount? A. Over fifty.

Q. Yes; and in most instances it represented a minority holding? A. Yes.

Q. Now, did you consider that a desirable or safe condition in which to hold your interests in those properties? A. No, sir; I didn't, and it was for that reason——

755 Q. What did you do to correct that situation? A. That was when I tried to get them all into one company.

Q. Now did the Laflin & Rand Company control stock in the same corporations that the du Pont had interests in? A. Yes; they were partners and had formed the most of these companies, had been formed by the du Pont and Laflin & Rand together, and they were partners in a great number of the companies, oh, I should say eighty or ninety per cent of them.

756 Q. That is to say, in the old days before you had any connection with this business, the Laflin & Rand interests and the du Pont interests acted as partners in exploiting new companies and in creating new corporations in different parts of the country? A. Yes.

Q. And each of them took stock in the new companies that were started; is that correct? A. Yes, sir.

Q. Now, as I understand, at this time there was a condition similar in the Laflin & Rand Company's management to that which existed in the du Pont management, the lack of a business head—and were they at that time endeavoring to sell their property. A. Well, I take it so, because we bought it.

Q. Well now then in buying that other interest,

it enabled you to protect your minority interests in these various companies, did it not? A. Yes, sir. By buying the L. & R. it gave us control of most of them.

Q. Before taking that step did you confer with counsel as to whether it was a legal and proper step to take? A. We did.

Q. And were advised that it was? A. Yes, sir.

Q. And you made this combination of these two interests in the old company, simply putting them together in the new company which you had formed, 758
the E. I. du Pont de Nemours & Company? A. Yes, sir.

Q. Now when the E. I. du Pont de Nemours Powder Company was formed, which is the defendant in this case—— A. Well now Mr. Graham, before that those other companies were not all taken into the E. I. du Pont de Nemours Powder Company.

Q. Yes; you are quite right; I will correct that. A. I thought you said Powder Company there; there are so many of these companies that you 759
have to be very careful.

Q. The Laflin & Rand were taken over by the Delaware Securities Company? A. That is right.

Q. And some interests in California were purchased by the California Investment Company? A. Yes, sir.

Q. Now then at that time these various interests were in existence when the deal was made between the E. I. du Pont de Nemours Powder Company and these interests by which they were all taken over to the Powder Company, to the big company? A. The present defendant.

Q. So that when the Powder Company came into being it obtained a large accession of assets beyond what your company obtained when they bought out the 1899 assets? A. Oh, yes.

Q. And that went into this new company, the Powder Company? A. Yes.

Q. Now at that time, as I understand it, after the Powder company was formed and after 1903 you had no connection whatever with any trade association or organization of any kind? A. None whatever.

Q. You were simply conducting the business, this consolidated business, that had come to you? A. Yes, sir.

761 Q. And I understood you to say that you knew nothing of the existence of these trade agreements at that time you made the purchase? A. Not until after the purchase.

Q. And then as soon as you could, you got rid of them and consolidated your properties for the protection of your interests and went on with your business, is that right? A. Yes, sir.

Q. When you looked over the field and found yourself in possession of these properties, what arrangements, if any did you make or what plan did

762 you adopt with reference to saving in freights? A. Well, when we got into the powder business it had been the companies that we purchased, or our predecessors had very little organization, they only had five or six clerks in their main office and didn't keep an up-to-date cost sheet. They left nearly all of their business to their agents through the country, devoting their time and ability to making good powder. In looking over the business situation I found there were a good many chances for saving. One that comes to my mind since you suggest freight is that powder was shipped from Hazardville, Connecticut, to San Francisco, Arkansas, in every portion of the United States. The Hazardville brands being only made there, the Hazard powder wherever it was sold was shipped

from Hazardville. We immediately adopted the policy of shipping from the nearest mill, which saved an enormous amount of money. The reason the saving is larger in this business than in any other is because powder is a dangerous freight and they charge very high rates, I think it is double first class.

Q. So you adopted the rule of delivering your powder from the mill nearest the point of consumption and discontinued this old system of shipping from Hazardville, Connecticut, probably out to the Pacific coast? A. Oh, we shipped a good deal to the Pacific coast. 764

Q. So that in point of fact the Hazard Company—— A. Well it made such a difference that they got out of the blasting powder business—I don't mean they got out of the blasting powder business, but they didn't make any blasting powder at that mill.

Q. How many offices did they maintain in the old days in Wilmington, about? A. The extravagance there was that many of these companies maintained offices in many cities, I think there was six in New York; two or three in Chicago; two or three in Cincinnati; two or three in St. Louis; two or three in San Francisco; and I at once took steps to do away with all of those offices and bring everything to one office at Wilmington. 765

Q. Having consolidated the assets into one company, you consolidated the machinery for selling the products? A. For selling.

Q. And did away with a whole lot of offices in New York and other points throughout the United States, is that correct? A. The Hazard Powder Company had large administrative offices in Chicago which I thought was an extravagance, and they were all consolidated and brought to Wilmington

and the selling agencies consolidated and that resulted in a very great saving.

Q. I want to ask you, Mr. du Pont, do you know whether or not there were other companies came into existence after the abandonment of this association in 1903 of powder companies? A. Well, it seems to me that soon after I got into the business in 1903 or 1904 or 1905, along there in the early days, there were a number of companies started.

767 Q. Besides the Buckeye? A. Yes, sir.

Q. And are the others all in business still? A. So far as I know they are all running.

Q. Now, you were shown some portions of the Luthy correspondence yesterday. I want to show you some more of it for identification. I show you a letter dated December 14, 1906, purporting to be a letter from Mr. Ferd Luthy to Mr. T. C. du Pont and ask you if you can identify that as part of this correspondence. (Handing paper to witness.) A. Well I could not say that certainly, but it looks as though it was a letter which came

768 from Mr. Luthy.

Q. You identify it as well as you identified the ones of Mr. Abbott, that he showed you yesterday? A. Just in the same way, in fact I cannot be sure I saw them.

Q. Here is a letter dated October 4, 1907, from Luthy to T. C. du Pont, do you make the same answer in reference to that? A. No, sir; this has my own handwriting on it, I must have seen this before.

Q. You identify it by your own initials? A. Yes; I referred it to Pierre and this all went into his office, and the enclosures with it, these circulars apparently.

Q. Were these papers included with the letter

when you received it (indicating)? A. I should say they were; I cannot swear they were absolutely the same papers, they look to me as if they were.

Q. You know of no change in the document since you received it? A. None whatever.

Q. Now I show you a letter dated October 15, 1907, from the same party addressed to you. (Handing paper to witness.) A. Well, this is in the same category as those of yesterday.

770 Q. Looks as if it was received by you? A. Looks as if it were; yes.

Q. Your best recollection is it is part of the same correspondence? A. It is.

Mr. Graham: I want to have these marked for identification.

(Same marked Defendant's Exhibits F, G and H for identification.)

Q. Now, when you spoke in your testimony with reference to Mr. Waddell's negotiations with you about the powder business, you spoke of two per 771 cent. that was to be put into the Trust Company. What was that—what was said that indicated what that was done for? A. Well, my experience had been that the du Ponts had put a great deal of money into one or two companies, all of the money into the concern, and were unable to control it. Mr. Waddell wanted control of this company that we were talking of forming, and I said, "Well, I have no objection to that, if we can make a contract between us." And the two per cent. was to be deposited as a guarantee on the part of Mr. Waddell, that he would carry out his part of the contract.

Q. In other words, the stock was to be divided on the basis of 49 per cent. to du Ponts and 49 per

cent.—or 51 per cent. to Waddell, 2 per cent. of which was to be deposited in the Trust Company as a guarantee of his carrying out the terms of the undertaking? A. I don't know—51 per cent.—that was 49 and 49 and the other 2 per cent. was to be deposited by Mr. Waddell so that by his consent it was to be a guarantee of carrying out his part of the contract.

Q. That is what I said, that is so? A. We were responsible.

773

Mr. Graham: That is all.

Redirect examination by Mr. Abbott:

Q. Referring to the last inquiry of Counsel concerning your arrangement with Mr. Waddell, and this 2 per cent. proposition, was that arrangement ever stated or indicated in writing? A. It may have been, I don't know; I think likely it was, but I don't know.

Q. Have you in any wise refreshed your memory
774 concerning the matter of negotiations which you had with Mr. Waddell at that time? A. No, sir.

Q. Since giving your testimony the other day? A. Not since then.

Q. I will ask you again in view of your statement concerning this matter, to examine exhibits 285 to 288-G and state whether or not the matters set forth in those exhibits contain the substance of the negotiations between yourself and Mr. Waddell, as near as you can recall; not whether those are true and correct copies as I asked you before, but whether the matter so set forth is substantially what transpired between you at that time (handing book to witness)? A. Before reading over this I might say that Mr. Waddell and I had several conversations

on the subject, and he and Mr. Hillis were to get up the papers.

Q. And you afterwards saw some of those papers, did you not?

Mr. Graham: Is the other question withdrawn?

Mr. Abbott: No, not at all; the question is interpolated and I wanted to bring down this question that the witness spoke of.

776

A. Just about the other, let me finish on the other part first so we will get straightened out on it.

Q. All right, proceed and answer the question. A. You started with that number of exhibits?

Q. It begins there (indicating) and runs on continuously. A. Well, I think that is 285. 285 is a letter written by Mr. Waddell to me.

Q. Now, will you look at the next one, please? (Witness examining book.) A. That next one looks as if it were part of a memorandum of correspondence or talk. And 287 is next (examining further). 777
I don't remember seeing 287 until the other day. 288——

Q. What is it about 288? A. I just called it off to you; I am reading it now.

Q. All right. A. That seems to cover part of the talk; I think that paper was drawn by Mr. Hillis. It says Hillis, note given by T. C. du Pont. 288-A—that talks about further organization of the company, and I recognize some features there. 288-B, a letter from Mr. Waddell to Mr. Hillis. Mr. Waddell says, "In presenting the proposition which you have now put in formal shape," I think that is part of the correspondence. 288-C—I think I recognize that as part of the negotiations, I mean the substance of it; I don't say it is a copy. 288-D—same

answer. That was the end, wasn't it, how far, 288-what?

Q. 288-G was the last, I think. A. Same answer to 288-E, same to 288-F and same to 288-G.

Mr. Abbott: Now, I will ask to have those documents marked for identification.

(The same marked Plaintiff's Exhibit 41 to 51, inclusive, for identification.)

779 Q. You answered Mr. Graham's inquiries with regard to a number of new companies which had come into existence not controlled by the du Pont Powder Company since it came into existence. Now, what companies were those? A. Why, the United States, the Senior——

Q. Who is the second one? A. Senior. Excelsior. Those are pretty bad names; and then the Egyptian. The Buckeye. I think the Jefferson.

Q. Jefferson? A. Yes, I think the Jefferson. A new mill at Thebes, that is the Miami Powder Company.

780 Q. That is a new mill? A. Yes, and I think the Equitable built one at Fort Smith, Arkansas. That is the United States, Senior, Burton, Excelsior, Egyptian and Jefferson. It may be two or those are one, I am not sure.

Q. Which two do you think are one? A. Burton Company, one of the others, the Jefferson may be the same as the Excelsior. There are six or seven there that I recall now.

Q. Where was the Senior Company located? A. Somewhere in Ohio, Southern Ohio.

Q. Do you know how large a plant that was? A. No, sir.

Q. You don't? A. No, sir.

Q. Where was the United States Powder Plant

located? A. I think it was in Ohio, or Western Pennsylvania; I am not sure.

Q. Do you know how large a plant it was? A. No.

Q. Did you at any time have any interest in the United States Powder plant? A. Not that I know of.

Q. I will ask you whether or not the United States Powder plant had a large interest in that was not owned and controlled by the Equitable Powder Company? A. I don't know, it might be. 782

Q. Is not the E. I. du Pont de Nemours Powder Company a 49 per cent stockholder in the Equitable Powder Company? A. Yes, sir.

Q. So that if it is true that the Senior Powder Company—that a large interest in that is held by the Equitable Powder Company, then you would have an indirect interest in that company, would you not? A. Well, I say they might have acquired an interest in it. I don't know about it.

Q. Now, then, the Egyptian Powder Company, where is that located? A. I think in Indiana or 783 Illinois.

Q. Do you know whether you had any interest in that plant? A. I think that the Equitable acquired interest in that, recently.

Q. So that you would have an interest in the Egyptian through your 49 per cent interest in the Equitable Company? A. That is the Powder Company?

Q. Powder. A. Very strong one.

Q. You have 49 per cent interest in the Equitable plant? A. Yes, sir.

Q. If the Egyptian is owned by the Equitable plant, you would have your interest in the Egyptian, would you not? A. We would today, I think, since you mention it, the Equitable had acquired

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an interest in the Egyptian, and in the Buckeye.

Q. Now, this Excelsior plant, where is that located? A. That is in the Middle West somewhere, near the Mississippi River, I think Missouri or Arkansas.

Q. Do you know how much of a plant that is? A. No, sir.

Q. The Jefferson plant, where is that located? A. In the Mississippi Valley.

785 Q. That is the same—any relation between that and the Excelsior? A. I say there may be some relationship between some of those companies, but I am not sure.

Q. The Burton plant, where is that located? A. In Ohio, I think;; it is in Ohio.

Q. Did you have any interest in that in any way? A. Not that I know of.

Q. Directly or indirectly? A. Not that I know of.

Q. Any arrangement with them to purchase their product? A. Not that I know of.

786 Q. Or take any of their output? A. There may be an arrangement, I don't know; I would not know it if there was.

Q. You would not? A. No.

Q. During this same period that you speak of, did not the du Pont Powder Company itself construct a large number of new mills? A. Well, two or three, I should say.

Q. Can you state where their new mills were constructed? A. Alabama, de Nemours, West Virginia, and up in Minnesota; they are now building one in Washington.

Q. In Washington? A. Yes, sir.

Q. Did you own an interest or did you construct a plant in the State of Washington at any time during 1903 to 1908? A. I think it was started in that

period some time, it might have been started the latter part of that period.

Q. Did it reach a point where you did any manufacturing during that period? A. I don't think so.

Q. Where is that plant located? A. Why, in Puget Sound.

Q. Did you build a plant in Colorado? A. I think there is one being built there now.

Q. I am speaking now during the period 1903 to 1908? A. I don't think so.

Q. Did you build a plant in Wisconsin, during 788
that period at Barksdale? A. I think we did.

Q. Did you build a plant in West Virginia near Bromwell? A. That is the de Nemours plant.

Q. I don't know the name, but is that the place? A. I said we built one in West Virginia and I think it is the deNemours plant; I don't know for sure.

Mr. Graham: When?

Mr. Abbott: Between 1900 and 1908, I understood that is the period you inquired about.

Mr. Graham: I didn't understand that his 789
attention was directed to it.

Q. That is the period I am asking you about, I understood that to be your answer to the question propounded by Mr. Graham. A. Yes, sir, that is right.

Q. You answered Mr. Graham's interrogatory with reference to the steps which you took about organizing these various companies and taking over these various assets that you had been previously advised by counsel that you could legally do that? A. Yes, sir.

Q. Do you know what the Court decided was the legal effect of the steps that you took at that time

to take over these organizations and the subsequent steps that you took in the organization of the E. I. du Pont de Nemours Powder Company? A. I knew that the Court decided that our organization was a monopoly.

Q. Well, but did you know what steps the Court took with reference to that matter, after it reached that decision?

791 Mr. Graham: I object to that as irrelevant, incompetent and immaterial.

The Court: I sustain your objection to that.

To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

792 Q. Now, you stated that you knew that the du Pont Company did not control the Association, the former Association that we called the Gunpowder Trade Association; that that was one reason why you desired to break away from it? A. No, sir.

Mr. Graham: He did not say that, you are repeating something—as if he had understood it, that is the vice in your question that I tried to correct in my examination.

Mr. Abbott: If there is any vice in that the witness may correct it. Will you state just what you did say.

(Question repeated.)

A. No, sir.

Mr. Graham: I object.

The Court: I think so, I think your objection is good.

Mr. Abbott: I have practically withdrawn the question and ask the witness what it was he did say about the matter.

Q. As I recall your testimony to Mr. Graham, you stated that the du Pont company did not control the Association or interests which were associated together as the Gunpowder Trade Association. 794 Am I correct about that? A. I told Mr. Graham that the du Pont concerns did not control the Trade association.

Q. Upon what did you base that statement—your own knowledge? A. Yes, sir.

Q. You did; now, I will ask you to state what companies or associations formed the Gunpowder Trade Association? A. I couldn't tell you.

Q. Well, then how can you state of your own knowledge whether they controlled that association or not, unless you know what companies were in that association? 795 A. Because I know we did not at that time.

Q. Why do you know you didn't? A. I don't know; I know it is daylight——

Q. Now, I will ask you as a matter of fact, if you know anything about the companies that were in that association? A. Only in a general way.

Q. Only in a general way. Now, I show you what purports to be a list of the companies that were in that association at the time you acquired the interests in 1902 and I will ask you to look at that and state whether or not you have any means of refreshing your memory as to what companies formed the association known as the Gunpowder Trade Association? A. I see in this list——

Mr. Graham: Wait a minute. The witness' attention is directed to the book, he is asked whether or not that refreshes his memory as to who formed the association. That is the question. Don't read what is in the book.

The Court: After reading that, has your recollection——

A. I see some companies here that I know were
797 in the association.

Q. Will you read the names of the companies that you know were in the association? A. I don't know positively that any of them were in there except——

The Court (after objection and argument): You understand, Mr. du Pont, you are not merely to give us what that record shows, but if that record contains anything that refreshes your recollection upon the subject, you may use that for that purpose.
798 If you can testify without looking at the book you may do so, but if your recollection of the names of the concerns that are represented there is not sufficiently distinct for you to give the names correctly, you may use that book for that purpose.

A. This is the way I look at it, I could call out, remember some of the concerns that were in there. I might forget some of them. If I saw the names in this book I might remember that they were members of the Association.

The Court: That is the purpose of handing you the book.

A. Your question was "how many?" wasn't it?

Q. No, I want the names? A. The E. I. du Pont de Nemours & Company, Sycamore Powder Mills, Hazard Powder Company, Laflin & Rand Powder Company, Schaghticoke, Oriental, American—no use in reading it all out in full?

(After argument.)

A. Boston, Miami, King, Ohio, Chattanooga, Equitable, I don't know that those others were.

Q. Will you state whether any of the companies whose names you have just given to us as the names 800 of companies which you recognized as having been members of that Association were afterwards acquired by you or the interests which you represented and afterwards came into and became a part of the E. I. du Pont de Nemours Powder Company? (Objection overruled.) A. What do you mean by "after"? I believe you used afterwards two or three times. Couldn't you ask two questions and make it clearer.

Q. Do you understand the question? If not, I will repeat it. 801

The Court: I take it that "afterwards" means after the Trade Association was abandoned.

A. Then I will put it this way: Some of those names that I read have since come into the Powder Association.

Q. Now I will ask you to read or to give a list of the names of those corporations whom you say afterwards came into the E. I. du Pont de Nemours Powder Company. Can you do it without referring to the book? A. Well, if the names were called off I could say yes or no.

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The Court: Would it help you to look at that same list?

The Witness: It would.

The Court: You may do that.

A. Now, that is that came in afterwards were not controlled by the du Ponts beforehand?

Q. I am not asking you that.

The Court: That is the question now.

803 Mr. Abbott: He is drawing his conclusions; I propose to follow that up a little further. That is a matter that is a subject of inquiry.

A. Well, your question now is how many of those names have I called off are now in the concern——

Q. No, how many of the names of those companies whose names you have called off—how many of those corporations were afterwards acquired or taken over by the Powder Company? A. You mean the stocks taken over or the assets or what? I don't
804 want to get wrong on that again.

Q. I don't know how to make that question more clear.

The Court: You can divide it if there is a division; if you took over the stocks you may indicate it, if you took over the assets you may indicate it.

A. Let me answer this way: The companies that I read off now are part of the E. I. du Pont de Nemours Powder Company.

Q. Well now, when you say "are," so as to avoid any trouble about that, do you mean that they did become a part of the assets of the E. I. du Pont de Nemours Powder Company at or about the time

when you organized that company? A. Well, some of them did and some of them afterwards.

Q. Well now, then, as you read them off, as you give those names, state when they became part of the assets of the Powder Company, please. A. The E. I. du Pont de Nemours & Company——

Mr. Graham: What is that?

A. The E. I. du Pont de Nemours & Company——

806

Mr. Graham: Well, that was your own company?

A. No, this is July, 1906; that was the company that was abandoned, wound up; that is the company we purchased the assets of.

Mr. Graham: I think this is leading to confusion, sir, and I don't want to interpose an objection, but it is the names that makes the difficulty, he is reading from a list there that shows a company, the 1899 company as I understand it—— 807

A. This 1896, this is——

Mr. Graham: 1896.

Mr. Abbott: The witness is not reading from any list.

Mr. Graham: I don't know what he is doing, if he isn't.

Mr. Abbott: The witness is using this in accordance with——

The Court: I asked him whether it would aid him in picking out the names of the corporations that this present company subsequently took over either in stocks or assets.

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He said it would aid him. Therefore, the book is placed in his hands.

A. The first thing I see here is July 1, 1896, the E. I. du Pont de Nemours & Company——

Mr. Graham: Well, you know that was prior to the incorporation of any company and that related to the old partnership which was dead in 1899, wasn't it?

809

A. Yes.

Mr. Graham: I am going to see, if possible, that there is no confusion.

The Court: I think so far it is all right; now, then, the point is, Mr. du Pont, whether that concern was also represented in this so-called trade association.

A. Well, there were so many companies there that I don't want to get any more confused than
810 the confusion is now. There were so many of the same name that it is very hard to keep that straight. This particular company that is named here is the one that was abandoned.

The Court: Then, that wouldn't be one of the companies. Keep this in mind, that wouldn't be one of the companies that were subsequently taken over by you after the Trade Association had been abandoned, because it had already been taken over.

Mr. Graham: It was dead. That is the old partnership that never was taken over by him or any of his associates.

A. It was the old partnership that was wound up. Sycamore Powder Mills, Hazard——

Mr. Graham: Well now, wait a minute, it is the undisputed evidence offered by the Plaintiff that the Hazard Powder Company was owned by the E. I. du Pont de Nemours Powder Company 20 years prior to this event. Now, why do they attempt to confuse the jury by showing that it was taken over afterwards? 812

The Court: It is this witness, if there is any confusion, it is this witness himself that is doing it. The witness has been merely asked to name the concerns that were represented during the existence of that association, the assets of which were subsequently acquired by the present defendant company. Keep that in mind and I think you will have no difficulty.

Mr. Graham: If you will remember the question, as his Honor says, Mr. du Pont, you will have no difficulty. This gentleman is asking you what companies were taken over out of those that you named by the E. I. du Pont de Nemours Powder Company after the dissolution of this Trade Association, but he hands you the list of 1896. I don't know what that intended to do. 813

A. Is that the question; I don't get the question that way; let us have it again.

Q. At what time——

Mr. Graham: After the end of the Trade Association——

Mr. Abbott: That is not the question—

814 the question was explained later on there and I asked him to specify the time when they were taken over.

The Court: Well, that is merely asking him to give additional information. I will first hear such part of that question as relates to those that were taken over after the dissolution. If you then want to fix the time, that will form the basis of another question.

815 A. Now, these are the concerns that came in after the Powder Association was broken up.

The Court: Yes, that will be one way of putting it.

A. The date of the association breaking up and the coming in of the other companies are so nearly alike that I don't think I could differentiate entirely; I can give you the list of the companies here.

Q. If you will permit me one moment perhaps I 816 can put the question to you in a little different form. I will ask you whether or not the Powder Company acquired any of the interests of what was known as the E. I. du Pont de Nemours & Company?

The Court: That is at the time, after 1903?

The Witness: No.

The Court: The time that he says the Trade Association was in existence?

The Witness: 1902.

The Court: All right.

817

Q. I will ask you whether or not the company, or other interests which you gave the name of a while ago as the "E. I. du Pont de Nemours & Company,"—as being a member of the Gunpowder Trade Association—was afterwards acquired by the E. I. du Pont de Nemours Powder Company? A. Well, is that your first question?

The Court: That is this question, yes.

818

A. Its assets were taken over by the Powder Company, reformed, and that company is part of the present E. I. du Pont de Nemours Powder Com pany.

Q. Now then, the next one, was the Sycamore Powder Mills of the same character? A. That has been owned by the du Pont for very very many years.

Mr. Graham: So that it wasn't taken over?

819

A. When we bought the company it was among their assets.

Q. But the Sycamore Powder Mills you gave as one of the companies that was a member of the Association, did you not? A. Yes, sir.

Q. Now then, the Hazard Powder Company? A. The du Ponts bought that, too, many, many years ago; 20 or 30 years ago; it was a member of the Association.

Q. Then the Laflin & Rand Powder Company? A. That has since come into the big company.

Q. When did that come into the big company? A. I could not give you the exact date.

Q. By "Since," what do you mean, since when? A. Since breaking up of this trade agreement.

Q. That is when it was acquired through one

of these corporations that you formed? A. Yes, through the Delaware Securities Company.

Q. Then the Schaghticoke? A. They came in afterwards, after the breaking up. That was taken into the big company, came through the Delaware Securities Company.

Q. Now, the Oriental Powder Mills? A. The greater portion of that, the control of that, belonged to the du Ponts for many years.

Q. The American Powder Mills? A. That is out
821 to-day.

Q. You never acquired any interest in that company? A. No, sir.

Q. The Austin Powder Company? A. That is the concern in which we own 33 per cent. of the stock.

Q. The Miami Powder Comapny? A. That is out.

Mr. Graham: By "out," you mean independent?

The Witness: And independent, out of the powder company.

822

Q. The Ohio Powder Company? A. That is in.

Q. The Marcellus Powder Company? A. That is in.

Q. The Lake Superior Powder Company. A. I don't know about that, sir.

Q. The Chattanooga Powder Company. A. That was taken over afterwards.

Q. The Equitable Powder Manufacturing Company. A. That has never been taken over; still a powder company; that is one in which we own 49 per cent.

Q. You own 49 per cent. of it? A. Yes.

Q. The Southern Powder Company. A. That I don't know of.

Q. The Phoenix Powder Manufacturing Company. A. That I am not sure; I think that we brought that in; I don't remember for sure about that.

Q. The California Powder Works. A. That I didn't know until two days ago was a member of the association.

Q. Did the Powder Company in any way have any interest in the California Powder Works? A. 42 per cent., about.

Q. Did the Powder Company have any interest 824
in the Phoenix Powder Manufacturing Company? A. I think it did.

Q. Do you know when it acquired that interest? A. No, sir.

Q. Was it on or about the time when you organized the Powder Company? A. I think the stock of the Phoenix Company, the Phoenix Powder Company was among the assets of the companies we purchased.

Q. Now referring to the questions propounded to you by Mr. Graham concerning the members of 825
the "old board," the term which he used, and the "old people," as being the majority of the Board of Directors in that compan yas I understood you on your direct examination you stated that the interests which were formerly represented by the partnership had a majority of the Board of your company when you organized it in 1902. A. Not when we organized.

Q. What? A. Not when it was organized.

Q. Did you give them a majority of that board at any time after you organized? A. Yes, sir.

Q. How long did they retain a majority of that board? A. I don't remember.

Q. Well now, was it until the 1903 company was organized, the Powder Company? A. I don't re-

826 *T. Coleman du Pont—Redirect*

member. I think they were the directors until they died except perhaps the Senator.

Q. After the organization of the Powder Company, were any of those same interests represented on the board of the Powder Company? A. What do you mean by the "same interests", Mr. Abbott?

Q. I mean the du Pont interests which were formerly represented by the du Pont partnership, and the interests which you took over, known as the du Pont interests? A. Were any of those directors in
827 the Powder Company?

Q. Yes. A. I think nearly all of them, many of them.

Q. You stated that when you organized the original E. I. du Pont de Nemours & Company—— A. Company.

Q. Well, company. This representation of the former du Pont interests did not immediately become members of the board, how long after you organized it did they become membes of the Board? A. Very soon afterwards.

828 Q. About how long? A. I don't know.

Q. Was it as much as 24 hours? A. Oh, yes.

Q. How long? A. I don't know.

Q. Was it as much as a week? A. I don't know.

Q. Wasn't it practically at the same time, Mr. du Pont? A. No, the company was organized for the purpose and did purchase the assets of this old 1899 company. One of the conditions of the purchase was that they were to have a majority of the board until such a time as we made such payments.

Q. And you put them on your board at the time under some agreement, is that correct? A. Yes, sir.

Q. And the agreement was the one which you have indicated, is that correct? A. Well, which one do you mean?

829

Q. This agreement which you entered into with them, that they should have a majority of the board for the purpose of controlling the affairs of the company until the obligation to them was settled? A. I don't know whether it was controlling, but it was so they could stop anything they did not like.

Q. Didn't you say they had a majority of the Board? A. Yes, sir.

Q. Would not that be for the purpose of getting the control of the Board? A. Not necessarily, they had——

830

Q. Then what purpose would it be for?

Mr. Graham: Finish your answer, you said "they had——"

A. (Continuing) So they could stop anything they thought was going wrong.

Q. How could they do that unless they had the power or control? A. They had the power, they had the majority, they did not have the power for that purpose. I was confused before. I did not differentiate between the stock of the company and the assets of the company.

831

Q. Now referring to this matter of these detectives, you stated yesterday that they were employed for a certain purpose? A. Yes.

Q. Were the instructions—were any instructions given to any of these detectives that you know of? A. I don't know, sir.

Q. Do you know who had charge of that matter? A. No.

Q. Who employed them? A. No.

Q. Do you know anything about whose control, under whose control they were? A. No, sir.

Q. Well, from whom did you get your information concerning the employement of these detec-

tives? A. Why, I don't think I heard about that until they told me the detectives were on, and I asked why they were on, and they told me, and I said let them go, and they let them go, and I found it out afterwards.

Q. You let them go? A. No.

Q. You say you gave orders to let them go? A. When I found it out, I think they were gone, because I asked about it and they said they were gone.

833 Q. You say some of your people thought that Mr. Waddell would endeavor to entice your employees away. Who were those people that thought this thing about these employees? A. I don't remember just who it was said that to me.

Q. Can you tell who the employees were that these people thought he was going to try to entice away? A. No, I can not.

Q. Do you know where these employees resided that they thought he was going to entice away? A. I said I didn't know who they were, so I could

834 not tell you where they resided.

Q. Do you know whether any of these emplayees resided in the State of Illinois? A. I do not know.

Q. Do you know whether any of them resided in the State of Ohio? A. I do not know.

Q. I ask you whether any of them resided in the State of Missouri? A. I don't know who they were.

Q. I know, but I am asking you now the question so as to cover that point.

Q. Mr. du Pont, in the transaction of the business of the E. I. du Pont de Nemours Powder Company at that time, was there any person in the employ of your company that had any authority whatsoever to employ detectives for the purpose of folfowing Mr. Waddell, and if so, who was that per-

son? A. Well, I suppose any vice-president or director would be able to do that.

Q. Now, I will ask you if Mr. William B. Dwinnell was not in charge of that department of your company that had the authority to employ these detectives, and if Mr. William B. Dwinnell did not employ those detectives? A. I do not know.

Q. Now, if he had employed those detectives, would it not have been his duty to have done so by some order in writing, some letter or other document? A. No. 836

Q. Would it have been oral? A. May have been.

Q. Might have been? Is it the custom in your office to permit matters of importance to be transacted orally without any written record of it whatever? A. Yes, sir.

Q. It is? A. Depends upon what you call "important."

Q. Would you consider a matter of this character, that it was a matter about which there would be any record or any written order made whatsoever? A. I think it is very likely.

837

Q. Then I will ask you how it happened that you have in your possession certain written reports from certain persons who were employed to follow Mr. Waddell—those reports you say were in writing—how does it happen you have those reports in writing, a part of the transaction, and have not any writing of the other part, and that is oral? A. It is entirely probable that whoever was told to do this work, were told to make reports in writing.

Q. Now, as a matter of fact, you did not know anything about how those detectives were employed, did you? A. No, sir.

Q. You don't know anything about what instructions were given to those detectives? A. No, sir.

Q. So that whatever you have said with regard

838 *T. Coleman du Pont—Recross*

to the purposes of the employment of those detectives was matter which you have formed your own conclusions about? A. No, sir.

Q. And not upon any records? A. No, sir; because I was told about it.

Mr. Graham: Let him finish.

The Court: He said, "no, sir; because he was told so."

Mr. Graham: Wait a moment, let him
839 finish; give him the key word, he did not finish whatever he was going to say.

A. (continuing) I was told that by somebody, and, as I said, I don't remember who that was.

Q. You don't know who it was told you? A. No, sir.

Q. You don't know whether an employee of your company? A. I don't know who it was.

Q. You don't know anything about who it was that told you? A. No.

840 Mr. Abbott: That is all.

Recross examination by Mr. Graham:

Q. Now, Mr. du Pont, Mr. Abbott has asked you about the "old people" as he calls it again, continuing in the board and you said a number of them had continued in the board. Isn't it a fact, that within a year two or three of the members of the Board died, Francis—— A. I think I said they continued until they died.

Q. What? A. I said they continued until they died.

Q. Alexis I.? A. Alexis I. and Francis G.

Q. And Charles I. du Pont died? A. Charles I. du Pont died.

Q. That was three out of how many? A. Out of how many du Ponts or out of whom?

Q. How many of them, what he is pleased to call the old interests of the company, died? A. Of the old interests, there was one, two, three, four, five people.

Q. That is what I want, the numbers; do not let us prolong it. A. Five.

Q. Three out of five died? A. Three out of five, counting Mr. Eugene du Pont, that is four.

Q. He was not in it? A. No. 842

Q. He died before you purchased the property? A. He died before the purchase.

Q. There is no doubt about it? A. No question whatever.

Q. Now, then, after these interests came into the possession, three out of the five died? A. Yes, sir.

Mr. Graham: That is all.

WILLIAM I. KOLLER, called and sworn as a witness for the plaintiff, testified as follows: 843

Direct examination by Mr. Abbott:

Q. Mr. Koller, where do you reside at the present time? A. Landsdown.

Q. Where is that? A. Delaware County, Pennsylvania.

Q. In Pennsylvania? A. Yes.

Q. How long have you resided there? A. Two years last August—this last August.

Q. Where did you reside previous to your moving to Landsdown? A. York, Pennsylvania.

Q. York, Pennsylvania? A. York, Pennsylvania.

Q. How long did you remain at York? A. Well,

I was there all my natural life except these two years.

Q. What business were you engaged in while you were at York, Pennsylvania? A. The last ten years I have been in the powder business.

Q. In your own personal name, or I mean in your own name? A. Rockdale Powder Company.

Q. Was that a corporation? A. A corporation.

Q. What official position did you sustain to that corporation? A. Secretary and treasurer.

845 Q. What kind of powder did you manufacture, or other explosives? A. Black blasting powder and dynamite.

Q. When was that plant constructed—when were the plants and mills of the Rockdale Powder Company constructed? A. We purchased the property in the year 1900; and we completed our black powder plant in 1901; and after that we started to erect our dynamite plant, and that was completed in the early part of 1902.

Q. What capacity did your plant have for the
846 manufacture of black blasting powder? A. About 350 to 400 kegs per day.

Q. What was the capacity for the manufacture of dynamite? A. About 10,000 pounds per day.

Q. Did you manufacture the entire capacity of your plant at any time during your operation of the plant? A. Yes.

Q. When was it that you manufactured your capacity? A. That was in 1902.

Q. Capacity in both regards, black blasting powder and dynamite? A. No, we had not brought the capacity of the dynamite plant up to that full capacity in 1902.

Q. When did you obtain full capacity in the manufacture of dynamite? A. Between 1903 and 1904.

Q. Now, how long did you continue to manufacture the black blasting powder at full capacity? A. Until about 1906.

Q. How long did you continue to manufacture dynamite at full capacity? A. About that same time.

Q. What, if anything, occurred about the time that you have indicated when you were not manufacturing at full capacity, to cause a change in that regard? What happened to cause you to cease to manufacture at full capacity? A. Well, the prices 848
became very much demoralized.

Q. What was the occasion for the demoralization of prices, if you know? A. Well, there was an apparent cut in prices.

Q. From whence did that cut come, if you know? A. The E. I. du Pont de Nemours Powder Company.

Q. Now, how long did that situation exist? A. For several years.

Q. By "several," how many years? A. Well, from, practically, the time we went in business up until 1906 and 1907.

849

Q. Now, did you undertake to do anything with a view to bringing about a cessation of this cut in prices? (Objected to and objection overruled.) A. Yes.

Q. Now state what you undertook to do in that regard? (Objected to and objection overruled.) A. In the year 1905, there was organized an association called the Association of Manufacturers of Powder and Dynamite in the United States; at one of our meetings there was a committee appointed, consisting of Mr. Blum of the Keystone Powder Company, and Mr. Macabee of the George R. Macabee Powder and Oil Company, and myself of the Rockdale Powder Company, to notify Mr. T. Coleman du Pont of the E. I. du Pont de Nemours

Powder Company. On account of Mr. du Pont's illness, we were unable to meet him. We did, however, meet in New York with Mr. Haskell and Mr. Patterson of the du Pont Powder Company.

Q. Do you know what offices each of those gentlemen or either of them held in the Powder Company—the du Pont Powder Company? A. As I recall at that time Mr. Haskell was one of the vice-presidents and Mr. Patterson the director of sales.

Q. Now did you have such a meeting? A. We
851 held such a meeting in New York.

Q. Now name who were present at that meeting as far as you can recall. A. Mr. Haskell, Mr. Patterson, Mr. Blum, Mr. Macabee and myself.

Q. Now tell what occurred at that meeting? A. Mr. Blum was appointed spokesman for your party, including Mr. Macabee and myself, and he asked Mr. Haskell—— (Objection overruled.)

Q. Proceed, Mr. Koller. A. As I said, Mr. Blum acted as spokesman for our party, and he asked Mr. Haskell with reference to the prices of black
852 blasting powder and dynamite.

Mr. Graham: Make him say what he said. That is stating a conclusion. What did he say?

Q. What was it he asked—— A. Sir?

The Court: What took place; don't characterize it or summarize it?

A. He asked Mr. Haskell whether the prices—whether he didn't think the prices of powder and dynamite were too low. Mr. Haskell stated that he thought the price of black blasting powder was about right, but dynamite was too high.

Q. What was the price of black blasting powder at that time? A. (Continuing.) It was at this moment, I think that I asked the question, "Well, how about the price on shot gun, smokeless and ordinance powder? Isn't it true that you have about a hundred per cent. profit in these commodities?" And Mr. Haskell said that he did not care to discuss that with me, or with us, that they were talking about powder and dynamite, and he further said that if it was a matter of trying to come to an agreement to fix prices, why the conference 854 would have to terminate. We told him that that was not our mission there, it wasn't to attempt to fix any prices or commit any unlawful acts, but we felt as independents that prices on powder and dynamite had gotten to that point where there was absolutely no profit in it and all that we desired was a fair living profit on the return of our investment. The prices had been slaughtered in many districts——

The Court: Just tell what took place 855 there.

The Witness: Sir—your Honor——

The Court: Just tell what took place there. If you said that there, you may state it here.

A. Well, we did say that prices were demoralized and that our sole mission over there was to ascertain whether we could not arrange with them some amicable agreement whereby we could all be in the field and make a moderate profit on our goods.

Q. Well, now, was anything else said at that time? A. I believe that was about all the——

Q. Well, now, what response, if any, was made to that statement by either of the gentlemen present?

856 *William I. Koller—Direct*

Q. Was anything further said at that conversation by Mr. Patterson or Mr. Haskel with reference to the subject of the conversation; did he accede to your request to arrange some basis of prices? (Objection sustained.)

Q. Now, was anything further said to you by Mr. Haskell or Mr. Patterson with reference to the statements which you have just related you made to those gentlemen? A. Mr. Haskell said that they would not agree to any fixing of prices.

857 Q. Did he give any reason for his unwillingness to agree? A. Well, he said that in the past they had had arrangements of that kind and they were not doing it any more, and he said that they would not consider any proposition of the kind.

Q. Can you remember any language that he used —can you remember the language specifically that he used to you in making that reply? A. Well, there was one remark that I recall—he said that in the past they had come as near wearing stripes as they cared to, and looking across the table he

858 nodded to Mr. Patterson. He said, "How about that, Charlie?" and Mr. Patterson nodded his head in assent.

Mr. Katzenbach: Well, we object to that and ask that that be stricken out, that part, "in assent."

The Court: Well, he may say how he nodded.

A. Nodded his head.

Q. You say he nodded it in assent.

Mr. Graham: No, no, he said he nodded his head.

The Court: You mean up and down.

859

Q. Well, did Mr. Haskell make use of any other expression or phrase to you, as near as you can recall the words of it, at that time, concerning the relations between the companies that you represented and the company which he represented? A. He simply said in a final conference that it was a survival of the fittest.

Q. Did the conversation end at that point?

Mr. Graham: He said it was final——

860

A. I cannot recall now.

Q. Did you have any further negotiations with Mr. Haskell or any other the representatives of the E. I. du Pont de Nemours Powder Company with reference to making an arrangement to stop the cutting in prices which had prevailed? A. Not to my knowledge.

Q. Was there any change in that regard subsequently—was there any change in prices after that conversation? A. No, none to better the condition of the independents.

861

Q. Were prices increased in any way? A. Not to my knowledge.

Q. Now, how long did the Rockdale Powder Company continue in business after that conversation? A. Until 1909.

Q. Did you continue to manufacture black blasting powder and dynamite? A. Yes.

Q. Did you manufacture to your full capacity? A. During what period?

Q. After the time of this conversation that you have related? A. Yes, as far as I can recall now.

Q. How long did you continue after that to manufacture at your full capacity? A. How long?

Q. Yes. A. After this meeting?

Q. Yes. In other words, so that you can see

862 *William I. Koller—Direct*

what I am trying to inquire about it, you had a capacity of three hundred and fifty to four hundred kegs per day of black blasting powder. (Objected to.)

Q. Let it be withdrawn. What was the output of black blasting powder in the year 1906? A. As I recall now, about 400 kegs per day.

Q. Now, what was your output of black blasting powder in 1907? A. About the same capacity.

Q. I am not asking about the capacity now; I am
863 asking about output? A. About the same output.

Q. What was the output in 1908? A. About half that amount.

Q. What was it in 1909? A. Well, practically—— (Objection sustained).

Q. Now, what was the final result so far as your operations were concerned after this conversation that you had with Mr. Haskell? A. In 1910 we finally discontinued business.

Q. Why did you discontinue business in 1910? (Objection overruled.) A. We were simply annihilated. (Motion to strike out answer sustained.)

864 Q. Did you cease the manufacture of powders in 1910? A. Yes, we ceased before then.

Q. Did you cease to manufacture dynamite at the time that you indicate that you went out of business? (Objection overruled.) A. It was about a year later, I think, that we ceased to manufacture dynamite.

Q. A year later from what period? A. From the period from which we ceased to manufacture black powder.

Q. Well, now, what year was it that you ceased to manufacture dynamite? A. I think it was 1909.

Q. And then you ceased to manufacture black blasting powder in 1908? A. As near as I recall.

Q. Then between 1908 and 1910, as I now under-

stand you, you were not operating at all? A. Not at all.

Q. Except in dynamite, which you continued to operate in for about a year? (Objection overruled.)

Q. Is that right? A. That is correct.

Q. Now, what was the price of black blasting powder at the time when you had this interview with Mr. Haskell and Mr. Patterson? (Objection overruled.) A. Ninety cents per keg.

Q. What was the price of dynamite at that time? 866

A. Ten and a half cents on a basis of forty per cent.

Q. Ten and a half cents per keg or per pound? A. Per pound.

Q. Now, do you know what percentage—I am asking you now of your own knowledge, best information—what percentage of black blasting powder was manufactured by the companies which you called independent companies at the time when you had this conversation with Mr. Haskell, in the United States? A. Before I answer that question, what was the question you asked me previously regarding the price of dynamite? 867

The Court: You said ten cents and a half cents per pound.

The Witness: Per hundred pounds.

Q. Per hundred pounds? Do you mean ten and one-half cents per pound in 100-pound lots, or ten and a half cents per hundred pounds?

Mr. Graham: He has answered.

Mr. Abbott: I didn't understand the answer and I want to find out about it.

The Court: I think it is permissable.

A. I want to get correct on that. Ten and a half

868 The Court: One hundred pounds?

The Witness: A hundred pounds. I mean ten and a half cents per pound.

Mr. Graham: That is what you said first.

A. Was that my first answer?

The Court: That is your first answer.

Q. Ten and a half cents a pound? A. Yes.

869 (Former question repeated by the Reporter as follows: "Q. Do you know what percentage—I am asking you now of your own knowledge, or best information—give what percentage of black blasting powder was manufactured by the companies which you call independent companies which you call independent companies, at the time when you had this conversation?") A. About 25 per cent.

Q. About 25 per cent. of the total output, is that correct? A. That is correct.

Q. Now, what, if any, other things were done by any of the interests which you have spoken of as

870 the interests represented by Mr. Haskell and Mr. Patterson to interfere with or affect your trade which caused you to bring about this conference? (Objection overruled.) A. Our goods were condemned. I recall one instance where our southern sales agent reported——

Mr. Graham: That is clearly objectionable. The question may have called for what these persons did.

The Court: I understand. So far, I will admit the witness's answer to his own knowledge.

Q. Very well. Now, you have said your goods were condemned. State of your own knowledge in what manner your goods were condemned. (Objection overruled.) A. From my own personal knowledge I can't give a direct answer to that question. I only have the reports from our various men who were selling our goods.

Q. Those men were your agents, were they? A. Yes, sir. (Motion to strike denied.)

Q. Now, Mr. Koller, can you say whether or not this price of 90 cents which you stated black blasting powder was sold for at the time when you had this meeting with Mr. Haskell was above or below cost price? 872

Mr. Katzenbach: That is objected to because it don't say above or below whose cost price.

The Court: I will allow it. You may examine him.

A. We considered that 90 cents was below our cost price. 873

Q. That was below the price that you could manufacture powder for? A. Yes.

Q. Did you yourself make any price to anyone at 90 cents? A. Yes, I think we sold some powder in the Pittsburgh District at 90 cents.

Q. Do you know who the other manufacturers of powder were that made this price of 90 cents?

Mr. Graham: Of your own knowledge.

Mr. Abbott: Mr. Graham, will you kindly let the witness answer my question? You can cross examine him on that.

Mr. Graham: I beg your pardon.

874 *William I. Koller—Cross*

The Court: The witness is cautioned that he must always speak of his own knowledge.

Mr. Graham: He didn't before and I only wanted him not to forget it this time.

A. No, I can't say that I did know positively who made the price of 90 cents

Q. Was there anything said at this conversation between you and Mr. Haskell as to whether the companies that he represented had anything to do with
875 that 90 cent price? (Objection overruled.) A. Mr. Haskell said at that meeting, he said he thought the price of powder was about right when me mentioned 90 cents.

Mr. Abbott: That is all.

Cross examination by Mr. Katzenbach:

Q. Mr. Koller, when did you become connected with the Rockdale Powder Company? A. In 1900.

Q. Had the company been in existence prior to
876 that date? A. No, sir.

Q. What business had you been engaged in prior to the year 1900? A. Mercantile and banking.

Q. Had you ever had any connection with the manufacture or sale of powder or high explosives prior to the year 1900? A. None whatever.

Q. Then your business prior to that time had been mercantile and banking, had it not? A. Yes, sir.

Q. Did you devote your entire time to the office of secretary and treasurer of the Rockdale Powder Company? A. Only part of my time up until 1904.

Q. Where was the plant of the Rockdale Powder Company located? A. Hoffmanville, Maryland.

Q. Where was the dynamite plant located? A. Both plants were located at Hoffmanville.

Q. Did you reside there at Hoffmanville during the years 1900, 1901, 1902, 1903 and 1904? A. No, I resided at York.

Q. At York? A. I resided there all the time.

Q. During the entire time? A. During the entire time.

Q. Did you have any active experience with the manufacture of either dynamite or black blasting powder during your connection with the Rockdale Powder Company, or were you solely in the office of the company? A. Well, up until a certain time 878
I simply had charge of the duties of secretary and treasurer. Then later I was delegated other powers, such as purchasing, selling and making an occasional visit to the plant.

Q. But you were not actively engaged in the manufacture of dynamite, that is in the manufacture itself of dynamite? A. Not in the manufacturing end of it.

Q. Or in the manufacturing end of black blasting powder? A. No.

Q. Now, you said the capacity of this mill was, 879
so far as black blasting powder was concerned, was between 350 and 400 kegs a day? A. That is correct.

Q. Was that the capacity which it started out with? A. No, it was very small when we started.

Q. And you worked up to that capacity? A. Worked up to that capacity.

Q. Now, what was your capacity for dynamite per day when you started in business? A. I should say that was about the same all the way through our entire existence from the time we started to make dynamite.

Q. Then your company in the year 1900 had the same capacity that it did in the year 1906 in dynamite? A. No; we were not making dynamite in 1900.

880 *William I. Koller—Cross*

Q. When did you commence the making of dynamite? A. About 1902.

Q. And what was your capacity per day in 1902? A. About 10,000 pounds per day.

Q. You said 10,000 pounds per day? A. 10,000 pounds per day.

Q. What economy did you have in your manufacturing department of dynamite with reference to the recovery of acids, any at all? A. None, we did not recover our acids.

881 Q. Then you did not manufacture dynamite under the most approved methods, did you, in your plant? (Objection overruled.)

A. That is rather a difficult question to answer. Different plants have had different methods of making dynamite.

The Court: I assume when you used the word "approved" you meant "economic"?

Q. Most economic method? A. At that time we thought that was the most economic method.

882 Q. You know now that it was not, don't you? A. Well, possibly that is true at this day.

Q. Did you pack your dynamite by hand? A. Yes, sir.

Q. Did you consider that as the most approved method of packing? A. Well, we thought so at the time.

Q. But you know differently now, don't you? A. Perhaps a machine is the more economical.

Q. Now, when did you enter this association that you have referred to? A. 1905.

Q. In 1905. And was that association composed of manufacturers of black blasting powder and higher explosives? A. Both, yes.

Q. Who were the members of that association?

A. I can't give you the names of all of them offhand, now.

Q. Well, give me the names of those that you recall? A. Well, there is the Keystone Powder Company, Emporium; George R. Macabee Powder and Oil Company, Pittsburgh; the Burton Powder Company of Pittsburgh; the Senior Powder Company of Cincinnati; the Ajax Dynamite Company —I think their address is Bay City, Michigan; the Seberite Powder Manufacturing Company of Washington; the Emporium Powder Company of Em- 884
porium, Pennsylvania; the D. C. Rand Powder Company—I think their address was Fairchance, West Virginia. There were possibly three or four others that I don't recall just at the moment.

Q. The Equitable Powder Company? A. I think they were—Mr. Gorham, president, was he president of the company, is that the one you refer to?

Q. I am asking you.

The Court: He is trying to identify it.

Q. The Excelsior Powder Company? A. The 885
Excelsior Powder Company.

Q. Mr. Olin of the Equitable Powder Company? A. I think not.

Q. The Buckeye Powder Company? A. No.

Q. They were not a member? A. No.

Q. You are positive of that? A. I am positive of that statement; yes, sir.

Q. Can you recall any others at this time than those that you have given? A. There is one in Joplin, Missouri, Mr. Rudd.

Q. Mr. Rudd? A. Mr. Rudd was connected with it.

Q. Independent Powder Company? A. Independent, and there is one——

886 *William I. Koller—Cross*

Q. They manufactured dynamite also, didn't they? A. Yes, I think they manufactured dynamite exclusively and there was another at Terre Haute.

Q. The Indiana Powder Company? A. That is not the name.

Q. Then there were about fifteen or twenty in this association and more than that? A. As near as I can recall, from fifteen to twenty.

Q. Twenty. Now, then, when did you form this association? A. In 1905.

887 Q. And what was the purpose of it—the purpose of it was that you had been competing among one another for trade and had demoralized prices, hadn't you? A. No; that was not the purpose of this association. The purpose was simply to formulate some plans whereby we would be of some assistance to one another in the case of accident, in the matter of railroad tariffs; and there were many things that we had under consideration for the benefit of each individual member. For instance, at the time of the explosion in our own case

888 we had only one plant, and then other plants in the different parts of the country could come to our assistance in a time of stress when we wanted to furnish a customer with powder that we were unable to furnish him with on account of an accident. Now those were some of the reasons why we formed this association—for our own mutual protection. The idea of regulating prices or anything of that sort was not considered at all at any time, it was simply to work out our existence and try to do business on a profitable basis.

Q. Then you never considered the matter of prices then, at any meeting of the association? A. We never considered the fixing of prices at any meeting.

Q. Did you ever discuss price? A. Oh, yes, prices were discussed.

Q. Now, then, was it the result of the discussion of prices that you had this interview that you have testified to with Mr. Haskell? A. Yes, sir.

Q. And the subject of the interview was one of price, was it not? A. It was.

Q. Now, then, when did the Rockdale Company first sell dynamite? A. In the year 1902.

Q. And what price did you get for dynamite? A. Twelve cents.

Q. In order to get customers, did you lower the price of your product in order to get them? A. Not 890
in every instance.

Q. But in many instances you did in order to get a customer, offer that customer a better price than he was paying for dynamite, did you not? A. We simply sold him our goods on their merit and tried to maintain what we considered the market price in the localities in which we were able to market our goods, and when he came to us and said that the du Ponts had offered him a lower price——

A. (Interrupting). Yes, with this explanation—

Q. Now, then, at this interview which you had 891
with Mr. Haskell you talked with him in reference to the price, did you not, of black blasting powder and dynamite? A. Yes, sir.

Q. And the result of that interview was that Mr. Haskell would have nothing to do with price or any regulation of prices? A. He declined to.

Q. Or stifling of competition. A. He declined to enter into any arrangement whereby prices of dynamite would be fixed.

Q. And your purpose there with the other members of the committee was to get the price of black blasting powder and dynamite fixed? A. Not at all.

Q. You stated that in order to get the prices

892 *William I. Koller—Cross*

fixed—— A. We were not there for the purpose of fixing prices or doing anything that was unlawful.

Q. I am not saying that you were, but didn't you go there for the purpose of fixing a price? A. No, sir; we simply went there with the sole purpose in view of trying to find out whether there was not some bottom to the ruinous prices. Powder at that time was being sold, as I have testified, at 90 cents, which we considered at a loss.

893 Q. You had sold it at 90 cents? A. Yes, we had sold some powder at 90 cents in the competitive districts.

Q. Who were your competitors in that district? A. Principally the E. I. du Pont de Nemours Powder Company.

Q. Well, state any special instance where the E. I. du Pont de Nemours Powder Company cut the price of the Rockdale Powder Company on powder. A. If my recollection serves me correctly, George W. Lewis & Company of Pittsburgh.

894 Q. Do you recall testifying in the suit of the United States of America against E. I. du Pont de Nemours & Company and others? A. Yes, sir.

Q. Do you recall your answer to this question in that testimony: "Can you——"

Mr. Abbott: If your Honor please, I simply want to inquire whether counsel is now reading the answers in another case, if so, if your Honor will permit that, and allows him to do that, we may want to read some answers, too.

The Court: He is under cross examination. What is your purpose, Mr. Katzenbach, perhaps that will clarify the situation?

Mr. Katzenbach: To contradict the witness.

The Court: Very well, I will allow it.

Q. Do you recall being asked this question: "Can you name a specific instance in which the du Pont companies ever cut a price of yours?" And your reply was: "A. I don't recall any specific instance"? A. I recall that answer at that time; yes.

Q. You said that the du Pont Powder Company had cut a price to George W. Lewis of Pittsburgh? A. That was the information I had.

Q. Did you get that information from—by someone else? A. No, I got that from Mr. Lewis. 896

Q. At what price had you been selling Mr. Lewis? A. As I recall we sold him at a dollar five scaled down to ninety.

Q. Dollar five scaled down to ninety? A. Yes; I can't name the positive amount that was sold at these figures.

Q. Now, do you say that the du Pont Company ever sold to George W. Lewis at less than 90 cents? A. I didn't say that.

Q. You didn't say that? A. I didn't say that they sold at less than 90 cents.

Q. Did you say they sold at 90 cents? A. That 897 is the information that I have.

Q. Then when you say it cut the price, you don't mean a cut, you mean meeting the price, don't you? A. Well, that was a cut price from our original price that we had been selling to Mr. Lewis, as I told you, at a dollar five.

Q. You say you have sold Mr. Lewis at 90 cents, is that right? A. Yes, we sold him finally as low as 90 cents.

Q. Started at a dollar five? A. Yes, at a dollar five and finally we dropped out.

Q. And you had various members in that association competing, did you not, in that district for Mr. Lewis' trade with you? A. Not to my knowledge.

Q. Did not the Burton Powder Company compete there with you? A. They may have been there, but not to my knowledge; I knew nothing about their competing.

Q. You didn't know anything about their having made any prices to Mr. Lewis? A. I don't.

Q. Or of any other powder company? A. I don't.

Q. Then your price went to Mr. Lewis from a dollar five to ninety cents by reason of competition, did it? A. That is my recollection of the incident.

899 Q. But you don't say that the du Pont Powder Company sold below 90 cents? A. I can't answer that question; I was not informed.

Q. Now, you were asked in the suit of the United States, petitioner, against the E. I. du Pont de Nemours Powder Company to give a list of customers which you said were taken away from you, and didn't you refuse at that time to give the prices at which you had sold to those people? A. I don't think I refused to give the prices.

Q. Then you declined to give them? A. I don't

900 recall that being my testimony, that I declined to give the prices.

Q. Were not you asked by Mr. Scarlet, you recall him, do you not? A. Yes, sir.

Q. To furnish a list of certain customers of yours, you recall that, don't you? A. Yes, I recall that.

Q. Then when that list was furnished, did you furnish the prices at which you had sold to those customers? A. I think so.

Q. That is your recollection, that you did furnish the prices? A. That is my recollection, yes. That was at the trial in Philadelphia you refer to. to the Government trial in Philadelphia?

Q. I refer to the Government case. A. Yes.

Q. You say that you gave to Mr. Scarlet a list

901

of prices—will you say that? A. That is my recollection, yes.

Q. Well, will you say that you did or didn't after he had requested it? A. I think I did, to the best of my knowledge at the moment.

Q. That is your best recollection then of what you did? A. Yes, sir.

Mr. Katzenbach: That is all.

Redirect examination by Mr. Abbott:

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Q. In reference to this last inquiry—these latter inquiries of counsel concerning what you testified to in the Government case, I will ask you to state as near as you can recall whether the following did not occur at that time: "Q. Can you name a specific instance in which the du Pont Companies ever cut a price of yours?" Did you answer to that——

Mr. McCarter: I don't think that is proper, your Honor.

903

The Court: That is on the same subject so far.

Mr. Abbott: Counsel read part of this, if your Honor please.

The Court: You are entitled to have it all.

Q. "A. I don't recall any specific instance." Counsel read that far. "It was a general case of them meeting prices for the simple reason at that time were about the only manufacturers of powder and dynamite, that is that made both, that manufactured both black powder and dynamite, and we felt the cuts more than anybody else, perhaps." Do you remember that? A. That was my testimony.

Q. Were not you interrogated further: "And you

can't remember a specific instance in which they ever cut your price so that we could look it up and find out whether it is so or not?"

Mr. Katzenbach: Where are you reading from, Mr. Abbott?

Mr. Abbott: I am reading from page 807.

Q. And you answered, "I can't at this moment." And you were asked, "Do your records show?" 905 And you answered, "There are a number of specific instances." And you were asked, "Do your records show"? And you answered, "Perhaps they would." And you were asked, "Do you know whether they would or not?" And you answered, "Whether they would show that the du Pont Company cut our prices?" And you were asked, "Yes." And you answered, "I don't know whether they would; I could not state that." Do you recall that? A. That is my testimony as near as I recall, yes.

Q. Now, have you in any manner since the time when you gave that testimony endeavored to re- 906 fresh your memory or recollection upon that subject? A. I have not.

Q. How did you obtain the name of the customer which you gave a moment ago as one specific instance? A. You refer to Mr. Lewis?

Q. Yes. A. It just came to my mind, for the simple reason that at one time Mr. Lewis was a very close friend, and he handled a great deal of our powder in that district, as long as he could on a profitable basis, for us.

Q. Mr. Katzenbach asked you some questions in regard to this association which you were a member of. Did that association have any written arrangement, in any way, a constitution or by-laws? A. Yes, it had a constitution and by-laws.

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Q. I show you a small pamphlet and ask you to examine the same and state whether this is the document that you refer to? (Handing paper to witness.) A. That is the document.

Paper offered in evidence; offer objected to and objection sustained. To which ruling plaintiff's counsel excepted and said exception was allowed.

908

Q. Are you able to remember definitely any further names of members of this association than you gave to Mr. Katzenbach while he was examining you, without refreshing your recollection in some manner? A. At the moment I can't ; but if my memory serves me correctly, the names of the members of the association at that time were printed in the back of that document which you showed me a moment ago.

Q. I show you, then, the document that you refer to and ask you to refresh your memory from that and give a correct list of the names of the members of that association.

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The Court: The additional ones, that is all you want, isn't it?

Q. Yes, if there are any additional ones there. A. Did I give you the Cressona Powder Company, the Eldredge Powder Company, the Nitro Powder Company, the Shamokin Powder Company, the Pennsylvania Powder Company? I believe that is the list as near as I recall in addition to what I have named before.

Q. Now, that gives a complete list of all the members of the association at any time during its existence, so far as you know? A. No, there were other members admitted after that.

910 *William I. Koller—Recross*

Q. Who were they? A. Oh, I don't recall their names at the moment.

Q. Do you remember when they were admitted? A. Well, they came in in the following year, some of them.

Q. You can't recall any further names in that connection? A. I can't recall at the moment, Mr. Abbott.

Mr. Abbott: That is all.

911 *Recross examination by Mr. Katzenbach:*

Q. Mr. Koller, what you have said with reference to Mr. George W. Lewis of Pittsburgh was what Mr. Lewis told you, was it not? A. Yes, sir.

Q. And everything that you have said was what Mr. Lewis told you? A. Yes, sir. (Motion to strike out, denied.)

Q. When did you first have this conversation with Mr. Lewis? A. During a visit of mine to him at Pittsburgh.

912 Q. Did he ever tell you that he had testified in the case of the United States of America, petitioner, against E. I. du Pont de Nemours & Company in this manner: "Q. During the years 1902——" (Objection sustained.)

Q. Did Mr. Lewis tell you that in the case of the United States of America, petitioner, against E. I. du Pont de Nemours & Company and others that he had testified as follows——

The Court: No, you can't do that, you may ask him whether he told this witness that he had testified in that case.

Mr. Katzenbach: That he had testified.

Q. Well, then, just answer that question. A. Mr.

Lewis never made any remark to me concerning his testimony in this case.

JOHN G. MILLER, a witness called and sworn for the plaintiff, testified as follows:

Direct examination by Mr. Abbott:

He resides at Chicago at the present time; has 914
resided there since 1889, with an interruption of a year or a year and a half; resided in St. Louis previous to going to Chicago; lived in New York from about April 1, 1899, to July 1, 1900; was general sales agent of the Laflin & Rand Powder Company from September 1, 1895, to December 31, 1903; was appointed to that position by J. A. Haskell, its president; after he left the employ of the Laflin & Rand Powder Company, he went into the brokerage business in Chicago, and has conducted the same ever since under his own name; he made arrangements to sell the powder of the Buckeye 915
Powder Company on a net price basis, in 1904; became a stockholder in the Buckeye Powder Company, for 100 shares of the par value of $50 each.

Q. After you became a representative of the Buckeye Powder Company, what, if any, steps did you take to do business for that company? A. I covered the territory for the Buckeye Powder Company, that is, travelled over it the same as I had done for the Laflin & Rand Powder Company. Through Illinois, Iowa, Minnesotta, Kansas and Missouri.

Q. Did you have any special field allotted to you in which you were to operate exclusively? A. No, sir, not any special district that I know of.

Q. What did you do with reference—how did you go about trying to get the trade for your company —to sell powder? A. Called on customer, asked the customer, solicited his business and tried to find out about the prices he was paying, the same as selling any other goods or in selling Laflin & Rand's goods, and have to rely upon his honesty for the information.

Q. Did you receive any instructions at that time or advices from the Buckeye Powder Company as
917 to prices that you were to charge for Buckeye powder? A. I applied to the Peoria office for prices from time to time and in some instances I would have to practically get the authority to meet competition. I had to use a corkscrew—took two or three letters to get authority.

Q. By that what did you mean, by a corkscrew, will you explain that term? A. Well, Mr. Waddell was reluctant to reduce prices, because he stated he was in business——

A. In some instances I would have to write two
918 or three times.

Q. Did you find in your efforts to secure business any particular fact which stood in your way of securing business, any particular circumstances? A. A matter of price, right along.

Q. Do you know anything about a system that was carried on of making contracts? A. Yes, sir.

Q. Do you know of your own knowledge that there were contracts in existence at the time when you were trying to transact business with the Buckeye Powder Company? A. Yes, sir. I called on customer after customer and I was informed that he couldn't do business with me because he had a contract——

Q. Did you find any other fact or circumstance in the way to prevent you from securing business

from customers whom you approached—consumers of black blasting powder? A. Well, the preference or demands of the miners cut quite a figure at times.

Q. Well now then, state in your own way what you learned with reference to any influence of that character which prevented you from securing business from consumers of black blasting powder? (Objection overruled.)

A. Complaints were made by our customers that the Buckeye powder was not satisfactory to some 920
miners. They wanted a certain brand, and demand had been made upon them for a certain brand.

Q. By whom was that demand made? (Objection sustained.)

Q. Well, Mr. Miller, do you know of any customer or consumer of black blasting powder whom you approached for the purpose of selling him Buckeye powder that had any contract for the purchase of black blasting powder with any other manufacturer of black blasting powder?

921

The Court: First ask if he had a written contract.

Q. (Continuing) Let this question go to written contracts.

The Court: Now, Mr. Witness, of course in view of what has been said, my present ruling is that unless you saw the written contract you can not say.

The Witness: I saw the written contracts for the reasons they were executed in my presence, a lot of them.

The Court: That is evidence.

Q. Now state with what customers you saw such

922 *John G. Miller—Direct*

contracts? A. Well, I made contracts with W. A. Wells & Company, Buxton, Iowa.

Q. You misunderstood my question. I mean contracts made by the Buckeye Powder Company with customers of the Buckeye Company who had contracts with other concerns. A. I am talking about contracts I made with Laflin & Rand Powder Company.

The Court: That is not the question which is now asked of you.

923

A. I made no contracts for the Buckeye, we took spot orders only for a specified number of kegs or car loads.

Q. I will ask the witness if you saw any contracts which were made between any consumer of black blasting powder and the company that you were representing, previous to the time when you left the employ of the Laflin & Rand Powder Company? Did you see any such contracts executed? A. I did not see them after I left the employ; no, sir.

924

Q. I mean before you left the employ? A. I was present when they were executed.

Q. Do you know of your own knowledge of any written contracts which were made between the Laflin & Rand Powder Company while you were in the employ of that company with any consumer of black blasting powder in the territory in which the Buckeye Powder Company operated? A. Yes, sir.

Q. Now, can you give the names of the consumers with whom such contracts were made, from memory? A. I can of some of them; yes, sir.

Q. Give as many as you can. A. W. A. Wells & Co., Buckston, Iowa; Smith & Lowe Co., Des Moines, Iowa; Phillips Coal Company, Ottumwa, Iowa; Empire Coal Company of Viola, Illinois; Chi-

cago & Burton Coal Company; Mt. Carmel Coal Company, Frontenac, Kansas; Central Coal & Coke Company, Kansas City; Weir Coal Company, Kansas City; Southwestern Improvement Company, Mineral, Kansas; Hamilton & Braidwood Coal Company, Weir City, Kansas; Black Diamond Coal Company, Springfield, Illinois; Coalfax Coal Company, Colfax, Iowa; W. C. Shepherd & Company, Oskaloosa, Iowa. I guess that is about all I can recall for the present.

926 Q. Is that all you can recall for the present? A. I think so.

Q. Now, did you have any dealings with any of the companies whose names you have given after you became the representative of the Buckeye Powder Company? A. I called on most of them with the exception of, I think, the Black Diamond Coal Company and the Chicago & Burton Coal Company.

Q. Those two companies you didn't call upon? A. No, sir.

927 Q. Now, did you succeed in doing any business with any of the companies whose names you have enumerated? (Objection overruled.) A. I sold, I secured orders from W. & A. Wells & Company for several car loads; sold the Devlin interests, that is, the Mt. Carmel Coal Company, several car loads and possibly some others; I wouldn't be positive.

Q. Did you continue to sell to the companies whose names you have last enumerated, Buckeye powder? A. No, sir.

Q. For what reason did you not continue to sell?

Mr. McCarter: I object.

Q. If you know?

The Court: (To the witness) Well, not in-

cluding anything they may have said to you at this time.

A. Well, without using the information I received from a customer I don't know anything.

Q. Did you continue your efforts to do business with the other persons whose names you have used here? A. Yes, sir.

Q. Did you succeed in selling them powder? A. I could not state at this time whether I made sales to others or not.

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Q. Now, coming down to the other matters which you found operated to prevent you selling powder, if there were any, will you state what you learned of your own knowledge with reference to any influence which was used with the miners to induce them to object to the use of Buckeye powder? (Objected to.)

Q. Let me ask you whether you had any personal knowledge of anything done by anybody to influence operators against the use of your powder other than what you obtained from such persons? A. You mean someone in the act?

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The Court: Yes.

A. No, sir.

Mr. Abbott: Will your Honor confine us to that line of inquiry from the witness?

The Court: At this time, yes.

To which ruling of the Court the plaintiff's counsel then and there excepted and said exception was allowed.

Q. You referred to the Phillips Fuel Company, did you not, in the list that you gave? A. Yes, sir.

Q. Did you have any business with that company, did you sell them Buckeye powder at any time? A. Yes, sir; we sold them quite a number of car loads.

Q. When did you cease to sell powder to the Phillips Fuel Company? A. Well, at the time the Buckeye Powder Company was succeeded by the Western Powder Company there were a few car 932
loads, out on an old order.

Q. Was there any question affecting any of these customers whose names you have given which involved the matter of price at which the powder was offered for sale?

The Court: I do not know that I comprehend that.

(Question repeated.)

Q. Perhaps the question of itself is not as clear as it should be. I will ask you this: In your relations—in your dealings, or efforts to get business 933
of the Phillips Fuel Company, did the price come into your negotiations in any way? A. Yes, constantly.

Q. Tell us in what way that question presented itself. (Objection overruled.) A. The Phillips Coal Company or Fuel Company, the name changed from time to time, would ask for prices on a certain number of car loads; I would quote them the price and then I would be informed that they had a quotation.

The Court (to the witness): Distinguish between the actual facts, that is, that can be testified to as to what occurred without

934 *John G. Miller—Direct*

regard to anything said. Now you had been selling them, had you?

The Witness: Yes.

The Court (To the Witness): And you offered powder at a certain figure. Well, did they take it?

The Witness: It was not bought at the price quoted first.

Q. What was the first price that you quoted, we
935 will say? A. I couldn't say at this time, Mr. Abbott.

Q. Do you know what you sold, what the first sales were that you made to the Phillips Fuel Company; do you know how much they paid you? A. I couldn't say at this time.

Q. Do you know what was the last sale that you made to the Phillips Fuel Company; what price you sold at? A. The last sale was at 92½c., delivered.

Q. Do you know of a company that manufactured powder by the name of the Royal Colliery
936 Company? A. I know a coal company by that name.

Q. The company of which Mr. G. D. Wentz was president? A. I know a coal company, you said powder company.

Q. I beg your pardon; I meant colliery company if I said powder company. Where was that company located if they were doing business? A. They were operating mines in Illinois and in the east.

Q. Did you endeavor to sell any powder to that company? A. I endeavored to sell them at the Illinois mines.

Q. Now, did you succeed in selling them? A. No, sir.

Q. Can you state of your own knowledge why you did not succeed in selling them powder?

Mr. Graham: What somebody else told the witness, as I understand. 937

The Court: I will allow him to show what he offered the powder for and did not succeed——

Q. Well, what did you offer powder to the Royal Colliery Company for—what price? A. I quoted them $1.10, I think, first, and then reduced that to $1.05, and they came back and said that they could buy it—naming the figure——

Q. Never mind what they said. A. I think the price was ninety cents.. 938

Mr. Katzenbach: We ask that that be stricken out.

The Court (to the witness): You see, it is very difficult for a layman to understand those distinctions. The point is you may tell what you said to them in relation to the purchase of powder, that is to say the figure you offered them and you may say whether they took it.

939

Q. Well, did you come in contact with any instance where shipments were made to your customers and information was communicated to you that that shipment had been made, from other sources, before you yourself knew the shipment had been made? A. No, sir.

Q. Never knew of such a case?

Mr. Katzenbach: I desire the Court's——

The Court: He said no.

Q. I will ask you whether or not you did not know that a certain Clerk in the office of the C. B. & Q. Railway Company was giving out information of shipments which were being made by the Buckeye

940 *John G. Miller—Direct*

Powder Company from the station of the C. B. & Q. Railway Company at Edwards, concerning shipments which were made by the Buckeye Powder Company to its various customers?

(Motion to strike out answer sustained.)

Q. Don't say what anybody else told you with regard to any matter excepting such as relates to your own knowledge of the transactions and what
941 you did in connection with them. A. After receipt of the complaints I called at the General Office of the Burlington Road and saw the Assistant Freight Agent and the General Freight Agent and they thought it was impossible for any——

Q. Don't state what they thought; state what they did.

(Motion to strike the answer sustained.)

Q. Do you know of your own knowledge of any steps that were taken by the officials of the C. B. & Q. Railroad for the purpose of ascertaining
942 whether the agent of that road at Edwards, Illinois, was giving out information concerning the business of the Buckeye Powder Company?

(After argument.)

Q. Did any agent or representative of the C. B. & Q. Railway to your knowledge make any investigation concerning information which was being given by its agent at Edwards, Illinois? (Objection sustained.)

Q. Mr. Miller, can you give a list of the customers of the Buckeye Powder Company whom you induced to become such customers, from whom you obtained trade for the Buckeye Powder Company? A. I have a memorandum.

Q. Will you give a statement or a list of those customers? (Objection overruled.) A. Northwestern Improvement Company, Red Lodge, Montana; W. A. Talmadge Company, Red Lodge, Montana; Robinson Carey Company, St. Paul; and Devlin Miller Coal Company, Frontenac, Kansas; Chas. J. Devlin, Topeka, Kansas; Mt. Carmel Coal Company, Frontenac, Kansas; W. A. Wells & Company, Buckston, Iowa; Whitesbreast Fuel Company, Chicago; Lost Creek Fuel Company, Muchkanioch, Iowa; Peabody Coal Company, Chicago; Black Diamond Store, Philip Shool Company, Ottumwa, Iowa; American Coal Company, Evans, Iowa; C. Bailey, Fraser, Iowa; Carney Coal Company, Chicago; Chicago, Northwestern Railway, Chicago; Chicago, Burlington & Quincy Railway, Chicago; Chicago, Milwaukee & St. Paul Railroad, Chicago; Deering Coal Company, Chicago; Dealman Coal Company, Keller, Iowa; Farwell, Ozman, Kirk & Company, St. Paul; Hutchinson Brothers, Dawson, Iowa; Port Byron Land Association, Port Byron, Illinois; D. Heenan & Company, Streetor, Illinois; Rex Fuel Company, Busse, Iowa; Star Coal Company, Ottumwa, Iowa; Utica Cement Company, Utica, Illinois; Western Stone Company, Chicago. 944 945

Q. Now, Mr. Miller, what, if any, of the customers whose names you have read did you afterward lose—who afterwards ceased to become your customers?

Mr. Katzenbach: That is, if he has knowledge, personal knowledge.

The Court: Oh, yes. I understand he was general sales agent.

Mr. Katzenbach: But only for a limited period of time.

946 *John G. Miller—Direct*

By Mr. Katzenbach:

Q. When did your connection with the Buckeye Powder Company cease? A. When the Buckeye Powder went out of business——

The Court: Proceed; let us get along a little faster.

947 A. We lost customer by customer until we got down to a limited number; I remember, among others, we had a part of the trade of some of the smaller coal companies and the Black Diamond Store of the Phillips Fuel Company.

By Mr. Abbott:

Q. Now, who, if any, of the list of customers whose names you have given to us and whom you stated you afterwards lost, gave you any reasons why they ceased to do business with you?

948 A. As I solicited the trade from the customers, they informed me that——

Q. Don't state what they informed you. I would like to have you state now which of these customers gave you reasons; don't state what the reasons were at this time. A. The reasons for what?

Q. The reasons for leaving you—ceasing to do business with you? A. Well, W. A. Wells & Company informed me that they——

Q. Now, don't state at this time what they informed you.

The Court (to the witness): Distinguish between what they said to you and the fact that they did say something.

Q. Now, who is another one, if any? A. Charles J. Devlin.

Q. Another. A. Lost Creek Fuel Company.

Q. Any more? A. Northwestern Improvement Company.

Q. Just go right on and give a full list of all those that gave reasons? A. Chicago & Northwestern Railway; Chicago, Burlington & Quincy Railway; Chicago, Milwaukee & St. Paul Railway.

Q. Any others? A. Western Stone Company. I don't recall any others at the present time. 950

Q. I will now ask you, Mr. Miller, to state what reasons were given to you by any one of the customers whom you may select for not continuing to do business with you? (Objected to.)

Mr. Katzenbach: That is objected to on the ground that it clearly calls for a hearsay answer.

The Court: Yes; that brings the precise question, Mr. Abbott, that you want to discuss.

Mr. Abbott: That is the reason I asked the question, if your Honor please. 951

After argument, the objection was sustained, and plaintiff's counsel then and there excepted to said ruling and said exception was allowed by the Court.

Q. Did you enumerate all of the customers who had left you, Mr. Miller? A. As nearly as I can remember at this time. This all took place years ago, you must remember.

Q. In your efforts to secure business of any of the persons whose names you have given as customers of the Buckeye Powder Company, did you

952 *John G. Miller—Direct*

at any time make any reduction in your prices? A. Yes, sir.

Q. Can you name any customers of the Buckeye Powder Company to whom you made different prices for your powder at different times in order to secure their business? (Objection overruled.) A. The Black Diamond Store of the Phillips Fuel Company in one case.

Q. Do you recall what price you first obtained business of the Phillips Fuel Company, what that
953 price was? A. To the best of my knowledge, $1.35 per keg.

Q. Now, do you remember and do you recall what was the subsequent prices at which you obtained the business of the Phillips Fuel Company? A. The price was gradually reduced until we got down to 92½c. per keg.

Q. Were you at any time, after you began making reductions in price to the Phillips Fuel Company, were you at any time ever able to raise that price? (Objection overruled.) A. No, sir.

954 Q. Do you know whether the Phillips Fuel Company at any time purchased any powder of any other company manufacturing black blasting powder during the time that you were doing business with the Phillips Fuel Company as your customer of the Buckeye Powder Company? (Objection overruled.) A. The Phillips Fuel Company was under contract with Laflin & Rand to furnish the powder to the Black Diamond Store.

Q. Now, what do you know independent of any information which you received from Phillips Fuel Company of the Black Diamond Store as to the sources from which they obtained their powder supply?

Mr. Katzenbach: That question is objected to on the ground that there might be

other sources of hearsay testimony that that witness might have availed himself of.

The Court: I know. By this time Mr. Miller, I think, has heard my ruling on these questions and (to the witness) you must only give such information as you have obtained independently from what some person has said to you, unless such person may be the agent of the defendant.

A. I have no other information. 956

Q. Mr. Miller, during your experience as agent of the Buckeye Powder Company, did you ever obtain any information from your customers concerning shipments which had been made to them by the Buckeye Powder Company before you yourself had received notice of those shipments from the Buckeye Powder Company? A. No, sir. No, sir—with this exception: If there was a customer——

Mr. Graham: That is hearsay.

The Court: You base it upon the customers and upon the information obtained of 957 his other customers. That was not a source of information which was in line with what I permitted you to inquire about.

Q. Did you obtain such information from any source other than the Buckeye Powder Company? (Objection overruled.)

The Court: (To the witness) What is your answer?

A. No, sir—with this explanation, that I got advice from the customer after the shipments were made.

The Court: You don't understand the question. Read the question to him again

958 *John G. Miller—Direct*

or perhaps you had better reframe the question again, Mr. Abbott.

Mr. Abbott: I will reframe it.

Q. Did you at any time while you were representing the Buckeye Powder Company receive any information from any source after shipments had been made to your customers that such shipments had been made, before you yourself received information from the Buckeye Powder Company, that
959 such shipments had been made? (Objection overruled.) A. No, sir.

The Court: So that it may be brought out and have it clear: (To the witness) The first information concerning the shipment came from the Buckeye Company?

The Witness: Yes, sir.

The Court: That clinches it, anyway.

Q. Did you at any time have any communication
960 with any official of the C., B. & Q. Railway Company concerning information which was given out by an agent of the company regarding shipments made to your customers? A. Yes, sir.

Mr. Katzenbach: That is objected to, that is the same question that was overruled, I think, on Friday.

The Court: You must first establish the basis for such a thing as that. You see that assumes that there was information.

Mr. Abbott: If he says he did have the information, then it may turn out it is not pertinent what that information was, but if I ask him what the nature of that information was and it appears to be improper——

The Court: You are assuming now there was such a course of dealing by the Railroad Company or some agent.

Mr. Abbott: I think it is apparent to Your Honor that the question at issue here is whether any investigation was made, and what the result of that investigation was.

The Court: Preliminary to that, you must show the situation which called for an investigation.

Q. Mr. Miller, did you at any time during this period that I have mentioned, while you were connected with the Buckeye Powder Company, receive any knowledge or information concerning the business of the Buckeye Powder Company in which you were interested from any other sources than the Buckeye Powder Company? (Objection overruled.) A. What information do you refer to?

Q. I am asking you whether you had information. Read the question so the witness may answer it.

(Question repeated by the Reporter.)

A. I had a——

Q. Answer that yes or no, please? A. Yes.

Q. All right, then, state what that information was. (Objection sustained.)

The Court (to the witness after argument): Very well, you may state the sources of your information, but not the information.

The Witness: Steve Bailey, Fraser, Iowa.

Q. Who was Steve Bailey? A. He was a customer at Fraser, Iowa.

964 *John G. Miller—Direct*

Q. What information did you obtain from Mr. Steve Bailey?

Mr. Katzenbach: That is objected to on the ground that the inquiry calls for hearsay testimony, being a statement made by a customer of this witness.

The Court: As the matter stands, I will exclude it.

965 To which ruling of the court plaintiff's counsel then and there excepted and said exception was allowed.

Q. Did you at any time make any investigation or institute any investigation as to the reasons for information coming to you in this manner that you have indicated? (Objection overruled.) A. Yes,

966 sir.

Q. Now, state what that investigation was. A. I saw the Burlington officials and called their attention to the situation and they made an investigation.

Q. Now, do you know what the result of that investigation was?

Mr. Katzenbach: Now, we object to that as being something that was communicated to this witness by others, and therefore hearsay testimony; and on the further ground that the witness——

The Court: I will sustain the objection unless you want your further grounds on the record.

To which ruling of the court plaintiff's counsel then and there excepted and said exception was allowed.

Q. Mr. Miller, referring to the list of names which you gave this morning as being the names of 968
customers whom you knew were under contract with the Laflin & Rand Powder Company, while you were connected with that company, I will ask you to look at the list of names which has now been prepared by the stenographer, and state whether or not any of the persons named in that list were customers operating in the territory in which the Buckeye Powder Company was located and doing business (handing paper to witness)? A. Yes, sir.

Q. Will you indicate what companies there were that answered to the description of customers doing business in the Buckeye territory? 969

Mr. Katzenbach: Just wait a minute; has there been any definition of the boundaries of the Buckeye territory?

The Court: That would not be material so far as this question is concerned.

Mr. Abbott: I used the term "Buckeye territory" as a general term. The witness himself was operating in a certain district which was supposed to be serviceable from the Buckeye plants. I take it when he makes answer to this question that he knows whether or not——

The Court: Well, I will allow the question.

970 *John G. Miller—Direct*

A. All of those customers might be handled from the Buckeye plant.

Q. Now, did you at any time approach any of the persons whose names are given in this list for the purpose of selling them Buckeye powder? A. Yes, sir.

Q. Will you examine the list and state how many of those customers, what proportion, if any, you approached; in the first place, I will ask you whether or not you approached any of them? A. Do you
971 want the names—I didn't call on all of them; no, sir.

Q. Will you state whether you called on more of them—upon a larger proportion of them? A. Yes, sir.

Q. Then, for convenience, and to save time, will you give the list of those whom you did not call upon? A. The McAllester Coal Company at Buck, Indian Territory; Sebree Coal Company at Sebree, Kentucky; Baldwin Brothers at Clinton, Iowa; B. S. Chambers & Company, Pittsburgh, Kansas;
972 Crescent Coal Company, What Cheer, Iowa; Frank Frorer, Lincoln, Illinois; Gilbert Grocery Company, Portsmouth, Iowa; Illinois Central Coal & Salt Company, St. Johns, Illinois; Miller Brothers & Company, Mulberry, Kansas; Prussia Hardware Company, Fort Dodge, Iowa; St. Louis & Big Muddy Coal Company, Cartersville, Illinois; W. A. Swan, Pittsburgh, Kansas; Wabash Valley Coal Company, Lyford, Indiana; White Walnut Coal Company, Pinckneyville, Illinois; Atwood Coal Company, What Cheer, Iowa; Barrett-Hayden Coal Company, Weir City, Kansas; Columbus Coal Company, Stippville, Kansas; Fidelity Land and Improvement Company, Stone City, Kansas.

Q. Let me interrupt the witness once more so as not to go over it again. I wish you would make

your answer cover those which you solicited as well by mail or otherwise. If you will exclude those that you did not personally call upon, as I want to find out those whose business you solicited. A. Well, I have confined my reply to those solicited personally.

Q. Were any in that list——

The Court (to the witness): Were there any that you solicited by mail?

The Witness: I don't think there was. 974

By Mr. Abbott:

Q. In the entire list? A. With the exception of possibly the Gilbert Grocery Company of Portsmouth, Ohio, and the Sebree Coal Company, Sebree, Kentucky; that is a general statement; I would not say positively.

Q. Did you succeed in getting business from all the persons whose names are included in this list and who you say you solicited in this manner? (Objection overruled.) 975

Q. Be as brief about it as possible? A. No, sir.

Q. Were any reasons given to you——

The Court (to the witness): You understood the question?

The Witness: He asked me if I sold all of them.

Q. Were any reasons given by those persons why they did not or would not purchase powder of you? (Objection overruled.) A. On account of——

The Court (to the witness): You cannot state what they said.

976 *John G. Miller—Direct*

Q. Yes or no.

The Court (to the witness): You can state whether they did give reasons for not buying.

A. Yes, sir.

Q. State what those reasons were——

Mr. Katzenbach: That is objected to.

The Court: That is, as given by them.

977 Q. (Continuing) —as given by them.

Objection sustained. To which ruling of the court the plaintiff's counsel then and there excepted and said exception was allowed.

Q. Did any of the reasons which were given to
978 you involve the question of these contracts which were in existence?

Objection sustained. To which ruling of the court the plaintiff's counsel then and there excepted and said exception was allowed.

Q. Did any of the reasons which were given to you by these parties or any of them involve the question of special prices that had been made to them by any other manufacturer of powder?

Objected to and objection sustained.

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To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

Cross examination by Mr. Button:

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Q. What price did you say you first received from the Phillips Fuel Company for Buckeye Powder? A. As near as I can remember, $1.35.

Q. Was that sold directly to the Phillips Fuel Company or to this Black Diamond Store? A. I could not state positively, because some of the orders came into consign and bill the Phillips Coal Company, or Phillips Fuel Company or the Black Diamond Store; I could not state positively—but the Phillips interest.

Q. Can you state the date on which the first sale was made to one or the other of those concerns? A. I think the first sale was made about May or June, 1904.

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Q. This list of customers that you have given here were formerly your customers when you were working for Laflin & Rand, as I understand your testimony? A. Not in every instance.

Q. Very largely so? A. Yes.

Q. Now, I show you three or four letters, Mr. Miller, and ask you if those letters bear your signature (handing papers to witness).

The Court: What are you handing the witness?

Mr. Button: Some letters and asking him if they bear his signature.

A. Yes, sir, those are mine.

982 *John G. Miller—Cross.*
George H. Kerr— Direct

Mr. Button: I would like to have those five letters marked for identification.

The Court: Yes, they may be.

(The same marked Defendant's Exhibits A to E, for identification.)

Mr. Button: That is all.

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983 GEORGE H. KERR, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. Where do you reside, Mr. Kerr? A. Wilmington.

Q. What is your business? A. Manager of the Trade Record Division of E. I. du Pont.

Q. How long have you been occupying that po-
984 sition? A. Since 1903.

Q. Since 1903? A. Yes, sir.

Q. Who preceded you in charge of that division or that department if there was any such? A. Why, no one preceded me. The position was created in 1903.

Q. Will you describe what the nature of your duties are with reference to the duties of the department which you say you have charge of? A. The Trade Record Division is composed of cabinets for filing trade reports from salesmen, and bills or invoices made out to customers. They are filed both in under the customer's name alphabetically and geographically.

Q. Will you describe the general nature of these trade reports? A. Yes. The name and address

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of the customer and approximately when they are going to be in the market again and the name of the purchasing agent, and what goods they handle.

Q. Will you state how many such trade reports are received by you, say within a month, I mean not within the last month, but during any month, just an estimate? A. Well, it will vary from possibly ten to fifteen thousand.

Q. Now, I will ask you to state the general character of the files which you have in your possession 986
with respect to this fact: Do you keep them under different divisions? Do you have different divisions in which these files are kept? A. Well, you would have to specify the divisions.

Q. Well, do you have such divisions as are represented by different colors of paper? A. No, sir.

Q. Have nothing of that kind? A. Absolutely not.

Q. Do you have a division which you call by names of colors? A. No, sir.

Q. Has there ever been such a division? A. No, 987
sir; not to my recollection; never had any such a thing.

Q. Do you get more than one copy of these trade reports—is there more than one made by the person who makes the trade report? A. Yes, four.

Q. Four copies made? A. Yes.

Q. What is done with each one of those copies? A. The salesman keeps one; one goes to the branch office from which he travels, the other is passed around among the officials of the company to be read and destroyed and the others comes to us to be filed.

And thereafter the witness produced certain documents called "Trade Reports" which were in the possession of the defendant E. I. du Pont de

988 *Alexis I. du Pont—Direct*
Robert S. Waddell, Jr.—Direct

Nemours Powder Company, and in his charge, and said documents were thereafter received and filed as Plaintiff's Exhibits Numbers 74 to 666, inclusive. And thereafter said George H. Kerr produced certain other documents belonging to said defendant which were in his charge, the same being contracts with consumers of black blasting powder, which documents were received and filed as Plaintiff's Exhibits 667 to 1090, inclusive.

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And thereafter ALEXIS I. DU PONT, a witness for the plaintiff, testified that he is secretary of the defendant E. I. du Pont de Nemours Powder Company, and he produced certain other documents which were in his charge, the same being contracts with consumers of black blasting powder, which documents were received and filed as Plaintiff's Exhibit 1246, with sub-numbers from 1 to 309 inclusive; also Exhibit 1247-A to 1247-FF inclusive.

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ROBERT S. WADDELL, Jr., a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Waddell, where do you reside at the present time? A. Monmouth, Illinois.

Q. Where did you reside during the year 1903, to and inclusive of 1909? A. Peoria, Illinois.

Q. Where did you reside previous to 1903? A. For about nine months previous to that, in Wilmington, Delaware, prior to that in Cincinnati, Ohio.

Q. Are you related to Mr. R. S. Waddell, Sr.? A. Yes, sir, son.

Q. What relation do you sustain to him? A. His son.

Q. In what capacity were you engaged, in what occupation were you engaged while you were in Wilmington? A. I was in the position of clerk in the sales department.

Q. Who had charge of that department? A. Mr. Waddell, Sr.

Q. Now, what were you engaged in while you 992
were at Peoria, Illinois? A. In the explosive business, in the manufacture of black blasting powder.

Q. In whose employ were you, or what concern were you connected with at that time? A. I was connected with the Buckeye Powder Company in the capacity of secretary and treasurer.

Q. What were your duties while you were employed by the Buckeye Powder Company? A. I had the keeping of all the records, and the general office work connected with both as a bookkeeper and in an official capacity.

Q. What was your official capacity? A. Secre- 993
tary and treasurer.

Q. Mr. Waddell, did you keep any records or any data with reference to the cost of powder as manufactured by the Buckeye Powder Company plant? A. Yes, sir.

Q. State what that data was? A. It was the cost. That was made up twice a month, based on our mill reports which gave us the necessary relation to the quantities of material used daily and the amount of powder manufactured daily.

Q. How did you arrive at the determination of the question of cost from that data? A. Our prices on raw materials were based on contract prices.

Q. What were the raw materials which you used? A. Nitrate of Soda, Sulphur and Charcoal.

Q. How did you determine the amounts of these various ingredients that were used in the manufacture of your powder so as to arrive at the question of cost? A. You mean the formula?

Q. Did you at any time undertake to determine the cost at which you were producing black blasting powder? A. Yes, sir.

Q. On what basis as relative to keg or tons or pounds, or what did you use as a basis? A. On a per keg basis.

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Q. On a per keg. Tell us how you arrived at the determination of the cost per keg? A. The mill superintendent was instructed to use a certain percentage of each of the various materials which goes into the manufacture of powder and the quantities he used daily were sent in to me each morning. I figured these materials at the contract prices, added the freight and discount, the mill overhead expenses and the general overhead expenses to obtain the total gross cost per keg.

Q. What did you ascertain about the total gross cost per keg by the method which you have indicated?

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Mr. Katzenbach: That is objected to on the ground that it must have relation to some particular time and also that he would have to testify as to the cost of materials at that time.

The Court: I think there should be an indication as to time.

Q. Well, at any time during the years 1903 to 1908—but preliminary to that I will ask you whether there was a difference at any time in the cost of powder between those two periods? A. Yes, sir.

Q. Now, will you divide the periods—divide that

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time into periods if you can and state the difference at the different times? A. Well, that would be rather hard to do Mr. Abbott, on account of the fluctuations on the nitrate of soda perhaps.

Q. Was the fluctuation in the nitrate of soda the only question which made any difference in the cost of powder? A. Practically, yes.

Q. That is the only thing? A. Yes, sir.

Q. Will you state what the fluctuation amounted to, the average fluctuation during the period when you began business and when you ceased it. A. 998
When we first started in the fall of 1903 we bought soda at $1.85 per hundred pounds; and we paid as high as $2.12 to $2.15 per hundred pounds later.

Q. Now, did you obtain your soda at the prevailing market rate? (Objection overruled.) A. Yes, sir.

Q. Do you know what the prevailing market rate on soda was from time to time, not now. I am not asking you now, but did you then know? A. Yes, sir.

Q. And did you obtain your soda at the prevail- 999
ing market rate? (Objection overruled.) A. We obtained it at the lowest contract price we could for a given quantity.

Q. What was the average price of powder per keg during the year—from the time when you began business and until the time you went out of business?

The Court: You mean by "price" the "cost"?

Mr. Abbott: Cost, I meant to say—the average cost:

By the Court:

Q. Did you do this daily or weekly or monthly, or

how did you determine the cost? A. Every fifteen days.

Q. Every fifteen days? A. Yes.

Q. Have you anything by which you can tell what it was that you determined at different times to be the cost of production? A. Only my own knowledge of the figures.

The Court: Well, that ought to be enough.

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By Mr. Abbott:

Q. Have you those figures at hand at the present time? A. No.

Q. Where are they? A. That I could not say.

By the Court:

Q. Do you remember them? A. Yes, sir.

By Mr. Abbott:

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Q. Now, then, give us your best recollection on the subject of what the average cost of black blasting powder was per keg at any time from the time you began business until you went out of business?

Mr. Katzenbach: I desire to enter an objection, to that question, because the witness testified that he kept a record of the cost every two weeks. He certainly can not have evidence of what the average cost was during the period of some five years. He has not said he made an average cost.

The Court: Average cost may be admissable for some purposes, but here, as the evidence now discloses that there was a fluctuation in the price of raw materials used and

Robert S. Waddell, Jr.—Direct 1003

as he determined every fifteen days what the cost was, he should be asked as to the particular time that you want to fix the cost of their product. I suppose that a particular time what the cost was is what you wish.

Mr. Abbott: If I understand the witness your Honor, he can only testify now from his recollection.

The Court: He says he remembers.

Mr. Abbott: Inasmuch as he made up the statement every fifteen days over this long period of time it is not probable or presumable that he can remember what it was every fifteen days. 1004

The Court: He knows whether the variation was large or small, he knows what the amounts of the fluctuations were that occurred, or he may know that.

Q. Was the variation in the cost of powder large or small during this period? A. Varied about 7 cents a keg based on the different prices paid for nitrate of soda.

Q. What was the minimum cost of powder at any time during that period? 1005

Mr. Katzenbach: That is, if he remembers.

A. The lowest that I can recall now was 77 and a fraction cents per keg gross.

Q. What was the maximum cost of powder during the same period per keg? A. As near as I can recall between 83 and 84 cents.

Q. Now, this difference between the maximum and minimum was due as I understand you, to the fluctuation in the price of nitrate of soda? (Objection overruled.) A. Yes——

Q. Did the Buckeye Powder Company quit business, did it go out of business? A. It sold its physical assets.

Q. When? A. As I recall now, the 19th of September, 1908.

Q. Was that company succeeded by any other company in the manufacture of black blasting powder from the same plant? A. Yes, sir.

Q. What was the company that succeeded it? A. The Western Powder Manufacturing Company.

1007

Q. Did you have anything to do with that company? A. I kept the books for one year from the time the Buckeye sold out.

Q. Have you those books now in your possession? A. No, sir.

Q. Do you know where they are? A. I could not state definitely.

Q. Well, after you left the employ of that company, what did you do with the books that you had charge of? A. Turned them over to my successor, Mr. Allen.

1008

Cross examination by Mr. Katzenbach:

Q. Mr. Waddell, you stated, I believe, that you had made calculations of the cost of the product of the Buckeye Powder Company, is that so? A. Yes, sir.

Q. How frequently did you make the calculations of cost? A. Twice a month.

Q. The frequency—twice a month, for how long a period? A. Practically for the entire time we were operating our mills.

Q. That was then from October, 1903 to September, 1908? A. Yes, sir.

Q. And you approximately made them 24 calculations as to the cost of the product in each year? A. Yes, sir.

Q. The frequency of those calculations of costs were made was because of the frequency in the change in the price of the ingredients of powder I presume? A. Yes, but I would like to make an explanation on that.

Q. You can make those afterwards if you want to. A. I can not answer this particular question unless I do explain the answer.

The Court: You may do so.

A. (Continuing) In figuring our cost of powder, 1010
for instance, while we used—while we had a contract for that a certain definite price for a certain number of tons per year at the same time we added freight on that soda, and to be on the safe side, we generally used for our own information the current market price of soda as advised by the New York brokers in soda.

Q. Then in making the calculations of cost of the powder, of this ingredient, nitrate of soda, you did not enter the cost at what you were paying at the time under your contract for nitrate of soda, but at what you took from the newspapers or other 1011
data as the prevailing price of nitrate of soda, is that correct?

Objected to on ground that it was immaterial. Objection overruled. To which ruling of the Court plaintiff's counsel excepted and said exception was allowed.

A. No, sir; I would like to explain if I may, how we arrived at that.

Q. I will give you an opportunity, Mr. Waddell,

we always treat gentlemen here courteously. What I want to know from you is this: In making up the cost of powder at any given time, did you, in figuring that cost, take the cost to the Buckeye Powder Company of the nitrate of soda used for that period at the price you were actually paying for it under your contract? A. Plus what it would cost us to replace that soda in case of a fire or loss.

Q. Well, then, as a matter of fact, you didn't calculate the cost of powder upon what you were
1013 actually paying at the time for nitrate of soda used in the manufacture of that powder, were you? A. We used our contract price plus what I have just stated.

Q. Now, in making up this manufacturing cost, did you enter that calculation or that cost price upon any books of the Buckeye Powder Company? A. No, sir; not in any book.

Q. Well, upon any document, paper, that became a matter of record in the files of the Buckeye Powder Company? A. They were merely memoranda
1014 that were given to Mr. Waddell, Sr., twice a month.

Q. So that then the memoranda of this cost after you had made it up passed from your possession into that of Mr. Waddell, Sr.? A. Yes, as a temporary memoranda.

Q. Well, do you know whether it was a temporary or a permanent memoranda? A. I know that it was not generally kept as a permanent record.

Q. How do you know that? A. Because I have used some of the sheets many times for scrap paper, using the back of the sheets.

Q. Then you did not give those then to Mr. Waddell, Sr., did you? A. After he was finished with them they were around the office of the company there and were not filed away as permanent record; they were loose sheets.

Q. Yes; then you did not consider that it was necessary to file those away as a permanent record of cost? A. Not after about the third or fourth sheet; it was only necessary to keep two or three current sheets on hand for comparative purposes.

Q. Well, now, then you did keep two or three current sheets on hand for comparative purposes, did you not? A. From time to time, yes.

Q. Now, where are those sheets? A. Well, that I couldn't say; it would be an accident if there is any of them alive today. 1016

Q. That is, that you are quite sure that they were dead, is that it? A. Well, I would say that there may be some in some of the books somewhere, but they were never taken care of to form a record of the Buckeye Powder Company.

Q. Now, in making a record of a sheet of cost what did you enter upon that sheet, Mr. Waddell? A. You desire a full description of that sheet?

Q. Yes. A. As I recall the first column was the total number of kegs manufactured for the fifteen days or the thirty days at the end of the month. 1017 Then there were columns following that which were indicated by names at the head of the columns for the different ingredients.

Q. Well, what were those? A. Nitrate of soda, sulphur and charcoal, and then there was a column for fuel, oils, general mill expense.

Q. What do you mean by general mill expense? A. Well, the tools and sundry purchases for use at the mills only; then there was a column for—

Q. That is any new articles that were bought? A. No, for instance, waste used in the engine room, things of that character, and we had a column on the sheet for the empty keg at the delivered price at the mills; then there was a column for traveling expenses, office and mill salaries, general office expense, which would include postage stamps and sta-

tionery and sundry small articles used in the office in the city; then there was—that is about all I can recall at the present time, that is, of the making up of the costs.

Q. Making up of the costs? A. Yes.

Q. Did you make any calculations for injuries to employes in the form of insurance? A. We reserved, if I recollect rightly, one cent a keg for each keg manufactured as a casualty fund for the destruction of property and a half a cent a keg, which
1019 was know as the personal casualty fund for the destruction of life. That was carried as an asset on our books.

Q. That was not embodied in the cost, then? A. No, that was not embodied in the cost of the manufacture of powder.

Q. Did you have any explosions there—they are customary in powder plants, are they not? A. Yes.

Q. You didn't have explosions? A. Yes.

Q. How many of them, to your knowledge? A. As I recollect two, two or three, I could not say
1020 definitely which.

Q. Now, then, did you add to the cost of manufacture any depreciation in your property in this item of cost of powder? A. Not on the cost sheet, no.

Q. Did you have any item for advertising? A. Yes, sir, that was included in the general expense.

Q. Sending out circulars to the trade? A. Yes.

Q. That was included as part of the cost? A. That is in the office end of the cost.

Q. Now, did you add in the cost, the powder that you gave away as samples? A. That was taken out at the end of the year, as I recollect under a donation account.

Q. Well, but then it didn't figure in this item of cost every two weeks? A. No, because of the very few——

Q. I am just asking you whether it did figure or not? A. No.

Q. Now, then, did you always pay the same price for labor during the time that you were manufacturing powder? A. No, sir.

Q. That is, I suppose your labor increased, did it not, in wages? A. It increased, depending on the number of kegs we were manufacturing.

Q. Well, you mean by that that if you were running full, the cost of your powder was less per keg than when you were running your plant, we will 1022
say, at fifty per cent of its capacity, is that correct? A. That would naturally follow, yes, sir.

Q. Then the price would fluctuate considerably by reason of the fact of whether you were running your full capacity or below full capacity, wouldn't it? A. That is, the labor account would.

Q. Well, wouldn't that affect the cost of overhead expenses, office expenses, selling expenses, they all went on, didn't they? A. Yes, sir.

Q. So that when you weren't running full capacity then your powder cost you more per keg? 1023
A. Yes.

Q. Well, now, have you any record of the periods in your books at all so that we could tell at these different periods of time, for instance in January, 1905, as contrasted with January, 1906, whether you were running at half capacity, full capacity or three-quarter capacity? A. I am sure I couldn't give you any information on that because I ran the office end of it and did not operate the mills at all.

Q. But all that enters into this matter of costs at any given two weeks, does it not? A. Yes, sir.

Q. Now, then, during the period that you were calculating this cost, did you advance the wages of your employees? A. I considered only the lump amount of labor expended.

Q. Well, that is not responsive to the question; I am asking you whether you advanced the amount that you were paying to the labor in your mill between the years 1903 and 1908, that is, per man, per hour, per day? A. I couldn't say; I didn't have anything to do with that.

Q. You were treasurer of the concern? A. Well, I considered just the lump amount paid each man every two weeks.

1025 Q. Didn't you make up the pay rolls? A. Yes, sir.

Q. Well, then, you would know that, wouldn't you? A. Well, I don't recall now any specific case of where any particular one man—where we increased in from one to eight years in his wages.

Q. I am not speaking about years; I am speaking about dollars, Mr. Waddell, or cents per hour. A. We paid per day.

Q. Did you pay for ordinary labor—— A. We paid for ordinary labor on a per day basis.

Q. On a per day basis? A. Yes.

1026 Q. Well, now then, between the years 1903 and 1908, did you increase the per diem of your labor employees? A. Yes, I should think there was an increase in that length of time.

Q. Then that was an element that entered into the cost, was it not, and the profits? A. Yes, but at the same time we increased our capacity of the plant.

Q. Well, you increased your capacity of the plant—— A. Yes.

Q. Well, now, was that done simultaneously with the increase of the per diem to the employees? A. It was, yes, because we put one man in charge of a mill as a head man of that mill and paid him twenty-five cents more per day than the first or second wheel man, for instance.

1027

Q. Well, now when was the capacity of your plant increased in what year, in what month? A. That I don't recall; I think it must have been about 1904 or 5; I don't remember the date.

Q. What was the increase? A. $25,000 in the capital stock——

Q. Now I mean in capacity? A. Oh, well, we originally started with a capacity of 400 kegs per day and the increase as I recollect was to a capacity of 800; 600 and then 800.

1028

Q. So that you doubled your capacity. Was 800 kegs per day the last capacity of your mill? A. As I recollect now that was.

Q. Upon this question of nitrate of soda. When you had a contract for nitrate of soda at a given price, did you ever sell your right to that nitrate of soda under your contract at an advance? (Objection sustained.)

Q. Mr. Waddell, in making up the cost of the product of the Buckeye Powder Company what did you do in entering the cost of the nitrate of soda where the market price of the nitrate of soda

1029

at the time of determining that cost was below your contract price? A. We took the contract price—I don't believe I quite understand, was it below or—

(Question repeated).

A. I don't recall any instance of that kind.

Q. During the entire time that you were manufacturing powder there was no instance of where the market price of nitrate of soda was below your contract price? A. I don't recall it now, but if it had been we would have used the contract price.

Q. You were also asked in regard to the cost sheets, as to the manner in which you made up your statement as to the cost of powder; I show you certain papers and ask you to examine them

1030 and state whether or not these have any relation to those cost sheets? A. Yes, sir.

Q. Now, did you have anything to do with preparing those papers in your hand? A. I prepared these two (indicating).

Q. Did you have anything to do with the other one? A. No, sir.

Mr. Abbott: I ask to have the first two documents marked for identification.

(Papers marked P 1113 and 1114 for identification.)

1031

Q. Did you know these documents were in existence while you were testifying? A. Yes, sir.

Q. How long from the present moment has it been when you discovered that those papers were still in existence? A. About Twenty-four hours from now.

Q. Are those papers all of the cost sheets that you know of that are in existence at the present time? A. So far as I know.

1032 *Recross examination by Mr. Katzenbach*:

Q. Mr. Waddell, you have testified here as to certain cost sheets that you supposed were not in existence when I was examining you as to the cost of the product of the Buckeye Powder Company. Have yon upon your books of account anything that shows the cost of the product of the Buckeye Powder Company? A. Except taken as a whole.

Q. But taken as a whole your books would show the cost, and the cost could be computed from the books of the Buckeye Powder Company, could it not? A. I doubt if you would get information covering a definite enough period to figure the cost, because the soda would lap and all expenses lap over and there would be no distinguishing link for periods.

Q. Then the cost for the different periods varies so that you could not obtain any specific knowledge from your books of account, of the cost of the product, is that what you mean to say? A. Not at this late day, unless you considered as a whole, took the whole of the powder manufactured over all the years.

Q. And as a whole, you mean the cost of the entire product between the time you went in business and ceased business? A. Yes, sir. 1034

Deposition of HARRY PAIGE, a witness for the plaintiff, was read as follows:

Q. Mr. Page, where do you reside? A. In Peoria.

Q. How long have you resided in Peoria? A. 24 years.

Q. What is your age? A. 37 years old, I am.

Q. What business are you in at the present time? A. Commercial agent for the C. B. & Q. Railway.

Q. How long have you been such agent? A. 1035
That title I have had about a year and a half. My title was contracting agent, but I have been in the same duties for the last fifteen years.

Q. What position did you occupy in the C. B. & Q. in the years 1903, '04 and '05? A. The same as now.

Q. Did you know at that time the Buckeye Powder Company? A. Yes, sir.

Q. Did you know R. S. Waddell, the president of that company? A. Yes.

Q. State whether or not during the years 1903 or '04 you had any business in the Buckeye Powder Company or with Mr. Waddell as the President? A. Yes, sir.

Q. Kindly state what that business was. A. If my memory serves me correctly, it was in the early part of 1903, or possibly the latter part of 1902, that Mr. Waddell first come to locate his plant and it was through me that it was located around the line of the Burlington Railroad at Edwards station.

Q. Were the products of the plant shipped over your line exclusively? A. Exclusive.

Q. Your lines were the only lines that had access to his mill? Yes.

1037 Q. You may proceed. A. My dealings with him were all the dealings that he, as representative of his corporation, would have with any line who was his sole means of transportation either in or out of his mills.

Q. Where were his mills located? A. Near Edwards Station, about one or one and a half miles west thereof.

Q. You received at Edwards Station all the product of the Buckeye Powder Company for shipment? A. We received it at their own switch, but our agent at Edwards Station was the agent who

1038 would receipt to them for the company.

Q. I will ask you to state whether or not you knew or had any relations with a man by the name of Piatt? A. There was a man by the name of Piatt from Kansas City. He came here either Decoration Day or Labor Day, 1904; it has been a long time back, and I didn't make any particular note of it, but I remember it was a holiday—it was either one or the other of those days.

Q. Did he come to see you, or did you go to see him? A. He came to see me.

Q. What, if anything, did he state to you at that time? A. He asked me to come over to the hotel and see him'.' (Objected to and objection overruled.) A. He asked me to come over to the hotel and see him; he wanted to talk to me.

Q. What hotel? A. The National Hotel, Peoria, Iillinois. He said that he was desirous of obtaining information——

A. The National Hotel, Peoria, Illinois, he said that he was desiours of obtaining information of the destination of the shipment, especially a carload shipment from the Buckeye Powder Co., and that he understood that I handled their rates, and that the copies of billing for all their shipments, came to my office, and if I was willing to furnish him with information, he would pay me $5.00 a letter understanding I was to write one letter a week. 1040

Q. Did he say whom he was representing? A. He did not.

Q. Did he state to you where the letters were to addressed to him?" (Motion to strike out the answer denied.) "A. The gentlemen presented to me a card, which I have not got. If my memory serves me correctly. I gave it to Mr. Waddell, there was an address on it at Kansas City, Missouri, but what that address was, I cannot say now.

Q. Where did this conversation take place? A. In the rotunda of the old National Hotel, Peoria. 1041

Q. I wish you would proceed to relate what further occurred at that conversation? (Objection everruled.) A. I told Piatt that was a little new for me, that I hadn't been selling out on a proposition; that I was human, and probably had a price, but I felt quite sure that it wasn't $30 a month; but that I would take the matter under consideration and let him know a little later in the day. I then telephoned to Mr. Waddell, that I wanted him to meet me; he did, and I laid the proposition before him, more as an evidence of good faith with him, as he had previously complained that somebody was giving out information to his competitors as to his business, and I took that means of

assuring him that, at least our office, or the people that he was dealing with directly, were trying to be honest and square with him, and that we would not lend ourselves to anything of that kind without his knowledge and consent. He advised that I pass the matter over and have nothing to do with it. I then called on Mr. Piatt and told him I couldn't do it.

Q. You have just stated all the conversation that you had with Mr. Waddell? A. I have not stated
1043 anything in particular as to the conversation with Mr. Waddell; I expect I told him of the circumstances, and he advised that I have nothing to do with it whatsoever, and to let the matter drop, which I did. There was, perhaps, a great many other things said at that time that would have no particular bearing upon the evidence in this case, or that had nothing to do with Piatt. (Objected to and objection sustained.)

Q. What if anything transpired after that conversation with reference to Mr. Piatt, did you see
1044 him further? A. I don't ever remember seeing Mr. Piatt again; I heard from him.

Q. When and how? A. It must have been four or five years after that I received an announcement of his joining some other partnership in law in Kansas City, and even that address I haven't got, I didn't keep it. (Motion to strike out answer sustained.)

Q. Did Mr. Piatt state to you at any time what business he was in? A. My mind is not absolutely clear as to whether he did or not. I talked to Mr. Waddell about it at that time, and I am not sure whether my knowledge or thought that he was with the du Pont people came to gradually forming the opinion by putting other things together, or whether he actually told me. If I had retained his card,

I could answer more directly some of these questions; but I didn't, it was not material or interesting to me at that time. (Motion to strike out answer sustained.)

Q. On this card which you have testified to, which he gave you, did it state his business upon it? (Objected to and objection overruled.) A. I don't remember; the card carried his name, the town, Kansas City, Missouri, and there was something in the corner—whether it was the number of his office, the same as 701 Jefferson Building, or whether it carried the firm he represented, I could not swear to at this time. 1046

Q. You gave that card to Mr. Waddell? A. Yes, sir, in showing Mr. Waddell who it was that called upon me. (Motion to strike the last answer denied. Motion to strike out the entire deposition denied.)

ELLIOTT S. RICE, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows: 1047

Direct examination by Mr. Abbott:

Q. Mr. Rice, where do you reside at the present time? A. Chicago.

Q. Where did you reside during the years 1903 and 1908 inclusive? A. Chicago.

Q. What business were you in during those years? A. Up to September, 1905, I was the agent of the E. I. du Pont de Nemours & Company and the Hazard Powder Company and the Austin Powder Company.

Q. What territory did your agency cover? A. It covered a part of the time, a part of Indiana; all of the time Illinois, excepting the extreme south-

1048 *Elliott S. Rice—Direct*

ern portion; Iowa, Nebraska, and some parts of Colorado.

Q. And was your office known with reference to the principal office at Wilmington—did it have a name? A. The office—the office of du Pont & Company.

Q. The office of du Pont & Company. Was it a branch office or was it a principal office or what? A. It was a branch office.

Q. A branch office, what was your title as man-
1049 ager of that office? A. General agent.

Q. Now during that time that you were manager of the office at Chicago, did you ever have occasion to make any contract with consumers of black blasting powder for sales of black blasting powder to them? A. With the operators; yes, sir.

Q. With the operators? A. Yes, sir.

Q. Have you got a list of those contracts with you? A. I have not.

Q. Have you got any data or anything from which you can refresh your memory as to the con-
1050 tracts which were made by you during your incumbency of that office? A. I have not.

Q. Did you ever have such a document? A. I had a list in the Government suit, so called.

Q. Had a list in the government suit? A. Taking testimony in that government suit.

Q. I will show you then Volume 1 of the testimony of the defendant's record in the suit of United States of America, Petitioner, against E. I. du Pont de Nemours & Company which is pending in the United States Circuit Court for the District of Delaware. Is that the suit you have in mind? A. I think so.

Q. Now I refer you to pages 318 and subsequent pages and ask you to state whether the data set forth there is the matter which you have referred

to as having given to the Government in that action (handing book to witness).

Mr. Button: Which page?
Mr. Abbott: Page 318 I think.

A. Yes; I think this list was taken from that—this record was made from that list which I had there at that time.

Q. Now, this list which you had at that time was that a list which you prepared yourself? A. 1052
It was prepared in my office by a stenographer.

Q. What did it consist of? A. The book?

Q. Yes. A. Consisted of the names of those with whom I had contracts, the period covered by the contracts, the price and the discount or rebate.

Q. In giving the information which is set forth on the pages which you have just examined, did you use that book? A. Yes, sir.

Q. Are you able to say then at the present time whether the statement in the record which I have just shown you is a true and correct statement of the list of the contracts that have been made by 1053
you on behalf of the du Pont Powder Company? A. I never compared it, but I believe it to be.

(The same received in evidence and marked Plaintiff's Exhibits 1143 and 1144.)

Cross examination by Mr. Button:

Q. Mr. Rice, did you negotiate the most of these contracts yourself that are in this list or these lists? A. Personally?

Q. Yes. A. Very few of them.

Q. They were done by men under your direction? A. Yes, sir.

Q. In your office? A. Yes, sir.

1054 *Elliott S. Rice—Cross*

Q. And this first list, I understand, is a list of contracts made in 1903 and thereafter as you recollect it? A. Yes.

Q. 1903 and 1904? A. They were made or renewed.

Q. And with almost or with very few exceptions, they were contracts in renewal of others that had theretofore existed? A. Yes, sir.

Q. Those others being mentioned in the second list which was put in here, do you recollect? A.
1055 I think so.

Q. I don't know as this has been shown to you. After you put in the first list, did you furnish the second list, showing the previous contracts with the same customers? A. I furnished the first list at the request of the attorneys, read it into the record when giving testimony. As to the second I do not remember. It seems to be a repetition.

Q. Don't you recollect that that second list was made up from certain red ink numbers which you had on that original book which referred to the numbers of the previous contracts? A. Yes.

1056 Q. The contracts as I understand it, were contracts for the sale of the product of the du Pont Company were they not and the Hazard? A. du Pont and Hazard; yes, sir.

Q. Was there anything new in the course of your business in the way of making contracts for the furnishing of powder to the coal operators at that time? A. No.

Q. When did you first take the agency at Chicago, Mr. Rice? A. In February, 1883.

Q. In February, 1883, were you selling the powder to coal operators under written contracts? A. Yes; we made some contracts as early as 1883.

Q. Did you make contracts for the furnishing of powder to the coal operators practically continuously from that time down? A. Yes, sir; I

believe we either made contracts or renewed them.

Q. In your experience of making contracts, was there any new system of making contracts inaugurated in 1897 or thereabouts? A. I don't know of any such thing.

Q. And your territory covered a portion of the territory did it in which the Indiana Powder Company sold powder? A. It did earlier.

Q. I think that is all. There is one more question. When did you cease to be the general agent there at Chicago, Mr. Rice? A. I think September 1, 1905. 1058

Redirect examination by Mr. Abbott:

Q. Have you any relations now to, or connection now with, the defendant in this case, the E. I. du Pont de Nemours Powder Company. A. I am not connected with the sales dapartment in any way and have not been since the 1st of September, 1905. I am taking care of some property for Col. du Pont. 1059

Q. Do you receive any salary or any compensation in any way directly or indirectly from the defendants in this suit? A. Yes, sir; I receive a salary under contract.

Q. At this time? A. Yes, sir.

Q. And have ever since you left the office—management of the office—in 1905? A. Yes, sir.

Q. You have testified here concerning certain contracts which you made as early as 1883. Will you state what those contracts were and with whom you made them? A. I could not at this time.

Q. Cannot you give the names of any one of them? A. No; I would not want to undertake to give the names at this time of the contracts.

Q. Can you give the names of any person or com-

pany or corporation with whom you made a contract previous to 1897? A. Yes; I made the first contract that I ever made for the sale of du Pont blasting powder at Erie, Pennsylvania, in 1878 or 1879.

Q. Who was that with? A. J. Lewis Taylor.

Q. J. Lewis Taylor? A. Yes, sir.

Q. Did you make any other contract with anybody that you can recall? A. No; I could not state positively.

1061 Q. As a matter of fact, you do not wish it to be understood that you had a system of making contracts previous to 1897, do you? A. No system about it, simply made contracts wherever they were desired or where we desired them.

Q. I would like to have you tell how many such contracts you made previous to 1897, I mean as to number. A. I could not say definitely.

Q. Will you state it was five? A. Previous to 1897?

Q. Yes. A. Well I should say it was a good
1062 many more than that, I cannot fix the number.

Q. Let me try to get your understanding of it, you say it was more than five? A. Yes.

Q. Will you state how many more than five it was? A. No, sir.

Q. Have you any idea? A. No, sir.

Q. Was it 500? A. No, sir; I don't think it was.

Q. Was it 250? A. I could not state.

Q. Was it 100? A. You mean all contracts all together?

Q. Yes; all contracts. A. Oh, I think perhaps.

Q. You think it was? A. I think so.

Q. Out of that list of 100, cannot you give us the list of the names of a single one outside of this one that you have given? A. Yes; we had a contract with the Des Moines Coal and Mining

Company, Des Moines, Iowa, prior to that time. We had a contract with the Chrystie Coal Company of Des Moines, Iowa, part of that time. I think we had a contract with the Whitebreast Fuel Company part of that time, an Iowa corporation. It is impossible to give them all.

Q. These are all you are able to recall at this time? A. Yes.

Q. Do you know anything about any Gunpowder Trade Association wherein the matter of contracts was regulated or attempted to be regulated? A. 1064
No, sir.

Q. You don't? A. No, sir.

Deposition of ERNEST HAUSER, a witness produced on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Hauser, where do you live? A. In the 1065
city.

Q. Peoria? A. Yes.

Q. How long have you lived in Peoria? A. I have lived in Peoria five or six years.

Q. Where did you live previous to going to Peoria? A. At Edwards.

Q. Illinois? A. Yes, sir, Edwards, Illinois.

Q. And previous to that where did you reside? A. Fontanet, Indiana.

Q. And previous to that, where did you live? A. At Seward, Pennsylvania. I left Indiana and went to Seward, Pennsylvania, and then went back to Indiana.

Q. What was your business in Seward, Pennsylvania? A. Glazeman.

Q. Glazeman in a powder manufactory? A. Yes, sir, in a powder mill.

Q. What was your business at Fontanet? A. Working in a powder mill.

Q. In what department? A. In all departments.

Q. And what was your business at Edwards? A. Head glazeman at Edwards.

Q. And what is your business now, and since you left Edwards? A. Carpenter.

1067 Q. Who were you engaged with at Fontanet, Indiana? A. The Indiana Powder Company.

Q. Working for them at their powder mills? A. Yes, sir.

Q. In whose employ were you at Edwards, Illinois? A. The Buckeye Powder Mill.

Q. Were you acquainted with any other employees of the Buckeye Powder Company? A. I was.

Q. Did you know any of those employees previous to going to Edwards, Illinois, to work for the Buckeye Powder Company? A. Yes.

1068 Q. Where did you know them? A. In Fontanet, Indiana.

Q. How did you first learn of the Buckeye Powder Company? A. Why, Mr. Anderson got a letter from Mr. Waddell, asking him to come over and take charge of this mill.

Q. What Mr. Waddell do you have reference to? A. Mr. R. S. Waddell.

Q. And what position did he occupy, do you know, in connection with the Company? A. I think he was manager, or president of the company.

Q. You say you received a letter from him? A. No, my brother-in-law, Mr. Anderson.

Q. Have you got that letter? A. No, sir.

Q. Do you know where it is? A. I do not.

Q. Did you ever see it yourself? A. Yes.

Q. Now, you may state what, if any influence that letter had upon your movements? A. Why, several of us were talking of going to Peoria, after Mr. Anderson received the letter; they said there was a new mill, and we thought we would like to change.

Q. Did you have any discussion with any of the other employees at Fontanet, with reference to going to Edwards? A. I did.

Q. About when was it that you first got the information concerning the Buckeye Powder Company plant at Edwards? A. Along in July. 1070

Q. July of—— A. About the mille of July.

Q. What year? A. 1903.

Q. Did you acquire any other information from any other source except as you have stated, regarding the plant which was then established, or was about to be established, at Edwards, Illinois, by the Buckeye Powder Company? A. Yes; there was a notice stuck up in the wash house of the plant at that time.

Q. Referring to the Buckeye Company? A. Yes. 1071

Q. Have you got the notice? A. No, I haven't.

Q. Do you know where it is? A. No, I do not.

Q. What were the contents of that notice? I will ask this question: By whom was the notice signed? A. Maddux.

Q. Do you know what his initials were? A. I don't remember.

Q. Do you know what position, if any, he purported to present? A. He was assistant general manager.

Q. Of what? A. Of the E. I. du Pont de Nemours Company.

Q. Was the notice signed by the company named? A. Yes, sir, the E. I. du Pont de Nemours Company. (Objection overruled.)

By Mr. Katzenbach:

Q. Do you know by whose authority this notice was posted of your own knowledge? A. The superintendent put it up.

Q. Did you see him put it up? A. Yes.

Q. Do you know whether he had any authority to put it up? A. I don't know whether he did or not; I suppose he did.

1073 Q. Now, Mr. Hauser, state to the best of your recollection what the contents of that notice was, and as near as you can recall the form and language used in the notice and the matter of signatures. (Objection overruled.) A. The notice read that Mr. Waddell had declared himself an enemy of the E. I. du Pont Company, and any employee that got employment at the Buckeye Powder Mill would never need apply to any of the mills controlled by the E. I. du Pont Company.

Q. How was it signed? A. It was signed by Mr. Maddux.

1074 Q. Any other notice? A. It was signed "E. I. du Pont de Nemours Company by Mr. Maddux" dated at Wilmington, Delaware.

Q. Where was this notice posted? A. In the wash house.

Q. What was the wash house? A. Where all the men changed clothes, and washed after the days' work is done.

Q. Did any other of the employees of the mill see this notice to your knowledge? A. Yes, sir.

Q. Was the notice discussed? A. Yes.

Q. Do you remember the date that the notice was posted? A. Not exactly.

Q. Well, can you state about when it was? A. It must have been along about the 25th of July or somewhere along in there.

Q. Of what year? A. 1903, 25th or 26th.

Q. Do you know where the notice was dated? A. Wilmington, Delaware.

Q. What was the practice of the Indiana Powder Company, if you know, with reference to the posting of notices—that is, as to where they were posted —that is, notices that were intended for the men? A. In the wash house.

Q. Do you know what was the custom? A. I do.

Q. What was that custom? A. They always 1076
stuck them up in the wash house, all the notices to all the men.

Q. Now, how long were you employed at the Buckeye Powder Mill at Edwards? A. About two years and a half or three years.

Q. Did you know any of the other men employed at that mill during that period? A. Yes, sir.

Q. Did you know them before you entered the employ of the Buckeye Powder Company? A. Yes, sir.

Q. Were they or were they not, men that have had experience in other powder mills where you 1077
have worked? (Objection overruled.)

Q. What other mills had these other employees come from, according to your own knowledge? A. The Indiana and the Northwestern.

Q. Where was the Northwestern mill located? A. It was on the C. & E. I. Railroad; I don't remember what the name of it is now.

Q. How far from Peoria? A. About twenty miles from Terre Haute.

Q. Indiana? A. Yes, sir.

Q. Do you know of any of the men who came from the Indiana Powder Company to work for the Buckeye Powder Company who afterwards left the employ of the Buckeye Powder Company? A. Yes, sir.

1078 *Ernest Hauser—Cross*

Q. Do you know where these men obtained employment afterwards? A. Yes, sir.

Q. State where they obtained employment? A. At the United States mill.

Q. Where was that located? A. Coalmont, Indiana.

Cross examination by Mr. Katzenbach:

Q. Were you ever employed at the mills of the
1079 Northwestern Powder Company? A. No, sir.

Q. Were you ever in those mills? A. No, sir.

Q. How do you know, then, that any employees of the Buckeye Powder Company were employed in the Northwestern Powder Company's Mills? A. Because they left Fontanet and went over there.

Q. Did you ever see them there? A. I seen them go over there.

Q. I asked you whether you ever saw them there. A. No, sir.

Q. Then you don't know whether they were there
1080 or not of your own knowledge? A. No, sir.

Q. Did you ever see any employees that were at the Buckeye Powder Company and the mills of the United States Powder Company? A. Yes.

Q. Have you been at the mills of the United States Powder Company? A. Yes.

Q. Did you work there? A. No, sir.

Q. Did you see any there? A. I did see——

Q. Name those you saw? A. George Hauser, Henry Justice, George Barder.

Q. Is that all? A. Yes, sir.

Q. Where are the mills of the United States Powder Company located? A. Coalmont, Indiana.

Q. Who operates those mills? A. They are, or they used to be operated by Norman Rood, Elmer Sergent.

1081

Q. What company operates them? A. I don't know what company; it is a United States Powder Company.

Redirect examination by Mr. Abbott:

Q. Do you know of your own personal knowledge, of a single employee that left the Indiana Powder Company after that notice was published as you have stated, that ever obtained employment again 1082
at any of the mills of the E. I. du Pont Company or any of its associates? (Objected to and objection sustained.)

Recross examination by Mr. Katzenbach:

Q. I ask you whether you would testify that no employee who had been with the Indiana Powder Company at Fontainet, and had entered the employ of the Buckeye Powder Company had been subsequently thereto employed by the E. I. du Pont de Nemours Powder Company? A. No; I wouldn't 1083
say that, not to my own knowledge; I do not know any that did, but I wouldn't say anybody did not.

Deposition of THOMAS J. REYNOLDS, a witenss produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Reynolds, where do you reside? A. At Collinsville, Illinois.

Q. How long have you resided at Collinsville, Illinois? A. I guess about 35 years.

1084 *Thomas J. Reynolds—Direct*

Q. What is your business at the present time? A. I am sub-district president of sub-division 6 of District 12 of the United Mine Workers of America.

Q. What is District 12? A. That is the State of Illinois.

Q. And what is sub-district 6? A. That takes in—I don't know that I can name the counties—it will run as far north as Gillespie; we will take in all that field up there. I could name the places, I guess.

1085 Q. No, just generally? A. And then we go as far south as Willettsville and as far east on the B. & O. as Salem and on the Vandalia as far south as Centralia and on the——

Q. How long have you held your present office? A. I think from about 1906.

Q. To date? A. Yes, sir; five or six, six, I think.

Q. Previous to that time did you hold any office in the U. M. W. of A.? A. Yes, sir; I was first elected president of a local union at home in Collinsville—that was in 1897. I think it was in 1898 I was

1086 elected a member of the State Executive Board of District 12; later I was elected state vice-president; I served two years as state vice-president, and one year as president.

Q. When was it that you ceased to be president of the U. M. W. of A.? A. I believe it was in 1904 or 1905——

Q. The initials U. M. W. of A. stand for what? A. United Mine Workers of America.

Q. What is the smallest organization in the United Mine Workers of America? A. I guess the local union.

Q. And what field does that cover? A. Well, the local unions in our state may have jurisdiction over one mine or several mines, in fact, sometimes there is two local unions in one locality—one may have

jurisdiction over one mine and the other a couple of mines; but there can't be any two mines in one local union, and there can be several mines in one local union.

Q. What is the next organization in the United Mine Workers of America? A. The Sub-district.

Q. And the next? A. The State.

Q. And the next? A. The National, and International.

Q. After you severed your connection with the United Mine Workers of America in 1904 or '5, as 1088
you have testified, what kind of work did you take up? A. I went to work for the Buckeye Powder Company; I worked for them, I think, ten months, as near as I can recollect.

Q. What did your duties, while you were working for the Buckeye Powder Company require of you? A. Well, we tried to sell powder and we also took the samples into the mines wherever there was an opportunity of selling it, and tried it out to see whether it was all right or not, whether we would get any business there. 1089

Q. State whether or not you have had experience in mining operations yourself? A. Yes, several years' experience; I don't remember just how many.

Q. As a practical miner? A. Yes.

Q. You are a practical miner? A. Yes, I have a certificate to that effect.

Q. Have you ever handled powder in your work in the coal mines? A. Yes, I have dug coal with powder and without it.

Q. Now, in performing your duties for the Buckeye Powder Company did you at any time enter the mines? A. Yes, sir; wherever they had samples of our powder trying them I always went down to see what it was doing, to see how it worked.

Q. What territory did you cover in your work

1090 for the Buckeye Powder Company? A. Well, I covered a good deal of the State of Illinois and I made a few trips I believe into Iowa and I believe one trip into Michigan; most of my work was in the State of Illinois, in the Peoria district and the Springfield district and down there in this field.

Q. Now, how long did you say you continued with the Buckeye Powder Company? A. I think I worked for them about ten months, as near as I can recollect.

1091 Q. What, if anything, caused you to cease your relations with the Buckeye Powder Company? (Objection overruled.) A. Well, we were having pretty tough sailing and I felt as though I had a chance. I thought I had a chance to go back with the miners and I feared that the company, with the opposition they were having, were not going to be able to live very long and I thought I had better take this chance to go back with the miners, and I did.

Q. State what facts, in a general way and in your own way, caused you to reach the conclu-
1092 sion which you have just indicated. (Objection overruled.) A. Well, there were some of the mines I was in where there was objections made to the powder, even by men who had not use dit at all. In one mine in particular, and that was at Marysville, Illinois; they took samples down there to try it; I don't remember how many kegs there was, but they didn't use it, and they said the men were bowling the powder out, and I said I would like to see what objections they had. We went into one place in particular, and the committee said to the men, 'How is the powder?' And he said, 'the new powder is no good, its rotten.' 'Where do you keep your powder?' he said, and he told him, and we went and looked and there was not a grain of Buckeye Powder there. One of the men at the shaft

bottom began to holler about the powder and the manager said to him, 'I don't think you ought to holler until you get some of it, you don't know whether it is good or not'; but he said, 'I don't want to try it.' A few instances of that kind in several places led me to believe that the powder was being bowled out and wherever we got a fair test I found not so much opposition to it by the miners; but they didn't give it a fair test, and that led——"

1094 The Court: That part you needn't go on with.

Mr. McCarter: We think the whole answer should go in.

The Court: If you want it in, it may go in.

Mr. McCarter: As your Honor has permitted some of it to go in, we object to any answer going in, but we object to it being split.

The Court: Let the record show that this is a request on your part to have the whole answer go in; the record must show the situation. 1095

Mr. McCarter: Of course, the record will show what is right, but the request was made —I don't want any misunderstanding upon that, upon the theory that it is improper to split an answer in two.

The Court: You are entitled to have it, only I want the record to show that it is upon your request.

(Balance of answer read, as follows): But they didn't give it a fair test, and that led me to believe that there was some force at work that this company wouldn't last long. Everybody said there was a powder trust, and I thought if we had to go

1096 *Thomas J. Reynolds—Direct*

against that opposition, sooner or later I would be out of a job, and I had better take this chance, and the job I left was paying me more wages than the one I had.

Q. I will ask you to state whether there was any difference that you noticed in going about from place to place in the opposition that you have testified to as to locality? (Objection overruled.) A. I found a great deal of opposition in the Peoria and also in the Springfield district; in fact, I didn't
1097 meet with very much success in either of them; I met with more success outside of those districts than I did in them.

Q. This mine you speak of at Marysville, what mine was that technically known as? A. Donk's Mine No. 2.

Q. Did you have any experience in connection with the use of Buckeye Powder in any other mine belonging to the Donk Coal Company? A. Well, we attempted to get the powder in at Troy, but we met with some opposition there just about the same
1098 that we did at Maryville and we had a pretty good business at No. 1 and I didn't want to get into any fight in those two places and I simply backed out and held on to the No. 1 business.

Q. Did you ever visit Pana, Illinois?

Q. That is in your district? A. While I was working for them, I went all over the State, yes, sir; I was there.

Q. What coal companies at that point did you call upon? A. I called on Mr. Puterbaugh.

Q. What other mine at that point did you call upon or mine owner? A. Pennwells.

Q. Any others? A. That is all I remember.

Q. What experience did you have at each point with either of the owners of those mines? (Objection overruled). A. I was not able to do any business; they told me that they had contracts—

1099

Mr. Penwell did—that he couldn't do any business. The other fellow dickered with me and found out what price I could make him. He was willing to find out the price and I thought he was feeling me out, and I didn't bother with them; he said he couldn't do any business with me now, and I left.

Mr. Katzenbach: I move to strike out as giving a statement made to the witness by other parties and is therefore hearsay testimony, and also upon the grounds that it is incompetent, irrelevant and immaterial.

1100

The Court (after examination of the deposition): It must be struck out.

The plaintiff then and there excepted to said ruling and said exception was allowed.

Q. Now, was there any trial of Buckeye Powder made at any time at that point? A. Not right there, there wasn't; there was at Pekin.

1101

Q. What was that? Tell what you know about the trial of the Buckeye Powder at the Pekin mines? Just tell what you know, of your own knowledge, with reference to the trial to which you have just been interrogated. A. The Dugan Brothers, I think, were running that mine at that time and they said if the mines would take the powder they could do some business with us; so I took the matter up with the miners and took some powder there for them to try; went down the mine after they shot it and saw that it done nice work; everybody was satisfied with it, and they also reported that to the Local Union, and they agreed to use the powder, provided the company would buy it; the company had given assurance that if it was acceptable to the men, they would. After the men

had taken that action, there was somebody went down there and went around with the committee of the miners around the mine, and they had them sign up to continue the use of the powder they were using before.

Mr. Katzenbach: Is that what was told you?

A. That was the excuse they offered me.

1103 Q. Do you know who the man was that went around to the miners at that time? A. No, sir; I don't know who it was.

Q. Do you know who he was puurported to be? (Objection sustained.)

Q. Now, from time to time, as you were carrying on your work for the Buckeye Powder Company, did you make repots to the Buckeye Powder Company of your efforts? A. Yes, sir.

Q. Did you at any time visit the mines of the Mammouth Vein Coal Company? A. That is in Iowa, isn't it?

1104 Q. Do you know where the Mammouth Vein Coal Company is located? A. I think it is in Iowa.

Q. Do you know who the Manager of that mine is, or was at that time? A. I know him, but I can't recall his right name.

Q. Did you sell any powder to him? A. No, sir.

Q. Was there any reason given to you why the Buckeye Powder could not be purchased by the Manager of the Mammouth Vein Coal Company? (Objection sustained.)

Q. Do you know a coal company known as the Phillips Fuel Company? A. That is at Ottumwa.

Q. Did you make any effort to sell Buckeye Powder to the Phillips Fuel Company? (Objection overruled.) A. Yes; I called on Mr. Phillips,

but I wasn't able to do any business with him at that time.

Q. Do you know a coal company called the Rex Fuel Co.? A. The Rex Fuel Company, yes; I remember the name, but right now I don't know just where it is located.

Q. I show you a paper which purports to be a letter dated 'Bussey, Iowa, December 15, 1904,' and I ask you to examine the same and state whether or not you recognized the handwriting? A. Yes, I remember it. 1106

Q. Whose handwriting is that? A. That is mine.

Q. Now, I will ask you to state, since reading the letter which I just handed to you and which I will have marked for identification whether the same refreshes your memory as to the Rex Fuel Co.? A. That was the Durfee mine.

Q. Did you succeed in selling powder to the Durfee mine? A. No, sir.

Q. What reasons, if any, can you state why you were not able to sell Buckeye Powder to the Rex Fuel Company, known as the Durfee mine? (Objection sustained.) 1107

Q. How does the Local Union speak; in what form is it authorized to express the action of the Union? A. Well, that would be——

Q. Suppose the action of the Union was taken in writing—how would that be evidenced? A. By the signature of the secretary and also the seal of the local union.

Q. Can the seal of the Local Union be used on any document not official? A. I don't think it would be; it should not be.

Mr. Katzenbach: There is no cross examination of this witness.

1108 *William Coyne—Direct*

WILLIAM COYNE, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Coyne, where do you reside? A. Wilmington, Delaware.

Q. What is your occupation? A. Director of sales in the du Pont Powder Company.

Q. How long have you held that position? A.
1109 Since August, 1907.

Q .What was your position prior to that date? A. For about three years, traffic manager.

Q. Of the same company? A. Of the same company.

Q. And prior to that, as far back as 1903? A. Since the beginning of 1904—my connection with the company commenced in the early part of 1904—in January, I think.

Q. What position did you hold at that time? A. Traffic manager.

1110 Q. Now, what position—the position that you hold at the present time, will you describe briefly what the offices are that are under your control? A. Practically entire charge of the marketing of all the production of the du Pont Powder Company with the exception of Government powder.

Q. Do you have anything to do with the matter of prices, regulating the prices? A. Yes, sir.

Q. You were to produce a document to-day relative to certain prices, Mr. Coyne, I believe? A. Yes, sir.

Q. Have you that with you? A. I have.

(Said document marked P 1219 for identification.)

Q. Mr. Coyne is it any part of your duties to

make the purchases or keep track of the places where the powder which you sell to the various customers comes from? A. I don't quite understand that. Do you mean, do I know what our source of supply is?

Q. Yes; I will ask you that first? A. Yes, sir.

Q. Now take an illustration—so as to make myself clear—suppose that you wanted to supply a customer upon an order received from the State of Illinois—we will say from Missouri, St. Louis—
with an order for black blasting powder, from 1112
what source would you have that order filled, just as an illustration—preliminary? A. For delivery at St. Louis?

Q. Yes. A. Well now we would ship it from Mooar, Iowa, but——

Q. Say during 1903 to 1908? A. Place it in the Belleville mill.

Q. Have you had any experience, or has it been any part of your duties during the time that you have been acting for the du Pont Company, to keep track of the sources from which the powder was
shipped to various customers that were under con- 1113
tract with you during that period? A. Well I always knew the sources from which we drew the supply, I have records of it.

Q. Can you say who supplied the powder—from what mills, generally speaking the powder came that was used to supply customers of the E. I. du Pont de Nemours Powder Company at any time since its organization down to 1908? A. I don't quite understand, the year—what do you mean by the year of your organization?

Q. Your organization was 1903, was it not? A. Why, there were several companies; I don't know.

Q. I am speaking of the Powder Company now. A. I would have knowledge of the sources of supply from 1904 on.

1114 *William Coyne—Direct*

Q. I show you plaintiff's identification 916, and ask you to look at it and state if you know where the powder would come from to fill any orders that might be made under the terms of that contract? A. The consumption is at Peoria, Illinois?

Q. Yes. A. I should say that would come from Mooar, Iowa.

Q. Will you state whether or not the Powder Company—the E. I. du Pont de Nemours Powder Company—had anything to do with supplying the
1115 powder that was called for under the terms of that contract? (Exhibit 916 shown to witness.) A. This antedates my connection with the company, but I don't think there is any doubt but what they did.

Q. Do you know where the powder was manufactured that was used at any time or ordered at any time for the purpose of filling orders that were received under any of these contracts? A. From 1904 I do.

Q. From that time on tell us what you know
1116 about them. A. Well, from our various plants, blasting powder mills of which I think you have a list or I can recite from memory a good many of them.

Q. I don't ask you to do that, but you say "our"; by "our" what do you mean? A. Well, I mean the du Pont Company as I know it.

Q. What do you understand that to be?

Mr. Katzenbach: I object.

The Court: Mention them, can you?

A. The mills?

The Court: Yes.

A. Yes; I can mention the mills, if that will

be sufficient; Mooar, Iowa; Belleville, Illinois; Pittsburg, Kansas; "P. & K." it might read there.

A. Pittsburg, Kansas; Turk, Kansas; Kellogg, West Virginia; Fairchance, Pennsylvania; Frontenac, Indiana; Youngstown, Ohio; Wilmington, Delaware; Birmingham, Alabama; Chattanooga, Tennessee; Pleasant Prairie, Wisconsin; Santa Cruz, California; several mills in the anthracite district of Pennsylvania; Punxatawny, Pennsylvania; and there may be some small mills that I don't recollect. 1118

Q. You had charge of the filling of orders that were received under those contracts at that time, did you? A. Well, yes; I might say that we had an order bureau that worked under my direction.

Q. In whose employ were you, what company were you acting for? A. Well, whatever company existed since 1904; I don't know the changes in the name or the dates that took place .

Q. Did you at any time change your office from one place to another in order to accommodate yourself to any particular company, any change in company? A. No, sir. 1119

Q. Always been in the same office? A. Not always the same office, but we moved our office to get better quarters only.

Q. From what source would your salary come, what company would you receive that from? A. I have to answer that the same as the other; it was whatever company that was operating.

Q. Did it come in the form of cash? A. Oh, no; I always got but one check.

Q. You mean since you have been working for the company, one check? A. I thought you asked me——

Q. Did it come in the form of checks, your pay? A. Yes.

Q. Can you recall what name was on those checks when you received the checks? A. These are checks in payment?

Q. Yes. A. I can; the recent checks.

Q. No; I am not asking for the recent ones; I would like to have you tell me as early as your employment began. A. I don't recollect.

Q. Do you remember who signed them as Treasurer? A. I don't remember that the treasurer does sign our checks; I think they are signed——

1121

Q. Well, do you know whose name was on them as Treasurer then? A. My recollection is that of P. S. du Pont.

Q. Now when you filled an order under any of these contracts what did you do with the documents or the records of that order; where were they placed by you? A. For a certain period, probably two or three years, they were kept in the main office at Wilmington and then sent to the hall of records.

Q. Do you recall the form in which those orders were prepared, in reference to the particular company to which you assigned the order or the papers? A. Since my connection with the company there never was but one company that the orders were assigned to.

1122

Q. What company was that? A. That was the operating company.

Q. Give the name will you? A. I don't recall what the name of the company was in 1904. It was either the E. I. du Pont & Company or the E. I. du Pont de Nemours Powder Company or the name has been changed two or three times and I have never had occasion to pay much attention to that.

Q. As far as you know you have always worked for one company? A. Yes.

Q. And of that company Mr. T. S. du Pont has always been treasurer and Mr. T. C. du Pont has always been President? A. Yes.

Q. And Mr. Alexis I. du Pont has always been Secretary? A. Yes.

Q. Have you at any time ever given orders for powder to be shipped from the United States Powder Company's plant? A. No.

Q. Have you ever given orders for powder to be shipped from the Egyptian Powder Company's plant? A. No. 1124

Q. From the Excelsior Powder Company? A. I think we may have in cases, emergency, bought occasionally a car load of powder from the Excelsior Powder Co., Burton Powder Company? A. Yes; in time of stress we have.

Q. From the Senior Powder Company? A. Yes, sir.

Q. From the Equitable Powder Company? A. We may have bought an occasional car when we had blows.

Q. From the Western Powder Manufacturing Company? A. Yes. 1125

Q. Now, in regard to the last company whose name I have just given you, will you state when you began ordering shipments from the Western Powder Company's plant? A. I think it was the latter part of 1909.

Q. How long have you continued to ship orders from that plant? A. I think we are taking some powder from that plant yet.

Q. Now, did you at any time Mr. Coyne ever endeavor to buy Buckeye Powder, give orders for Buckeye Powder through your plant? (Objected to and objection overruled.) A. From the Buckeye Powder Company?

Q. Yes. A. No, sir.

Q. Did you ever attempt at any time to make an arrangement with the Buckeye Powder Company for the purchase of any portion of the output for disposition to your customers? (Objected to and objection overruled.) A. The Buckeye people were so antagonistic to us that we never felt that we could have any dealings with them at all, and didn't.

Q. You never sought to make any arrangement of that kind for that purpose? A. No.

1127 Q. Do you remember ever having written a letter to Mr. Waddell or to the Buckeye Powder Company for the purpose of seeking an alliance with them, or an arrangement with them to make use of their powder with your customers?

Q. I show you a paper and ask you to state whether you know anything about that signature (handing paper to witness)? A. That is my signature.

(The paper referred to was marked Exhibit 1221 for identification.)

1128

Q. Now, I ask you to look at this document and read it, and state whether or not you desire to make any change in the testimony which you gave the other day, with reference to some interrogatories which were put to you? A. Yes, sir; you asked me if I had any recollection of writing a letter to Mr. Waddell asking him for prices of powder and I said I had no recollection. This letter refreshes my memory; this is my letter.

Q. And then you wish to change your testimony in that regard? A. Yes, sir.

(The paper was received in evidence and marked Exhibit 1221 and read to the jury as follows:)

E. I. du Pont de Nemours Powder Co.
Wilmington, Welaware, October 24, 1907.

Mr. R. S. Waddell, Pres.,
Buckeye Powder Company,
Peoria, Illinois. File SD-241-D

Dear Sir:

Would it be possible for you to help us out with some "B" Blasting Powder and if so, at what price 1130
f.o.b. mill?

Would also like to know what size grains you could furnish, what quantity per month, and the number of months you could continue to supply us.

Thanking you in advance for your early attention.

Q. Have you any knowledge, Mr. Coyne, of any purchases which have been made at any time during your incumbency of the position of Director of Sales, of powder—blasting powder, from the Western Powder Manufacturing Company? A. Yes, 1131
sir.

Q. Do you have any knowledge of your own, or any information concerning how that powder was shipped from the Western Powder Manufacturing Company to your customers, that is to say, in what kind of kegs? A. I never saw the kegs, but I know the kind of kegs we directed the powder to be shipped in.

Q. And what kind of kegs were they? A. Du Pont kegs.

Q. Now, I will ask you to state whether in ordering shipments from other manufacturing companies of which you have made purchases, other than your own plants, did you or did you not have that

1132 *William Coyne—Direct*

powder shipped in du Pont kegs? A. Sometimes we did, sometimes we did not; it depended upon the volume of the business and the length of time we had before we needed the powder for the customer.

Q. Have you any knowledge of the total number of kegs which were shipped by you from the Western Powder Manufacturing Company's plant, to your various customers during any years since 1908 to the present time? (Objection overruled.) A. I can remember one or two years.

1133 Q. What years were they? A. I think 1900—we did not ship any in 1908, as I recall it. In 1909 we purchased about 20,000 kegs.

Q. Do you recall about how many kegs you purchased in 1910? A. I think about 40,000 or 43,000, somewhere in there.

Q. And 1911? A. I think it was something less than in 1910, but around 30,000, if my memory serves me.

Q. 1912? A. I do not think I can remember that.

Q. 1913? A. I do not recall just the number of
1134 kegs in 1913.

Q. Now, can you recall the price that you paid to the Western Powder Manufacturing Company for the powder which you purchased during the years from September 18, 1908, down to the present time, the price per keg? A. The price varied. I think we paid for some at the time 90 cents at the mill, and some at the time 95 cents.

Q. Do you know when you began paying 95 cents? A. I cannot say.

Q. Do you recall whether you paid the 90-cent price as late as 1912? A. No, I cannot say.

Q. Now, was or was not this price of 95 cents a price at the mills, or was it at the customer's delivery point? A. It was at the mill.

Q. You assumed the burden of expense in transporting it from the mills to the customer? A. Yes, sir.

Q. Now, referring to Plaintiff's Exhibit 1219 for identification, the same being a document which you have produced here. I note that the prices which are given upon that document appear to have been made on an average basis; is that correct? A. It is the yearly average delivered price, by district.

1136

Q. How did you obtain the average, say during the years 1906 and 1907, for black blasting powder, which was sold in the Chicago district? A. Of course I did not make the statement, but I know the method.

Q. Well, will you describe that method? A. The price we received for the powder from the customers was divided by the number of kegs sold.

Q. You know the testimony given by Mr. Patterson, do you not, regarding prices which obtained in that period, the 95-cent rate? A. I heard Mr. Patterson's testimony.

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Q. Yes; now, the rate as given here appears to be 98 cents, and I will ask you how you have arrived at that determination, at 98 cents? A. Well, Mr. Patterson said that the 95-cent price had been made, but not of necessity to every customer.

Q. Well, now, can you state what proportion of the powder which you sold during that period in that district was sold at the 95-cent rate? A. What year are you referring to?

Q. During 1906 and 1907? A. No, I could not give you the amount.

Q. Can you state whether or not the majority of the powder was sold at the 95 cent rate? A. I cannot, except for the fact that the average price was 98 cents, as an indication that the major portion of it was sold at 95 cents.

Q. Now, I will ask you also to state whether the 95 cent rate cut any figure in the average which you give for the year 1905, which appears to be $1.04? A. Yes.

Q. Then can you state when and what date your 95 cent rate began, when it was first made, that rate? A. May 5, 1905.

Q. The May 5, 1905? A. The 95 cent price was authorized.

1139 Q. Now, can you state when it was that the 95 cent rate was discontinued? A. Except in the case of existing contracts which of course had to be carried out, that price was discontinued, October 14, 1907.

Q. Now did that 95 cent rate prevail in any district except the Chicago district during that period? A. During what period?

Q. During 1905, 1906 and 1907? A. There was one 95 cent price made in the Pittsburg district according to the record, in I think October, 1905, and in March, 1906; in the Pittsburg district a 95

1140 cent rate generally prevailed.

Q. That was in 1900—what year did you say? A. 1906, after March.

Q. Yes; was there any competition at that time in the Pittsburg district? A. Yes, sir.

Q. I beg your pardon? A. Yes, sir.

Q. What company was it that you were in competition with at that time? A. Quite a number.

Q. Will you mention some? A. The Burton I think. Standard. Miami; Rand Powder Company —oh, yes, the Senior and King Powder Companies. The Rand Powder Company of New York.

By Mr. Katzenbach:

Q. What was that last? A. The Rand Powder Company of New York.

By Mr. Abbott:

Q. That rate then, as I understand it, was made to meet the competition in the district? A. Yes, sir.

Q. You issued a regular price list during the year 1907, your first regular price list, did you not? A. I think that was a first price list that was issued for general distribution.

Q. Now, after that price list was issued, did you at any time make any deviations from the prices 1142
set forth in that list? A. Well, very few, if any. There were a few situations that were a little bad that had to be taken care of; for example, some of our agents had made contracts at the low figures that had prevailed, and extended some time after October 14th, and we had to protect them, but as a general rule the price stayed up until pretty well for a couple of years.

Q. Did you have any competition after the first price list was issued in 1907? A. Yes.

Q. Did you at any time make any deviation in 1143
prices with a view of meeting competition during that period after 1907? A. You mean for what period after?

Q. After you issued your regular price lists? A. Well, I cannot recall any specific cases, but I am quite certain that we had afterwards, had to meet conditions.

Q. Now, when you made a deviation from the price lists, these regular price lists, for the purpose of meeting competition, did you make that price effective for your entire trade? A. When every situation got bad in any particular locality, and several prices were reduced, and that would always be the case before we would reduce ours, we would take care of every one in that territory at about the same basis.

Q. What I meant was this—— A. That is generally speaking.

Q. Not so much in the particular district, but did you make a general arrangement of your prices that were mentioned in this price list, and set forth in this price list when you made these deviations for the purpose of meeting competition? A. I cannot recall any.

Q. Now, do you know what proportion of the blasting powder trade with your companies in the
1145 Central States was under contract during the years 1904 to 1908, and what proportion was not under contract?

Mr. Katzenbach: That is rather indefinite as to the Central States; I think it ought to be so framed as at least to include certain specific states.

The Court: Yes.

Q. Well, you have Chicago, St. Louis and Pittsburg districts. Would those districts be commonly understood as Central States or would they not?
1146 A. It depends on the period, you have in mind during that period—the Cincinnati district and the Kansas City district was included.

Q. They would be included? A. Yes.

Q. Can you state what proportion of your black blasting powder trade in the districts in St. Louis, Pittsburg and Kansas City, was under contract during the years 1904 to 1908? A. No.

Q. Can you state what portion was not under contract; I am not asking you now for definite figures, but approximately. A. No; I never remember making that calculation or seeing the figures.

Q. Did you have anything to do with making sales of, or handling the output of smokeless powder plants? A. The commercial part of it, yes.

Q. By commercial part, what do I understand? A. As against the government part.

Q. You had nothing to do with making sales to the Government? A. No.

Q. Did you have anything to do with making sales to customers other than the United States? A. Yes, sir.

Q .Now, from what plants did you obtain this smokeless powder which you sold to your customers? A. Carney's Point, N. J., Haskell, N. J.

Q. Is that all? A. And I think we had a small 1148
plant at Oakland, N. J., during the period mentioned; also Parlin, N. J.

Q. Are there any other or were there any other smokeless powder manufacturing plants in the United States during that period? A. Yes, sir.

Q. Where were they located? A. The American Powder Mills near Boston, Mass.

Q. Is that all? A. I think that is—I cannot recall any others.

Q. Now, what proportion of the smokeless powder was manufactured by these plants which you
referred to, and the American Powder Mills? A 1149
As near as we could figure it, we have no exact data on it, somewhere between 65—our percentage of the trade was between 65 and 75 per cent, somewhere in that neighborhood.

Q. Of all grades and kinds of smokeless powder? A. Commercial smokeless powder, yes.

Q. Now, while you were acting as general sales agent did you have anything to do with handling dynamite? A. Yes, sir.

Q. From what company—what company did you represent while you were handling dynamite? (Objection overruled.)

A. I know nothing of the Eastern Dynamite Company.

Q. You say you handled dynamite and sold dynamite; from what plants did you obtain the dynamite that you sold to your customers? A. I sold dynamite, commencing in I think July, 1907, and from that time on we drew our stock of dynamite from the various dynamite plants of the company, du Pont, N. J., Kenfield, N. J., Forcite, N. J., and Emporium, Pa., Hercules, Cal., Luvers, Colo., Barkdale, Wis., Ashbourne, Mo. I think that is all.

Q. Now, when you received an order or an ap-
1151 plication to purchase black blasting powder or dynamite or smokeless, or any other explosive which was in your department, and you desired to have a special price to meet any of the conditions which you thought was proper, did you proceed to obtain that price, did you make it yourself? A. Practically always.

Q. Did you at any time have any communication with any other department or any board in connection with the operations of your company? A. Not since I went into the sales department. We had a sales board of which I acted as chairman,
1152 and still act as chairman, but the price matters were settled with the individual assistant directors of sales, and they were ratified by the sales board at the meetings of the sales board.

Q. Now, this sales board that you speak of, do you know when that originated? A. I have knowledge of its existence since early in 1905, when a member of it, in my capacity as traffic manager.

Q. Will you state how that sales board was made up? A. By employees of the sales department. The vice-president in charge of the sales department was the chairman, when he was present. In his absence the director of sales was chairman. The other members of the board were the subordinate officials of the sales organization.

Q. Just what, in a general way, were the duties of that board? A. Simply passing upon the sales matters of the company.

Q. Did it have any other special duty except the making of prices? A. Well, except in a general way it supervised all the delivery of powder, and plants of the customers.

Q. And of course you know Mr. J. A. Haskell? A. Yes, sir.

Q. Was he at any time connected with this sales board? A. He was chairman of it, to my knowledge, from early in 1905, to some time in July, 1907. 1154

Q. In that connection, I do not think I asked you the other day where you were employed before you entered the sales department of the du Pont Company. A. In the Lake Superior Consolidated.

Q. At what point? A. Saulte Ste Marie, Ontario.

Q. Now, during the time that you were acting as director of sales, from 1904 to 1908, did you have anything to do with the Laflin & Rand Powder Company? A. I was not director of sales from 1904. My directorship of sales commenced in July, 1907. 1155

Q. I beg your pardon, previous to that time what was your title? A. Traffic manager.

Q. Well, during the time that you acted for the du Pont interests in connection with the sale and marketing of its explosives, did you have anything to do with the Laflin & Rand Powder Company? A. I think not.

Q. Did you have anything to do—— A. I think the Laflin & Rand Company was out of existence from the time I came with the company, and I do not know how long before.

Q. Did you have anything to do with the Hazard Powder Company? A. No, sir.

Q. Did you have anything to do with the Chattanooga Powder Company? A. I think not. I think they were all out of commission.

Q. Did you have anything to do with the Indiana Powder Company? A. No.

Q. The Phoenix? A. No.

Q. You have no knowledge of how the product of any of these companies was marketed? A. No.

Q. Did you have anything to do with the shipment of any powder, or directing the shipment of
1157 any powder, or other explosives, from any mills belonging to any of these other companies, the names I have given to you—the Hazard, the Laflin & Rand, and Chattanooga and various other companies? A. No.

Q. In your department would that be—give the two orders for the shipment? A. In my department?

Q. It would be in your department? A. Yes, sir.

Q. Then, since you have had the title of director of sales, you have made your shipments from such
1158 plants as are owned by the du Pont Powder Company? A. Yes, sir; and since I have been traffic manager, too, as far as my knowledge goes.

Q. Oh, yes, and from the time you entered the employ of the du Pont Company down to the present time? A. Yes, sir.

Q. You have shipped only from plants known as plants belonging to the E. I. du Pont Powder Company? A. Yes, sir; that is true, with the exception of some powder which we bought in time of accident, from other powder companies.

Q. From these other mills which you have indicated? A. Yes.

Q. I show you plaintiff's papers for identification, 1125, 1125-A, 1126 and 1127, and ask you to state whether you know anything about those docu-

ments (handing same to witness)? A. Yes, sir. They were prepared in my department for Mr. Patterson.

Q. Now, referring to identification No. 1125-A, I call your attention to the fact that on this list of competitors—on the list which shows the number of pounds of output from all competitive dynamite companies, from 1903 to 1908, inclusive—and I will ask you to state how you obtained the information as to the output of those plants, as indicated upon this document? A. In various 1160 ways. The principal way is that our salesmen call upon practically every consumer of—Is that a dynamite statement?

Q. Yes. A. (Continuing): Every consumer of dynamite in the United States. We have at one time or another sold to nearly every consumer, and they make a trade report showing as near as they can estimate the annual consumption of explosives of every person they call upon, and the name of the company from whom he is purchasing as near as they can get the information from the customer, and 1161 at Wilmington those reports are sorted by companies and the annual consumption of the various customers added up; and in that way we get—that is our principal source of information. Now, we know that we cannot get it all that way, and we add 15 per cent. to the totals so arrived at. Then we have various other ways of checking that information. Sometimes a competitor will tell us what he is getting, and we get pretty close to it, because in the Government suit, I think, for the years 1906, 1907 and 1908, or 1905, '06 and '07, that table was offered in evidence by us, and the Government checked it out by asking each competitor to submit a sworn statement of his business, in those years, and we were within seven or eight per cent. ac-

curate, not of each powder company, each competitor, but as a whole I think we are within 8 per cent., as I recall it, of accuracy.

Q. The calculations which you have made here as to the capacity and the output of these mills, has not been made from any personal knowledge, or personal investigation of your own concerning those plants? A. Only in the manner stated.

Q. You have never calculated from the size or number of wheels which were used, what the capa-
1163 city would be? A. That is a part of the general scheme with our men who work on that problem, and which they take into consideration.

Q. Did you have any personal knowledge other than these reports, which had been made to you by your representatives? A. By the men in my department, yes, sir.

Q. Now, referring to Plaintiff's Exhibit 1126 for identification, which purports to be a statement concerning black blasting powder, or black powder, I take it that is black blasting powder? A. Black
1164 blasting powder. "B" blasting, is the common designation.

Q. I note on the second sheet of the table, which purports to show the capacity and number of kegs of output for all competing blasting companies for 1903 to 1908, inclusive; now, how did you obtain the information upon which you based that table? A. Practically in the same way as I explained the dynamite information, in fact, almost exactly.

Q. I call your attention to the fact that there is a statement here concerning the Buckeye Powder Company, during the years 1903-4-5-6-7 and 8. How did you obtain information concerning the output of that mill? A. In the manner explained.

Q. Now, do you know of any investigation that was made by any of your representatives concern-

ing the wheels and the size of the mills, and the number of kegs that were manufactured during those years for this company? A. I do not think so. I cannot recall that any of the men ever made any such investigation.

Q. I will ask you in a general way, and you can stop me, if I get the name of a company that the same rule does not apply to. I will ask you concerning the Burton Powder Company, the King Powder Company, the Jefferson Powder Company, the Giant Powder Company, the Lakeside Powder 1166
Company, the Miami Powder Company, the B. C. Rand Powder Company, the Rand Powder Company of Pennsylvania, the Rand Powder Company of Tennessee, and the Rockdale Powder Company, the Tennessee, the Tomhicken Powder Company, the United States Powder Company, and the Western Powder Manufacturing Company. Now, you recall those names, as I have read them to you, and I will ask you to state whether you obtained the information regarding any of those companies, in any other manner than you have indicated? A. I 1167
think not, Mr. Abbott.

Q. You have no personal knowledge in any way as to anything contained in this statement, except in such as has been furnished to you by your representatives who have sent in information in these trade reports? A. Yes, sir.

Cross examination by Mr. Katzenbach:

Q. Mr. Coyne, you were shown a letter written by you under date of October 24, 1907. Do you recall the letter to which I have reference? A. Yes, sir.

Q. Did you ever receive a reply to that letter? A. I have no recollection of receiving a reply to it,

no more than I had of sending the letter, and I would like to explain, if I might, why I had no recollection of that letter.

Q. Make an explanation of why you had no recollection of the letter until it was shown to you? A. We had the most serious explosion in our history on the 14th day of October.

Q. Of what year? A. 1907, and we lost an entire plant; something that did not happen to us before. And a great deal of powder that was stored
1169 there for the fall trade went up in the explosion, and we were similarly, I think, panic stricken with the idea that we would not be able to take care of the big volume of business we thought was offering, and we probably wrote broadcast to every powder company in the country for help, and I think that this letter—probably I did ask somebody to write that letter, and I probably signed it in a hurry, and it never fastened itself on my mind.

Q. Was the plant you have located in Fontenac, Ind.? A. I think in Indiana.

1170 Q. And what was the daily output of the plant before it was destroyed by this explosion of October 14, 1907? A. As I recall it, it was at that time 1,500 kegs per day.

Q. How many kegs of powder were destroyed by that explosion? A. 43,000.

Q. Now, will you state when the first purchase of any powder by the du Pont Powder Company was made from the Western Powder Company? A. Either in October or November, 1909.

Q. Now, who was in control of the Western Powder Manufacturing Company at that time? A. Messrs. Olin & Lent, I think.

Q. Were they experienced manufacturers of powder? A. The oldest in the country except ourselves—except du Pont.

Q. How long had Mr. Olin, to your knowledge, been engaged in the powder business, as a manufacturer? A. Well, to my personal knowledge, since 1904, but I had known that he had built several mills and operated them several years before that.

Q. And Mr. Lent, how long had he been engaged in the powder business? A. Of my own knowledge since 1904—but by general repute, he had been in the business all his life, practically.

Q. During this period that you have spoken of, commencing with the year 1909, and during the years following, were there any other bad explosions in the du Pont mills, which necessitated your purchasing powder of other people? A. Yes, sir. On January 9, 1908, we had an explosion at Belleville, Ill., mill, and were closed down by an injunction, until September, 1909, or about 21 months. 1172

Q. And during that period was there an explosion at Mooar, Iowa? A. I do not recall any explosion at Mooar, Iowa, but my impression is that we had a fire there, but we had in 1908 two explosions at Pleasant Prairie, and I think three fires—— 1173

Q. Where is the Pleasant Prairie mill located, at what distance from Chicago? A. Eighty-five miles north of Chicago.

Q. And known as the Chicago District? A. That is in the Chicago District.

Q. With the crippling of these mills at Belleville and at Fontenac, Ind., and Pleasant Prairie, Wis., that left you with what source of supply for the Chicago District solely and the St. Louis District? A. We simply—Mooar, Iowa, and Pleasant Prairie and Fontenac and Belleville were out of commission. We had but one mill where we previously had four.

Q. At the last explosion at Pleasant Prairie, how many kegs if any were exploded? A. Early in

1911, Pleasant Prairie was totally destroyed by an explosion, entirely wiped out, and we lost 85,000 kegs of powder there.

Q. Had the du Pont Company to your knowledge, prior to the purchase of powder from the Western Manufacturing Company, in the year 1909, ever purchased powder in times of stress, when explosions had occurred, from other powder companies? A. Yes, sir.

1175 Q. And that is the prevailing custom or practice, is it not? A. Oh, yes, sir; we purchase mostly from one another in time of trouble.

Q. Yes. Where the du Pont Company has knowledge of the ability and experience, and of the character of powder made by a competitor, has it been the custom in supplying orders, that that powder, known as standard powder, should be put into the kegs of the du Pont Company and shipped to customers? A. Why yes, when there was time enough for du Pont to send its kegs, or provide the other kegs.

1176 Q. Is there anything unusual in that? A. No, it is quite the custom.

Q. Is that done by the other manufacturers, when their mills explode; do you in your factory at times send away powder, and do other manufacturers of powder at their factories send away powder done up in containers of other companies, to your knowledge? A. If there was time and the other—yes, I am quite certain we have done that. We have put our powder in other companies' kegs.

Q. Now, Mr. Coyne, you were requested to make out a statement showing the average yearly gross price obtained for "A" blasting and "B" blasting for years shown in different districts. You have complied with the request of Mr. Abbott, have you not? A. Yes, sir.

Q. And that was the statement which has been marked here as Exhibit 1219, is it not? A. Yes, sir. I do not see that number—yes. (Paper handed to witness.)

Q. Now, Mr. Coyne, I will ask you to hold in your hand this Exhibit 1219, and will you state, if you please, what was the average price of "B" blasting powder—I will change this—"B" blasting is known as the standard powder, is it not, and the quality manufactured by the Buckeye Powder Company? A. "B" blasting, yes; that is the name 1178
of the common designation.

Q. That is the common blasting powder? A. Yes, sir.

Q. Now, will you state in the first place, under the designation of "Chicago District," what comprises the Chicago district, in making out this estimate? A. I think during the period '3 to '8 inclusive, the limits of the Chicago district changed, but in a general way. The Chicago district was Indiana, Illinois, Iowa, Northern Missouri, Wisconsin, Minnesota, North and South Dakota and Michigan. 1179

Q. Down to the year 1906, what was the average price of "B" blasting in the Chicago district? A. The statement shows that the average delivery price was 98 cents per keg.

Q. That was the average price? A. That was the average price from our records.

Q. Now, were there other districts in the United States in which the price of "B" blasting was as low, or lower than in the Chicago district, and if so, in what districts was that so? A. In 1906?

Q. In 1906? A. Hazleton district, the price was 95 cents delivered, but it might be well to explain there that that——

Q. What was it in the Pittsburg district?

1180 *William Coyne—Cross*

Mr. Abbott: I would like to hear the witness's explanation of that.

Mr. Katzenbach: Do you want to make any explanation?

Mr. Abbott: The witness said he would like to explain.

Mr. Katzenbach: Certainly; make any explanation you desire to make.

The Witness: That 95 cent price for the
1181 same class of powder in the Hazleton District, the price would have been 98 cents, but the price was 95 cents for "B" blasting, because it is what we call soft grain powder, it costs about 5 cents less to manufacture than the standard "B" blasting grade.

By Mr. Katzenbach:

Q. Now, do you use the standard "B" blasting grade in the Pittsburg district? A. Yes, sir.

Q. Now, what was the average price of the stand-
1182 ard "B" blasting in the Pittsburg district for the year 1906? A. 98 cents.

Q. Then that was the same as it was in the Chicago district? A. Yes, sir.

Q. Now, what does the Pittsburg district comprise, what territory? A. The Pittsburg district changed some in that time, but in general the Pittsburg district was the states of Ohio, Western Pennsylvania, Western Maryland, quite a section of West Virginia. I am not certain whether this took in the part of Eastern Kentucky or not, but I think that leaving out Kentucky, it is the district.

Q. In the Pittsburg district, did you have very active competition during the year 1906, to your knowledge? A. Yes, sir.

Q. What competitors did you meet in the Pittsburg district in the year 1906? A. The standard. The Burton. The Miami. The King. The Austin. The Senior. The American. The Rand of Fairchance and the Rand of New York. There were three or four competitors in the Hazleton District who got over in there with their powder, the Black Diamond, the Nuremburg, the Roberts, and two other small ones, that I cannot recall.

Q. The Lofty? A. The Lofty was one of them, and the Miller Powder Company. 1184

Q. Now, do you know whether the Rand Fairchance and Pennsylvania was a competitor in the year 1906, or whether or not this mill blew up in the latter part of 1905? A. I cannot give the exact date, but I know the plant was totally destroyed by an explosion, somewhere along that period.

Q. Now, in the Chicago district, during the year 1906, was there competition in the powder trade during that year? A. Yes, sir.

Q. What competitors did you come in contact with in the Chicago district? A. Do you mean competitors that were competing in 1906? 1185

Q. In 1906, in the Chicago district. A. You do not mean the powder companies that were actually in the Chicago district, you mean in the districts that were adjacent thereto.

Q. That were in competition in the Chicago district. A. That actually sold powder in there, in competition with us?

Q. Yes. A. There was the Senior, the King, the Miami, the American, the Austin, the Equitable, the Standard, the Burton, the United States, the Excelsior, Egyptian, and the Rand of Tennessee that got up into that territory.

Q. Well, you have omitted the Buckeye; they were in competition with you, were they not? A.

Well, yes, sir; they were in competition.

Q. Now, then, in the year 1907, you have stated here that in the Chicago District, the average price of "B" blasting was 98 cents a keg; now, will you state whether there were any other districts in the United States where the "B" blasting was lower per keg in the year 1907 than it was in the Chicago district? A. Pittsburg district was 97 cents that year, in 1907.

Q. Now, in the latter part of the year 1907, was
1187 there any increase in the costs of the ingredients which went into the powder, to your knowledge? A. As I recall it, our cost of soda, which is the principal ingredient, went up steadily from 1902 to 1907.

Q. And what was the date upon which the price of that blasting powder was increased in the year 1907? A. October 14th.

Q. At that time you were meeting what competitors in the Chicago district, those that you have named. A. All I have just enumerated, including
1188 the Buckeye.

Q. What is that? A. Including the Buckeye.

Q. Now, Mr. Coyne, I note here that in the years 1906 and 1907, that "B" blasting powder was higher than the prices which were mentioned in the Marquette district; will you state what was the amount of that and what is known as the Marquette district? A. That is a retail proposition. We delivered the powder in the Marquette district to the mines with our own teams in small lots as against—all the business in the Marquette district is of that character, while in the other territories, the carload units represent almost 95 per cent of the business, if not quite 95.

Q. Now, what is the Marquette district? A. It is the mining district around Marquette, Michigan.

Q. Do you then have to haul your powder from a plant to magazines at first in the country districts, where these plants are located, and then make a second call from those magazines to supply these small mines, by retail? A. We ship to our magazines, and they unload it into our magazines, and then haul it with teams to the mines.

Q. Now, I notice that in the New York district in the year 1906 that "B" blasting was $1.36 a keg, and in the Philadelphia district "B" blasting was $1.04 a keg. Will you state why that difference 1190
is in price, and also why more than in the Pittsburg and Hazleton and Chicago districts for the same year? A. The New York "B" blasting powder business is practically all a retail business. There is very little, if any, carload business in "B" blasting powder in that state, and where we do have that business, the municipal regulations, and the high freight rates, add very much to the cost of doing the business, and in addition there is a great deal of small export orders that are included in the New York sales of "B" blasting powder, which 1191
because of the restrictive regulations in New York, and the great cost of handling through that city, storing in barges in the stream, and hauling by launch out to vessels, just as they leave the Gravesend Bay, add very much to the cost.

Q. Is there any additional expense in that district by reason of any certain kind of packages required for export? A. Yes, it is a fact, the export "B" blasting powder has to be packed in, as I recall, cases, four or five, on account of South American customs regulations, which adds to the cost, in wooden cases.

Q. Now, why was the cost of "B" blasting in the years 1906 and 1907 in Philadelphia less than in New York? A. Because in Philadelphia the

bulk of the business was carload business, practically no less than carload "B" blasting trade in Philadelphia, there were some coal mines.

Q. Now I observe that in the district which you have marked here as the Huntington District, in 1906, that "B" blasting was $1.01 per keg as compared with 98 cents in the Pittsburgh District. What created that difference, freight rates or what, if you know? A. I imagine—well, I am quite certain that the average freight from the mills to the
1193 customer was greater than in the Pittsburgh or in the Chicago District.

Q. I observe that "B" blasting in the San Francisco District in the year 1906 was $1.18 per keg. State what the reasons were as to why that was higher than in the Pittsburgh District, for example, or in the Chicago District, during that same year, and first state where the San Francisco District is, what it comprises? A. The San Francisco District comprises the States of California, Arizona, Nevada, Utah, Idaho, Oregon, Washington,
1194 Alaska and the Hawaiian Islands. The higher price always obtains in that territory, because of the greater cost of manufacturing, labor and material.

Q. What else goes into the cost, the higher cost of manufacture, are wages higher in the mills in the San Francisco District? A. Yes, sir.

Q. How does the cost of the ingredients compare? A. As I recall it, there is a material difference in the cost of the ingredients, as well as labor, they are higher than elsewhere; and, in addition to that there were no new mills built in that territory in the time mentioned, and as a matter of fact the mills out there had about all they could do. I think we shipped from the East at that time around Cape Horn, in 1906 or 1907, or some in each year,

a total of 150,000 kegs of powder.

Q. The consumption, then, in that district exceeded the plant capacity? A. Yes, sir; at that time.

Q. I observe here, in the Scranton District for the year 1907, that the price was $1.13, whereas in the Hazelton District it was 94 cents per keg. Will you state why it was higher in the Scranton District than it was in the Hazelton District, if you know? A. A difference in the cost. In the Hazelton District, as explained, the kind of pow- 1196
der furnished was five cents less in cost per keg to make, it was a soft powder, five cents per keg less than the standard keg, whereas in the Scranton District a special packing of the standard grade was required, called sausage powder, which cost us, I think, at that time, 1903 to 1908, if I do not very much mistake, if my memory is not very much at fault, of the cost sheets, between 10 to 12 cents more a keg to make than standard powder.

Q. Now, Mr. Coyne, we are familiar with sausage down here in Trenton, but not with powder sausage. Just explain what this powder sausage is. 1197
A. Well, in coal mining, outside of the Scranton District, the practice of the miners is, I think, to make a paper tube to put their powder in for insertion into the bore hole. In the Scranton District we put the powder for them in a glazed—two glazed tubes, each twelve inches long, and 2½ inches in diameter. They are made of double thickness glazed leather skin, some kind of leather skin paper, which adds very much to the labor and material cost.

Q. And this making of sausages then, for the Scranton District is the cause for that higher price, is it? A. Yes, sir, for at least ten cents and possibly 12 cents of it.

Q. I notice that "B" blasting in the years 1906 and 1907 in Duluth District was higher than in the Pittsburgh or Chicago District or the St. Louis District. Will you state why that was. A. For the same reason as the high price in the Marquette District. We had a high freight rate to get the powder from our mills to the magazines in the first place, and then we team-hauled that powder in small quantities, 100 kegs or so, to the various mines, various distances.

1199 Q. Now, I observe that in the Denver District, the price in the year 1907 was $1.05, as compared with the price of 97 cents in the Pittsburgh District and 98 cents in the Chicago District. What is the cause of the difference in that price? A. I can only account for it by excess freight, higher freight than in the Chicago District.

Q. You have mills located in or near the Denver District? A. No, our nearest mill all during this period—yes, all during this period, was on the Missouri River.

1200 Q. At Pittsburgh, Kansas? A. Pittsburgh, Kansas, not on the Missouri River, but a Missouri River rate point.

Q. Would the haul be at least 1,000 miles, or approximately, to supply the Denver District? A Approximately 1,000 miles, yes, sir.

Q. I notice that in the Birmingham District for the year 1907, the price was $1.04, as compared with 97 cents to the Pittsburgh District, and 98 cents in the Chicago District in that year. Will you state what was the cause of the higher price in the Birmingham District? A. I think first of all the labor, or at least the mill cost was higher, on account of high material freight, raw material freight, and all that trade in the Birmingham District at that time was practically retail trade, it was team delivery to the customers.

1201

Q. You have referred, Mr. Coyne, in your examination by Mr. Abbott, to a sales board, of which you acted as chairman. Will you state when you became a director of sales for the du Pont Company? A. I think July, 1907.

Q. Prior to that, I believe, you had been in the employ of the company, I believe you stated, as traffic manager? A. Yes, sir.

Q. And you had been a member of what you have referred to as the sales board prior to 1907, for what period of years? A. I think I went on the sales board early in 1905; it may have been late in 1904.

1202

Q. Now, when you went on the sales board, will you just state who were members of that board, and describe fully what you did? A. You want the names of the individuals?

Q. Yes; the personnel of the sales board. A. Eugene du Pont, assistant director of sales, in charge of the St. Louis, Chicago and Joplin offices; J. W. Matthews, assistant director of sales in charge of the west coast and export districts; W. C. Matthews, assistant director of sales in charge of the Lake Superior, Duluth, and Denver districts; J. F. Van Leer, in charge of the Eastern and Southern districts; C. M. Barton, in charge of the technical division, whose duty it was to investigate complaints and see that our product was doing proper work; J. W. Martinas, sales auditor, who had supervision over the expenses of and auditing the expenses of the sales department; W. S. Simpson, who had charge of the statistical division; George H. Kerr, manager of the trade record division; E. B. Jones, manager of the storage and delivery division; H. A. Lindsay, manager of the sales order and stock bureau, all divisions of the sales department.

1203

Q. Now, these were employees of the du Pont Company, every one that you have mentioned? A. Yes.

Q. There was no outsider on that sales board, no one representing any other company? A. Oh, no.

Q. None representing the Equitable Company? A. No, indeed.

Q. No one representing the Austin Company? A. No, sir.

1205 Q. No one representing the Buckeye Company? A. No, sir.

Q. Or the Miami Company? A. No, sir.

Q. It was just simply your own sales board, a means by which you transacted the business for your company? A. Purely and simply.

Q. You did not apportion any trade with any other companies? A. No, indeed.

Q. And you did not attempt to fix a price for any other company to sell at, or anything of that kind? A. No, sir.

1206 Q. You simply went over your own trade conditions and the condition of your business at the meetings of this sales board? A. Yes, sir, du Pont business.

Q. Now, prior to 1904, you said you were connected with the Lake Superior Consolidated. That is a railroad and not a powder company, is it not? A. Well, there were 23 corporations merged in the Lake Superior. We did not manufacture powder.

Q. You did not manufacture powder at all? A. No, sir.

Q. You had nothing to do with the du Pont Company? A. No, sir.

Q. You had no knowledge, I think you said, of the Rand Company, the Hazard Company, the Chattanooga Company, or the Indiana Company, or the

Phoenix Company, separate corporations at all? A. No; not any knowledge except hearsay. I knew they had been merged at some previous time, before my advent into the du Pont Company. I had no relation with them as companies at all.

Q. They were not operating when you went there? A. No, sir.

Q. Neither did you have any knowledge about how their product had been marketed, did you, except from hearsay? A. No.

Q. You were requested, I believe, Mr. Coyne, to 1208
—you have been shown two documents that have been marked 1126 and 1127 by Mr. Abbott. I now show you those again and ask you whether or not they were compiled under your direction? A. They were.

Q. And from data which you had available? A. Yes, sir.

Q. Now, for the years 1905, 1906 and 1907, did you ever see any signed statement of competitors as to their capacity and output for those years? A. As to the years 1905, 1906 and 1907?

1209

Q. Yes; or any of them? A. I think Mr. Scarlett, in the Government suit, showed me, in fact, gave me the 1905, 1906 and 1907 sworn statements of all the powder companies that had compiled them for him. It was not totalled up, and he wanted us to do it.

Q. This information contained upon these exhibits was in part obtained, particularly with reference to blasting powder, from these sworn statements of competitors? A. For the years mentioned —we changed our records, because we had absolute information, and we went back and altered all our records to conform to the data made up from the sworn statements of our competitors for those three years, so for those three years it is correct.

1210 Q. You spoke something about a price in the Pittsburgh district of 95 cents for powder. When was that made? A. One particular—I think in October, 1905, as I recall it, we made a price of 95 cents delivered to the Frick interests, the Union Supply Company.

Q. Now, then, you spoke of a 95-cent price in the Chicago district. When was that made? A. May 5, 1905, that was authorized.

1211 Q. Was that due to the competition in that district? A. Yes, sir; it was. We have pretty general information that—in fact, information from all sources, that that price was obtaining all through the district.

Q. Had you had information that competitors were selling below that price, 95 cents? A. I won't say that we had any information that they were selling below that price, but we knew that reputable powder concerns, old line powder companies, or the new people who were making pretty good powder, were quoting 95 cents

1212 Q. And so because of the fact that your competitors were making a price of 95 cents, you lowered your price to 95 cents, is that right? A. Yes, sir.

Q. When you speak of competitors making pretty good powder at that time, you do not refer to the Buckeye as making good powder, do you? A. Well, I——

Objected to. Question withdrawn.

Mr. Katzenbach: That is all.

Redirect examination by Mr. Abbott:

Q. Mr. Coyne, where is this signed statement that you speak of that you saw with reference to the

competitors' business in possession of the Government at one time? A. It was not a signed statement in toto. Mr. Scarlett——

Q. Wait a moment; do you know where it is at the present time? A. No.

Q. Who was it sworn to by? A. The executive officer of the Powder Company making it, some executive officer of the Powder Company making it.

Q. Do you know whether that sworn statement was used in the Government exhibits in any way? A. I believe it was. 1214

Q. Could you—I don't like to put you to any trouble, but I have no recollection of the statement, and I would like to have you locate it for me in some way. Can you indicate about where it was and when it was used? A. If you will allow me to state my recollection about the whole procedure,——

Q. Certainly. A. I don't know that I can help you now, but I know I was on the stand several times, and in one of the examinations there was some dispute about the accuracy of our records, 1215 such as we handed in here, and Mr. Scarlett, for the Government, asked that we give him the same data that we have produced here, and we did so—I am getting a little ahead of the story, at that time its accuracy was somewhat questioned, and I made the suggestion that the Government could easily check our figures by asking each of the powder companies manufacturing "B" blasting powder to state what their sales had been for three or four years previous, and Mr. Scarlett said he would do it. I gave him a list of all the powder companies in the United States, I think we had all the names, and he asked each one of them to submit him a sworn statement, and they did so. When he got the batch of the sworn statements, he was pretty

busy, and I happened to be over there and was leaving one day and he asked me if I would take it over to our office, and have our boys who were familiar with it, add it for him, and bring it back in statement form, and I am quite certain we did that, and incidentally kept a copy of it.

Q. Now, is it not a fact that the information which you have indicated which was put into the Government records was simply a tabulated statement, and that there is no sworn statement con-
1217 cerning that matter there? A. I am very much mistaken if each powder company did not swear to its statement.

Q. I show you Government's Exhibits 393, 394, 395, 396 and 397, and ask you to examine them, and state whether or not that is the information you have in mind? A. This says, "Table showing the total sales reported under oath of black blasting powder for the calendar years 1905 to 1907, both inclusive," I think that is it.

Q. That is the table that you have in mind? A.
1218 Yes, sir.

Q. And the subsequent tables,—look at the subsequent ones there? A. What table did you ask me to start on, is this the first one?

Q. Well, start with that, and then go this way, down to 397. A. Yes, sir; I think that is what I had reference to.

Q. The statement as it is here is not sworn to, but is tabulated as having been sworn to. That is what you had in mind? A. Yes, sir; I cannot make those fine distinctions.

Q. Mr. Coyne, in answer to certain questions put to you by Mr. Katzenbach with reference to various conditions which prevailed in various districts, and the effect on prices in those districts at certain times, I will ask you to state whether those same

conditions prevailed at other times, at times when other prices than those you have been interrogated about prevailed. In other words, were those conditions normal or abnormal?

Q. I will ask you, so as to be specific, whether the conditions which you have indicated as affecting prices in the various districts obtained during the years 1903 to 1908 inclusive, covering the period that is covered by Plaintiff's Exhibit 1219 for identification? A. I don't believe I understand that question, Mr. Abbott. 1220

Q. Well, now, you said for instance, in the Hazleton district that there was an inferior quality of powder required and used in that district which affected the price of that district? A. Yes, sir.

Q. Did that condition prevail during all these times? A. During the entire six years; yes, sir.

Q. Now, in another district, you said that there were, in the San Francisco district, for instance, you said that labor was higher out there. Did that condition prevail during all that time? A. To the best of my recollection, yes, sir; and obtains yet. 1221

Q. And in the Scranton and Hazleton districts you said there were different grades of powder required for either of these two districts. Did that condition obtain during all that time? A. Yes, sir.

Q. These several years? A. Yes, sir.

Q. In the Denver district you said that freight, excess freight, affected the price out there. Did that condition obtain during the years 1903 to 1908 inclusive? A. Yes, sir.

Q. Now, as a matter of fact, in regard to that district, were not your mills 500 miles, at least 500 miles nearer to Denver points of distribution and consumption in the Denver district than any other mills? A. No.

1222 *William Coyne—Redirect*

Q. Well, comparing it as between the Buckeye Powder Company and your plants, how much nearer were your plants to Denver, for instance, than the Buckeye Powder Company's plant? (Objection overruled.) A. We had several plants, if you will allow me a moment to fix them in my mind as to distance from Denver. I think we were 300 miles nearer Denver than Mr. Waddell was with our Mooar mill, and I don't believe that the Pittsburg and Columbus mills in southeastern Kansas, the
1223 way the freight travelled, were any nearr to Denver. At any rate, I think they did not have any better freight rate than Mooar.

Q. How about your nearness to Pueblo? A. The Excelsior mill at Kansas City was nearer than any of our mills.

Q. How about the distance of your Columbus plant from Pueblo, wasn't it very much nearer? A. It was very much nearer, but if my recollection is not wrong, at that time we had no better freight rates to the Colorado district than we had from
1224 Moar.

Q. Well, as a matter of fact then, you had the advantage in your favor in the freight rate to the Denver district, did you not, over the Buckeye Powder Company? A. Yes; I think we had 3 cents a keg over the Buckeye.

Q. Now, in the Birmingham district you said that labor and material cost was higher, and that that was largely retail trade. Did that condition obtain during the years 1903 to 1908? A. If I said labor, I think I made a mistake. What I intended was the material cost was higher on account of a number of conditions, one of which was not labor.

Q. That condition obtained during this whole period, did it? A. To the best of my knowledge, yes.

Q. In that connection, isn't it true that wherever there are team deliveries from any manufacturing plant, that that is the cheapest and best service that can be had for the delivery of powder? A. Where you team direct from the mill, yes.

Q. And a mill having that advantage over another mill, would have a very distinct advantage in the making of prices, would it not? A. I think there is very little team delivery made in any district from a mill at less than 5 cents a keg, and of course that would be about 20 cents a hundred. 1226

Q. Now, taking in this district where you stated that they made a certain kind of sausage? A. Sausage powder, we call it.

Q. Sausage powder. Now, that same condition obtained from 1903 to 1908 inclusive? A. Yes, sir.

Q. So that as a matter of fact these various conditions that you have indicated as prevailing in various districts that affected the districts, that affected prices in those districts, obtained during the entire period covered by the table which is known as Plaintiff's identification 1219? A. You refer to the physical conditions? 1227

Q. I am referring to the conditions which you stated as having made the difference in prices between some of these districts? A. Yes; those conditions in each district obtained.

Q. All along? A. Practically so; yes.

Q. So that under these conditions the variations in these districts from time to time could not have been affected by any of these circumstances which you have related in one year any more than in any other year, could they? A. I think not, if I understand your question.

Q. Now, in the New York district, for instance, you spoke of certain local conditions that prevailed in New York City and thereabouts, which made it

necessary for you to charge more for your powder there. How far does that New York district extend, what territory does it include? A. The New York district consisted of the New England States, New York, part of New Jersey, Cuba——

Q. The Island of Cuba? A. The Island of Cuba and Mexico, and South America.

Q. That is all covered by the New York district? A. Yes.

1229 Q. Now then did those conditions that you have stated as applying to the New York district, apply to all of that territory that you have enumerated as being within that district, the special package, etc. A. No; only for export to South America.

Q. Then what you said about special conditions applying to New York City, you had in mind merely the New York City district, around New York City? A. No; I mean especially conditions, if I recall my testimony right, high freight rates, stringent municipal regulations——

1230 Q. That relates to New York City, does it not? A. My intention was to show that that applied to Boston and Portland, or all Massachusetts as a matter of fact has very stringent laws, and Maine has, and it is unusually expensive to do business there.

Q. Whatever those conditions were though, they obtained during the whole period from 1903 to 1908? A. Yes.

Q. You gave a list of names of persons who were members of the sales board during a certain period of your connection with the company. Did you wish to have it understood that those persons were the only members of that board during the period that you were in the employ of the company? A. From the time I became director of sales in 1907, from that time on, the men I mentioned were the

only members of the sales board, with the exception of one man whom I forgot, Mr. E. C. Ferraday, manager of the contracting division.

Q. Did you give the name of Mr. Haskell in the list? If so, I didn't get it? A. In 1905, when I became a member of the sales board as traffic manager, Mr. Haskell, as I think I testified, was chairman of the sales board, Mr. J. A. Haskell.

Q. Do you have any knowledge as to whether or not Mr. Haskell, by order, originally established that Board himself? I am simply asking you as 1232
to your own knowledge on that subject? A. I have no such knowledge.

Q. Now, you stated that you came in competition in certain prices which you made, or for whom you made a 95 cent rate, beginning May 5, 1905, by reason of the fact that you got certain information from certain customers concerning prices which had been made by various of your competitors. Will you state who those customers were that gave you any such information? A. I don't think I said we got the information from the customers direct. 1233

Q. Will you explain what it was that you did say? A. We got it from our salesmen, and they in turn, I presume, got it from the customers.

Q. Then will you state what customers they were that your salesmen got the information from? A. I cannot say, I cannot answer that question, because I don't know; but I can tell you what customers we made the 95 cent price to in the start off. We never made——

Q. In what district were they located? A. The Chicago District.

Q. Have you got a list of all the customers to whom you made the 95 cent price, during the time it was in existence? A. No, I have not. I know a few that we made the price to in the start.

Q. Is the list large or small, and would it be very convenient for you to prepare such a list? A. For what period?

Q. During the period that the 95 cent rate prevailed? A. I think I can make you such a list.

Q. Will you do that? A. Yes.

Q. Now you stated that you had certain competitors in supply explosives in the Pittsburgh District. If I do not give these names correctly, please correct me, I took them down as you went along,
1235 and I may not have it accurate. Now, take the American Powder Company. Did that company sell powder in competition with you in the Pittsburgh District? A. I think so.

Q. Can you tell with any particular—can you give me the name of any particular customer that you came in competition with them concerning? A. No—in the Pittsburgh District?

Q. Yes. A. I cannot. I know that they come in competition, though, because they buy their products from the Miami Powder Company that has a
1236 mill near Cincinnati, and all those Cincinnati mills competed in the Pittsburgh District.

Q. Then it was the Miami Powder Company and not the American Powder Company. The American Powder Company is located in Boston, is it not? A. The American Powder Company buys and sells a large part of the output of the Miami Powder Company and competes everywhere.

Q. Now, can you remember the names of the customers that you came in contact with that way, who received Miami powder? A. No, that is too far back.

Q. Now, take the Equitable Powder Company. Did they sell in competition with you in the Pittsburgh District? A. I don't think my testimony included the Equitable Powder Company as a competitor in the Pittsburgh District.

Q. How about the United States? A. I didn't mention the United States as a competitor in the Pittsburgh District.

Q. What district were those two competitors in? A. In the Chicago, St. Louis and Kansas City District.

Q. And the Egyptian the same? A. Yes, sir.

Q. The Austin, the Lofty, the Miller, were in the Pittsburgh District? A. The Austin competed in both the Pittsburgh and Chicago Districts and the Lofty and the Miller in the Pittsburgh District. 1238

Q. Now, there are a number of plants that are not set forth in this list of competing plants on Plaintiff's identification 1126, and I would ask you as I read these names, to tell me whether any of them to your knowledge shipped to any competitor or customer of yours in any of the districts where you sold black blasting powder, and I will ask you to check me as I read the names.

Mr. Katzenbach: That is competition in any district? 1239

Mr. Abbott: Yes.

Q. Take the Tomhicken Powder Company. Did you come in contact with any customer of the Tomhicken Powder Company? A. That was in the Hazelton District, was it not? That was one of the smaller ones, I would not remember that so well.

Q. Take the Tennessee Powder Company, how about that? A. That came in competition in the Chicago and St. Louis District.

Q. Was that an important factor? A. Is that the powder company that had a mill at Jellico?

Q. Yes. A. It was quite an important factor in making prices.

1240 Q. Do you recall when they became a competitor of yours? A. I do not.

Q. Can you recall from memory what was the output of that mill in 1907? A. No.

Q. Can you recall what was the output of that mill in 1908? A. No.

Q. I will ask you to look at this statement and see if you can tell from this statement what the output was in 1907? A. In 1907, it did not start operation until August 1, 1907.

1241 Q. How much was it for that year? A. 75,000 kegs, according to this statement.

Q. Is that the output? A. That is the—no, I beg your pardon, the capacity was 70,000. The output was 43,000 kegs.

Q. What was the output in 1908? A. 58,000 kegs.

Q. Now, do you know of any customer of yours that would come in competition with this company concerning the sale of black blasting powder? A. I cannot name them, but I know that we lost several customers to that concern.

1242 Q. What mill did you have that was correspondingly located, and from which you would supply that trade in competition with the Tennessee Powder Company? A. I think Chattanooga and Belleville.

Q. Now, the output of the Chattanooga and Belleville Company during the year 1907, was how much, can you state? A. Chattanooga mills and Belleville mills?

Q. Well, Chattanooga for the present? A. Well, I could make a pretty close guess, I think. I should say roughly 250,000 kegs.

Q. I will ask you to look at the statement and see if you can and state more definitely what it was in 1907? A. The output was 298,000 kegs.

Q. What was the output in 1908? A. 171,000 kegs.

Q. Now, will you look at the output of the Belleville mill at the same time in 1907 and 1908? A. In 1907 the Belleville mill output was 317,000 kegs, and very early in 1908 the plant was shut down by an explosion, and in 1908 it produced but 9,000 kegs.

Q. So that you had during the year 1907 a total of 298,000 kegs for the Chattanooga Company——? 1244
A. The Chattanooga mill, not company.

Q. Chattanooga mill. And 317,000 kegs for the Belleville mill, in competition with the Tennessee powder plant, with an output of 43,000 kegs? A. Well, in that section we had very much more competition than the Rand.

Q. I am asking you about this mill, I want to show how important it was so far as a competitor is concerned? A. That was one of several mills competing in that territory.

Q. I am going to ask you about some of the others. Take the Standard Powder Company, for 1245
instance, do you remember about that plant? A. At Horrell Station, Pa?

Q. Yes. A. Yes.

Q. How much of a plant was that? I will put the question in this way: Do you know what their output was in 1907? A. No, sir; I cannot tell you those things from memory.

Q. Do you know what the output was in 1908? A. I cannot tell from memory.

Q. If this statement says it was 2,000 kegs in 1907, and 7,000 kegs in 1908, then that is correct? A. I would say so, but it doesn't say that, does it?

Q. I don't want to misquote it, if you will look at it and say whether it does? A. I would be surprised if they didn't make more powder than that

in 1907 and 1908. (Witness examines Exhibit 1127.) A. (Continuing) Oh, yes; it was destroyed by an explosion in 1908, and did not resume operations.

Q. Does not that statement show that it had an output of 2,000 kegs in 1907 and 7,000 kegs in 1908? A. That is right. I had forgotten the date they were destroyed by an explosion. I knew the capacity was very much greater.

1247 Q. What mill did you have that was in competition with that mill? A. Fairchance and Youngstown.

Q. What was the output of the Fairchance plant in 1907? A. I will stand on the record. There is no use asking me this, because I positively cannot remember; there were so many mills.

Q. If this record shows that it had 384,000 kegs in 1907 and 244,000 kegs in 1908, that is correct, is it? A. Yes, sir.

Q. And that would be in competition with the Standard Powder Company with 2,000 kegs in 1907 and 7,000 kegs in 1908. Now, the Shamokin Pow-

1248 der Company, was that one of your competitors? A. Yes, sir.

Q. What was the output of that—I will read it to you, because you say you will stand on this record—the output of that plant in 1907 shows that it was 76,000 and in 1908 it was 67,000 kegs. Now, what plants did you have that were in competition with that? A. I think the Shenandoah and Ferndale Mills.

Q. Shenandoah—well, if this table shows that in 1907 the Shenandoah had 99,000 kegs output and in 1908 103,000 kegs output, that is correct, is it? A. Yes, sir.

Q. What was the other? A. Shenandoah was the one you just read?

Q. Yes. A. Ferndale.

Q. If this statement shows that in 1907 the Ferndale had 238,000 kegs and in 1908, 162,000 kegs output, that is correct? A. Yes, sir.

Q. Was the Moosic a competitor of that ocmpany at that time? A. The Moosic was one of our companies.

Q. I know, but was that powder in competition with this Shamokin Powder Company at that time? A. I would not be positive. Moosic might have been in competition with Shamokin, but as I recall it, Shenandoah and Ferndale only got up there. 1250

Q. What plant would there be in competition with the Moosic? A. Moosic is our own plant.

Q. I know that, but was there any plant operated by any so-called independent manufacturer at that time that was in competition with the Moosic? A. There were five powder companies in the Hazleton district, and I think the Miller Company——

Q. What were the names of those five powder companies? A. The Roberts was one, the Black Diamond, the Nuremberg—— 1251

Q. Is that all? A. I think there were five of them, I cannot recall the others. I can pick them out on that list.

Q. If this table shows that in 1907 the Black Diamond had an output of 32,000 kegs, and in 1908 an output of 46,000 kegs, that is correct, is it? A. Yes, sir.

Q. And as to the Nuremberg, if it shows that the Nuremberg had 22,000 kegs in 1907, and 31,000 kegs in 1908, that is correct? A. Yes, sir.

Q. As to the Roberts, if this table shows that it had 67,000 kegs in 1907, and 60,000 kegs in 1908, that is correct? A. Yes, sir.

Q. Now then the Moosic? A. I think there are a couple of others, if you will let me look at the table, I think I can pick them out.

Q. Certainly. A. The Black Diamond I gave you, didn't I?

Q. Yes; I read that one. A. The Cresona.

Q. What does it show there that the Cresona had in 1907 and 1908? A. 60,000 in 1907 and 53,000 in 1908. The Lakeside Powder Company had a capacity of 24,000 in 1907. The plant was dismantled in 1908.

Q. Did you read the Locust Mountain? A. No; I did not.

1253 Q. The Locust Mountain was in there 19,000 output—I am giving you output, not capacity—19,000 output in 1907, and 27,000 in 1908. A. The Lofty, you read that?

Q. I think not. A. The Lofty is 18,000 and 15,000. The Nuremberg you read. The Roberts Powder Company.

Q. I read that. A. That is all.

Q. Now what plants including the Moosic, did you have located relatively to these plants whose names you have just read? A. We had the Shenandoah plant and the Ferndale plant, and there

1254 were some more plants in the anthracite region, I don't just recall their names, I can point them out if you will give me the list.

Q. Was the Oliver one? A. The Oliver was one.

Q. I will hand this to you in a moment, but I will ask you now, if this table shows that in 1907 the Moosic had 265,000 and in 1908, 269,000 kegs, that is correct? A. Yes, sir.

Q. If it shows that the Oliver has 243,000 in 1907, and 255,000 in 1908, that is correct? A. Yes, sir.

Q. If it shows that the Shenandoah had 99,000 in 1907 and 103,000 in 1908, that is correct? A. Yes, sir.

Q. If it shows that the Ferndale had 238,000 kegs

in 1907 and 162,000 kegs in 1908, that is correct? A. Yes, sir.

Q. Now, those were all in competition with those other mills whose names you have just indicated? A. Yes, sir.

Q. Now, you said that there were others that possibly you could tell about if you saw the statement? A. The Consumers was one.

Q. What was the output of that in 1907 and 1908? A. In 1907 220,000 kegs, in 1908 235,000 kegs.

The Enterprise at Gracedale, Pa., 161,000 and 1256
173,000.

The Rushdale, 221,000 and 230,000.

The Tamaqua, 21,000 in 1907, nothing in 1908. The plant was dismantled.

The Wapwalopen, 331,000 and 324,000.

Q. Was anything shipped from the Brandywine mills into that district? A. I think not, although there might have been.

Q. Was anything shipped from the Laflin & Rand mills to that district? A. There were no Laflin & Rand mills at that time, all du Pont mills.

1257

Q. Do you know any mills that had been formerly known as Laflin & Rand mills that were in existence at that time? A. As I remember, the Rosendale and Wayne, that is, in that section of the country.

Q. The Rosendale mills had an output of 192,000 kegs in 1907, 25,000 kegs in 1908, is that correct? A. Yes, sir.

Q. What was the reason for that great variation of 192,000 and 25,000, if you know? A. As I recall it Rosendale was only used as an emergency mill, it was four miles from the railroad, and whenever we could get along without its output, we did. It was so expensive to do business there.

Q. Now, take the Buckeye Powder Company. In

1907, if this table shows that the Buckeye Powder Company had an output of 32,000 kegs, and in 1908, it had an output of 46,000 kegs—if this table shows that the Buckeye Powder Company had an output of 85,000 kegs in 1907, and 50,000 kegs in 1908, that is correct as far as you know? A. As far as our knowledge goes, yes, sir.

Q. Now, what plants did you have at that time that were selling powder in competition with the Buckeye Powder Company? A. During 1907 and
1259 1908?

Q. Yes. A. Mooar, Iowa.

Q. I will take these separately. This table shows that the Moar, Iowa, plant had an output of 1,172,000 kegs in 1907, that is correct? A. Yes, sir.

Q. And that it had 1,090,000 kegs in 1908, that is correct? A. Yes, sir. The Moar is the biggest mill in the world.

Q. What is the next one? A. Belleville.

Q. And if this table shows that Belleville had an output of 317,000 kegs in 1907, and 9,000 kegs
1260 in 1908, is that correct? A. Yes, sir.

Q. What is the reason for that great variation? A. They had an explosion early in 1908, as I recall it, January 9th, and they were shut down for a year and a half by an injunction gotten out by the City of Belleville.

Q. Take the output that prevailed during the preceding years, 1903 to 1907, according to this table, would that be its normal output during that time, from 1903 to 1907 inclusive, the output of the mill was normal? A. The Belleville?

Q. Belleville? A. As far as I can remember I think it was.

Q. This 1908 was abnormal by reason of this explosion? A. Yes, sir.

Q. What was the other mill in that same district?

A. The Fontenac was a competitor of the Buckeye mill.

Q. If this table shows that in 1907 the output of the Fontenac mill was 252,000 kegs, is that correct? A. Yes, sir.

Q. And in 1908 it was discontinued? A. It was entirely destroyed by an explosion in 1907.

Q. Now, what other mills? A. Pleasant Prairie, Wis.

Q. If the table shows that the output of that mill was 494,000 kegs in 1907, and 575,000 kegs in 1262
1908, is that correct? A. Yes, sir.

Q. What is the next mill in competition with the Buckeye? A. In the territory that the Buckeye covered, not as closely in competition with it of course as these mills that were within two or three hundred miles of it, but in adjacent territory, we had mills that competed with Buckeye, Youngstown for example.

Q. They had an output in 1907 of 228,000 kegs, and in 1908 of 189,000 kegs, is that correct? A. That is right.

1263

Q. Now, what other mills? A. If I mistake not, the Buckeye Company sold in Kansas, and even went to Texas with its output, and in that case we might say that our Pittsburg and Columbus, Kansas, mills competed with it although that is a little far fetched perhaps.

Q. Now the Columbus, Kansas mill, you mean at Turk, Kan.? A. Yes.

Q. That mill had an output of 445,000 kegs in 1907, and 382,000 in 1908? A. Yes, sir; that is right.

Q. Now, what other mill? A. Pittsburg mill, P. & K. it shows there I think.

Q. Oh, P. & K. 272,000 kegs in 1907 and 225,000 in 1908? A. That is right.

1264 Q. Now, any others? A. I think he got into the Chattanooga territory south of the Ohio River, but I am not certain about that. In that case our Chattanooga mills.

Q. 298,000 in 1907 and 171,000 in 1908? A. That is right.

Q. Can you think of any others? A. Kellogg, W. Va.

Q. 208,000 in 1907 and 124,000 in 1908. Any others? A. I think he came in competition with the
1265 Fairchance mill, Pennsylvania.

Q. 384,000 in 1907 and 244,000 in 1908. Any others? A. I don't recall any othes; I don't think there were any others.

Q. Now, there was also situated in the Pittsburg district, was there not, a plant known as the Equitable Powder Manufacturing Company plant? A. Yes, sir; there were about 11 other plants in the territory that I have outlined. Yes, sir; the Equitable and East Alton, and I think during that period they built a mill at Fort Smith, Ark.

1266 Q. This table shows that the Equitable had an output of 643,000 kegs in 1907 and 415,000 kegs in 1908, is that correct? A. That does not seem right.

Q. That is on the other table there. A. Let me see. I don't see why they should have less in 1908 than 1907. That is what it says, they have 643,000 in 1907 and 415,000 in 1908.

Q. Will you kindly look at that table and say what the Egyptian Powder Company had in that district—it was located in that district, was it not? A. Yes, sir; in southern Illinois, at Marion. The Egyptian had 257,000 in 1907, and 165,000 in 1908.

Q. Now, the Austin Powder Company, did they come into competition with the Buckeye Powder Company? A. Yes.

Q. They had an output of 502,000 in 1907, and

414,000 in 1908. Is that right? A. That looks right. There were several others in that territory, if you want the list.

Q. Now, mention the other mills, we want to get in all that there is in this, my knowledge of the powder business is not as accurate as yours? A. The United States.

Q. The United States had an output of 265,000 bags in 1907, and 236,000 kegs in 1908? A. I think that is right.

Q. What other one? A. The Miami. 1268

Q. That had an output of 585,000 in 1907, and 438,000 in 1908? A. I think that is right. The Senior.

Q. The Senior, that had an output of 209,000 in 1907 and 155,000 in 1908? A. That is about right, I should think, if the report states it. The King Powder Company.

Q. That had an output of 224,000 in 1907 and 210,000 in 1908? A. The Excelsior Powder Company.

Q. 194,000 in 1907 and 134,000 in 1908. A. The Burton Powder Company. 1269

Q. 170,000 in 1907 and 205,000 in 1908.

A. I think the Rand Powder Company of Tennessee figures in that.

Q. I will ask you to look at the statement and read it yourself? A. The Rand Powder Company of Tennessee in 1907 sold 149,000 kegs and in 1908 154,000 kegs.

Q. You say sold. A. I mean output.

Q. Do you know whether that company had any customers in what was known as the district covered by the Buckeye plant? A. They went quite a ways north; I would not say whether they went as far as the Ohio River or not, but I think they did. I won't be sure they did, but my impression is they did.

1270 *William Coyne—Redirect*

The Western Powder Manufacturing Company, their output was 30,000 kegs in 1908.

Q. But that was a successor of the Buckeye Powder Company, was it not? A. Yes, sir.

Q. So that it was not a competitor, because it was a successor, the Buckeye Powder Company was out of business, was it not, when Western began to manufacture? A. When the Western began to manufacture, it was a competitor.

1271 Q. Beg pardon. A. You are asking for the competitors of the Buckeye Powder Company?

Q. Yes. A. Oh, yes; you are right.

Plaintiff's Exhibits for identification Nos. 1126 and 1219 offered and received in evidence.

Q. Now, Mr. Coyne, referring to this letter of yourself to Mr. Waddell dated October 24, 1907, and admitted as Plaintiff's Exhibit No. 1221, you say that, on your cross examination, that you sent this out immediately following some shortage of your

1272 own, due to accident? A. It was a few days after the wiping out of our Fontenac, Indiana, plant.

Q. Yes; now, were all of these other plants that you have spoken of here, Mooar, Iowa, and all th others in the Chicago district, a list of which you have given—did they remain in operation at that time after this accident to the Fontenac Mills? A. The Belleville remained in action, in service, until the ninth of the following January, until it was put out of commission.

Q. Mooar, Iowa? A. Ran without trouble.

Q. Columbus, Kansas? A. Yes.

Q. And all the list that you mentioned as being in the same district, as Buckeye plant was located, all continued in operation just the same, did they not? A. Yes.

Q. Now, I will ask you to state why if this was

an emergency matter, as you have indicated, you used this expression in the letter: That you also asked to know what sized granes you can furnish, what quantity per month, and the number of months you could continue to supply it.

Q. Will you state why you made that inquiry if it was intended only for temporary purposes? A. Well, we did not know what our demand would be.

Q. Yes. A. It looked like there would be a tremendous business that fall, 1907. You will notice

1274

Q. Will you state to what other companies you sent this same inquiry, at the same time? A. I am quite certain we sent to Burton, Senior, King, may be Miami, and Equitable.

Q. Have you made any examination of the records to ascertain whether you did make this inquiry of those other mills? A. I know that I made an examination, and I know that we purchased about that time some powder from these other mills.

Q. Have you made any examination of your files to know whether you sent out a similar inquiry to this, to any of those other mills? A. No. 1275

Q. You are testifying now purely from your recollection? A. Recollection, that is all.

Q. How long did you continue to make purchases of powder from the Senior Powder Mills? A. I cannot answer from memory, but I should imagine that early in the following year we would cease, because of the strong demand for powder, which began to drop off a little along February and March.

Q. Do you know at this time, how many kegs of powder you bought from the Senior Powder Mills? A. I have a statement in my pocket of what we bought at that time.

Q. Will you look at the statement and give me

the information? A. We bought 3,200 kegs from Senior.

Q. Now, when was that? A. In October, 1907.

Q. Did you buy any from Senior? A. That was the last purchase from Senior.

Q. Now, what other mills did you make purchases from? A. We bought from the King Company 3,000 kegs in October, 1907; 5,531 kegs in November.

Q. 65? A. 5,531. 2,900 kegs in December, and
1277 in January 1,600 kegs. We bought from the Miami Powder Company in October, 1907, 400 kegs. In November, 2,000 kegs; in December, 500 kegs. We bought from the United States Powder Company 2,800 kegs in October, and none thereafter. We bought from the Burton Powder Company 2,400 kegs in November, and none thereafter; that is down to the end of 1908.

Q. Now, did you ever rebuild this mill of the Indiana Powder Company that was destroyed? A. No, we could not. We would not be allowed to
1278 build. It killed so many people and did damage so many miles in extent, there was sentiment there that made our people feel they could not.

Q. Did you ever build any mill to take the place of that? A. Yes, we enlarged the Moar mills' capacity, and the Pleasant Prairie—the mills' capacity.

Q. How much did you increase the Prairie Mills? A. I do not recall.

Q. Just roughly? A. Well, I think it was a thousand kegs a day.

Q. And how much did you increase Mooar, Iowa? A. Well, I would say from recollection, that at least a thousand, and may be 1,500 kegs a day, but the table will indicate that. The table will give you that information, Mr. Abbott.

Q. Where are the United Powder Mills located? A. Coal Mount, Indiana.

Q. How far is that from the Indiana powder plant that was in existence? A. My recollection is about 80 miles; it may not be quite so far, and may be a little further.

Q. Did you buy any powder of the United States Powder Mills? A. I think the record indicated that we bought 2,400 kegs. I will confirm that, if you want me to—about 2,800 kegs from them in October. 1280

Q. October, 1907? A. Yes.

Q. Now, I find that in summing up all the powder that you bought from other companies, a list of which you have given us, about the time of this explosion, that it totals a sum of 29,211 kegs; is that correct? A. I think that is about correct. I could have given you that total, I had it here. 24,331.

Q. Now, that, as I understand it, supplied your necessities for all your customers that might have been inconvenienced by this explosion of the Indiana Powder Company's plant, outside of what you were able to supply from your own mills? A. Yes, because the panic started, if you will remember. 1281

Q. I beg your pardon? A. We were disappointed in the volume of our business. The panic started, and we later found that we need not have bought that much.

Q. That, however, did supply you in the circumstances? A. Yes.

Mr. Abbott: That is all.

Re-cross examination by Mr. Katzenbach:

Q. Mr. Coyne, you have stated that the panic caused a reduction in the output and sale of powder; what panic did you refer to? A. Well, the

slowing down of business generally, that commenced about that time, in 1907.

Q. In October, 1907, is that the panic that you refer to? A. Yes, that is the panic.

Q. Well, now, as the result of that panic, how much did the output of powder in the country fall to during the year 1908; can you give those figures? A. I think the table shows that exactly, if I may be allowed to refresh my memory.

Q. I show you a table here that I will ask to have
1283 marked (handing same to witness).

By Mr. Button:

Q. Have you the original? A. I have it in my valise.

Q. Get it. A. (Witness obtained paper.)

Q. Have you any data that would refresh your memory as to the falling off of the business after the panic of 1907? A. I think I have here our own compilation.

Q. Well, will you state——
1284

By Mr. Abbott.

Q. Just a moment; is this something that you have made up yourself? A. Some of it is. I have not found the table yet. I can tell you when I find it whether I made it up myself.

Mr. Katzenbach: Just find it, please.

The Witness: Yes, I have a record here that I have prepared from our office records showing the falling off in the black powder trade between 1907 and 1908.

1285

By Mr. Abbott:

Q. Is this something you made up yourself? A. Something I have made up.

Q. From the records in your office? A. From the records in my office.

Mr. Abbott: I have not any objection if it is made up from the records in your office, if your Honor please.

The Court: Very well.

1286

By Mr. Katzenbach:

Q. Now, will you state, Mr. Coyne, in kegs, how much the output was in 1907 of your company, and how much it was in 1908, and the amount that it fell off in 1908? A. Our total output in kegs of 25 pounds each in 1907——

By Mr. Abbott:

1287

Q. Was how many? A. I say in kegs of 25 pounds, our output in 1907 was 7,363,000 kegs; and in 1908, it fell to 5,635,000 kegs, or approximately a million, six hundred thousand kegs drop.

By Mr. Katzenbach:

Q. Now, then, what was the competitors' output in kegs in 1907?

By Mr. Abbott:

Q. Are you reading the competitors' output? A. From the same statement, yes, sir.

Q. Now, where did you get the data upon which

you made up that statement? A. It is the same data you have there.

By Mr. Katzenbach:

Q. Largely from the sworn statements of competitors, was it not? A. I think 1907 surely is, but I am not so certain about 1908.

By Mr. Abbott:

1289

Upon that, if your Honor please, I wish to interrogate the witness just a moment. I wish that you would make it a little more clear how you obtained the information which is set forth in that paper that you have before you, concerning the output—not concerning the capacity, but concerning the output—of the mills which you claim to be the mills of your competitors.

The Court: Yes, he can do that—if I re-
1290 remember rightly. I thought it was the output that he referred to before.

Mr. Abbott: Part of his information relates both to output and capacity.

The Court: I understood he is talking about it. Well, did you have any other source?

The Witness: Nothing, except as I related. I may explain the thing a little. You started offering this output. Now, output and sales are practically the same thing with us.

By Mr. Abbott:

Q. So that when you found one of your competitors had made a sale, you looked over the total

number of sales until you got information concerning that, and that total is output, so far as you are concerned? A. Yes.

Q. That is the way you arrived at it? A. Plus 15 per cent. that we allowed for laps and slams.

Q. And you verified that with those sworn statements which were afterwards furnished by the Government? A. Yes, sir.

Mr. Abbott: All right.

1292

By Mr. Katzenbach:

(The question was repeated by the reporter.)

A. 3,875,000 kegs.

Q. And what was the competitors' output in 1908? A. 3,206,000. They lost only about 650,000 kegs, as against our 1,600,000.

Q. Then the competitors lost a lesser percentage of their trade in 1908 than your company did? A. Very much. 1293

Q. Now, will you state whether there was any increase between the years 1903 and 1908, in the output of competitors? A. Yes, in the year 1903, our competitors had the capacity to manufacture 3,000,000 kegs, and in 1908, a capacity to manufacture 6,000,000 kegs.

Q. So that their capacity to manufacture had increased to 100 per cent. in the five years?

Mr. Abbott: We want, if your Honor please—the inquiry was output, and the answer was capacity.

The Court: That is so.

Mr. Katzenbach: Well, I will withdraw that question.

1294 *William Coyne—Recross*

By Mr. Katzenbach:

Q. Now, will you state, Mr. Coyne, what was the capacity of your competitors in 1903? A. The capacity to manufacture?

Q. The capacity to manufacture? A. 3,000,000 kegs, according to our records.

Q. And what was the capacity of competitors to manufacture in 1908? A. 6,000,000.

Q. Then the capacity to manufacture had in-
1295 creased, of competitors, 100 per cent. in the five years, between 1903 and 1908, is that correct? A. Yes.

Q. Now, then, what was the output, and by output we will mean sales of competitors in 1903? A. 3,000,000 kegs—I beg your pardon. In 1903, 2,000,000 kegs.

—Q. And what were the sales of competitors in 1908; in other words, output of competitors in 1908? A. 3,200,000 kegs.

Q. Then during the five years between 1903 and 1908, the actual sales of competitors had increased
1296 1,200,000 kegs? A. Yes.

Q. Now, have you any figures which would give this comparison by years; first, as to the capacity of competitors in each year? A. I have.

Q. Will you give the increase of capacity of competitors in each year, between 1903 and 1908? A. I could give you the actual capacities if that will suit.

Q. Capacities to manufacture? A. In 1903, the competitors' capacity to manufacture was 2,100,000 kegs. In 1904, it was 3,015,000. In 1905, 3,697,000. In 1906, 4,600,000. In 1907, 4,622,000, and in 1908, 4,740,000.

Q. Are you certain that is capacity to manufacture that you have just been reading? A. No; I

read the wrong table. I find this says "Competitors' increased capacity" in Waddell's claim territory, that is the territory of Mr. Waddell. The increase in that territory alone is the figure.

Q. I want the United States. A. I have got the wrong table. Now I have it.

Q. Will you please give it, for the years? A. This is for the entire country.

Q. The entire country? A. In 1903, 3,031,000. In 1904, 4,005,000. In 1905, 4,702,000. In 1906, 5,700,000. In 1907, 5,861,000. In 1908, 5,957,000. 1298

Q. Now, you know the territory claimed, or rather mentioned in this case as Buckeye territory, do you not? A. Yes.

Q. Will you state how the capacity of manufacture of competitors increased in this so-called Buckeye territory, between the years 1903 and 1908, and give that increase, if any, from year to year.

The Court: He has given that by mistake. Let it stand. That is what he gave you.

1299

Q. Yes, that is what you gave by mistake. A. The competitive increase in the Waddell claimed territory, yes.

Q. And that would be the same answer to this question? A. Yes.

Q. Now, then, have you calculated any percentage of increase in competitors' capacity to manufacture between the years 1903 and 1908? A. Why, the figures indicate 100 per cent. increase, in capacity to manufacture.

Q. Yes; have you a table of that? A. There are a lot of tables.

Q. Now, Mr. Coyne, have you a table of that character? A. You mean the increase in percentage each year?

1300 *William Coyne—Recross*

Q. Yes, each year. A. I have not any percentage, but I have it here in actual kegs, but which, of course, is only the difference between the years I gave you; for example, I give say the number of kegs, 1904, increase over 1903, and so on.

Q. Well, have you not those in percentages? A. You mean our——

Q. I will show you a paper here and ask you whether you—— A. You want to know the percentage of the trade held by us and the competi-

1301 tors?

Q. No. The percentage of increase of trade of competitors between 1903 and 1908.

By Mr. Abbott:

Q. Mr. Coyne, are you about to testify from your own personal knowledge, or from this document which was just shown you by Mr. Katzenbach? A. I am going to answer that question with the knowledge that I have obtained from a study of that question, and some figures I made up myself.

1302 Q. And not with reference to this document? A. No, I did not see anything there. That particular question you ask me, I could answer in toto. I know what our records indicate.

By Mr. Katzenbach:

Q. That would be satisfactory. A. Yes, I have that, Mr. Katzenbach. (Question repeated.) A. Uou want to know the percentage of the trade held by us and the competitors?

Q. No, the percentage of increase of trade of competitors between 1903 and 1908. A. In 1904, our competitors increased their business over 1903, 25.44 per cent., and we decreased 12.06 per cent.

We lost, in other words, 12.06 per cent. of our business in 1904 as against 1903. Then in 1905 against 1903, our competitors increased their business 54.99 per cent. I am referring to black powder now.

Q. Yes. A. And the country over.

By the Court:

Q. For blasting? A. Yes, sir; and we decreased 1905 versus 1903, 10.70 per cent. In 1906, our competitors increased their business 73.24 per cent. 1304
over what they had in 1903, and our increase was but 1.52 per cent. over what we had in 1903. In 1907, our competitors had increased their business 96.40 per cent. over what they had in 1903, and our increase was but 10.84. In 1908, the competitors had increased their capacity 62.49 per cent. over 1903, and we had decreased over 1903 15.17 per cent. As a matter of fact, there is only in the year 1908, according to our records—there are only 200,000 kegs more of blasting powder used in the United States than there was in the year 1903, and
the competitors had increased their business 1,200,- 1305
000 kegs, and we had dropped our business 200,000 —no, we dropped over a million. In 1903, we sold 6,660,000 kegs. In 1908, we only sold 5,660,000.

By Mr. Katzenbach:

Q. Now, what effect had that increase in the competitors' output and in their business upon the price of blasting powder? Had it declined during those years? A. Well, naturally, there was a great scramble from 1904 on, when this big increase in the capacity came into operation. It really commenced in 1905, the heaviest part of it. A number of new companies had to get business, and there

was no more business than there was before they built their mills, and plenty of capacity in the country to take care of it; so there was a great scramble for what business there was offering, and consequent price war.

Re-direct examination by Mr. Abbott:

Q. Now, in making up your statements there, I did not catch it all—regarding the percentages of
1307 increase of manufacture of the various competitors, I will ask you to state whether you included all of the companies that are named in the Plaintiff's Exhibit No. 1127, the competitors? A. That is supposed to be the exact figure used there, Mr. Abbott.

Q. Well, now, I am going to read off a few names here, and ask you if you included these in that list. Equitable, Egyptian—— A. I included that in the list, the Equitable.

Q. Everything that was in this list? A. Yes, every powder company in that list of competitors.
1308 Q. You then read—your figures were made up from this table (indicating Exhibit 1127)? A. Yes, sir.

(Witness excused.)

WILLIAM COYNE was recalled as a witness, and having been previously duly sworn, testified further as follows:

Direct examination by Mr. Abbott:

Q. Mr. Coyne, you were to prepare, I believe, a statement covering certain prices, 95-cent price, with regard to customers to whom that price was

made. Have you prepared such a statement? A. I have.

Q. Will you produce it. A. (Witness produces statement and hands same to Mr. Abbott.)

(The document was marked for identification No. 1248.)

Mr. Abbott: Until we have a chance to examine that document, we have no further questions to ask Mr. Coyne, and I do not wish to keep Mr. Coyne here, so I will 1310
notify him if his presence is further needed.

Cross examination by Mr. Katzenbach:

Q. Just a moment. Mr. Coyne, at the top of this statement, which has been marked 1248 for identification, I notice that you have the words, "Authorized by the Sales Board, from May 1, 1905, to October 14, 1907, inclusive." A. No; the top is just a summarization, that I made myself, and no part of it.

Q. This is the same thing. You don't mean by 1311
that that this is a list of parties to whom the du Pont Company sold at that price, do you? A. No.

Q. Then what you mean is that this is simply a list to whom that price was quoted? A. Yes; the Sales Board authorized that price to be quoted.

Q. Yes. Mr. Coyne, you have examined the document known as the answer to the Bill of Particulars in this case, have you not? A. Yes, sir.

Q. It contains a list of the alleged customers of the Buckeye Powder Company? A. Yes, sir.

1312 *Lester D. King—Direct*

The deposition of LESTER D. KING, a witness produced for the plaintiff, being duly sworn, was read as follows:

Direct examination by Mr. Abbott:

He resides at Springfield, Illinois; he worked for about four months as a demonstrator for the Buckeye Powder Company, from the forepart of September, 1906, until the forepart of February,
1313 1907; his duties were to visit the different local unions of the different mines; some locals had written to the Buckeye Powder Company that they would like to try their powder, and it was his duty to visit those persons, and induce the operators of the mines to purchase Buckeye powder; the district which he visited was chiefly around Springfield and Peoria; that some time in January, 1907, he attended a meeting of the members of the local union which operated in Scholl's Mines, and the Peoria district, as the agent of the Buckeye Powder Com-
1314 pany.

Q. What powder was being used in the mine at that time? A. Du Pont.

Q. Was there anybody in that meeting representing the du Pont Company, if you know? (Objection overruled.)

Q. Do you know whether there was any person, any one present at that meeting, representing the du Pont powder? (Objection overruled.) A. Mr. Moffatt represented the du Pont people there that night.

Q. Who was Mr. Moffatt; can you describe him otherwise? (Objection overruled.) A. I don't know whether he was the agent for Dooley Brothers there or for the du Ponts, but he represented du Pont direct in his argument that night regarding powder."

Q. Was anything said by Mr. MMoffatt at that meeting? (Objection overruled.) A. After I had made my talk in explanation about the quality of the powder of the company I represented, Mr. Moffatt followed me and addressed the miners assembled, and in his address he stated that his company, that is, the du Pont, had a contract with the Sholl's Fuel Company which would hold them for about a year, and he didn't see how the men could do anything in regard to that contract; and they told him that they would have to furnish a better 1316
grade of powder, or they would show him that that contract wouldn't make any difference in regard to using the powder.

Q. Do you know what action, if any, was taken by that meeting with reference to the matter before them? (Objection overruled.) A. Why, it was left in the hands of the committee, there, to take action either one way or the other, in regard to the company.

Q. Do you know what, if any, action was taken by the committee? A. None to my knowledge.

Q. Of the committee, do you mean? A. The local 1317
union Pit Committee of the local there.

Cross examination by Mr. Button:

Q. Who sent you down there? A. Mr. Waddell, the president of the Buckeye Powder Company.

Q. You were aware when you went, that the mine was using du Pont powder? A. Not at that particular place.

Q. What powder did you think they were using? A. I didn't think anything about it.

Q. And you didn't know? A. No.

Q. You found out when you got there, they were using the du Pont powder? A. Yes, sir.

Q. You found they had a contract for some time to run? A. Only through the agent of the du Pont Powder Company.

Q. You had no doubt on the subject? A. I didn't question it.

Q. As soon as you discovered that fact, did you cease pushing Buckeye powder there? A. No, sir.

Q. You went right on getting them to break their contract? A. No, sir.

1319 Q. You did all you could to get them to change? A. I did all I could to get them to use Buckeye powder.

Q. Did you do all you could to get them to adopt Buckeye Powder? A. In an energetic business-like way.

Q. You did all you could to get them to change from du Pont to Buckeye at that time? A. I did all I could to show them the quality of the powder we got.

Q. Well, your object was to induce them to adopt it? A. Well, I guess it would be so considered.

1320 Q. Well, it was, wasn't it? A. You might so consider it.

Q. Were you there for any other purpose? A. No, sir.

Q. Did you succeed in getting them to break their contract with the du Pont Company? A. No, sir; I didn't attempt to get them to break it.

Q. Do you recollect all this conversation from your independent recollection at the present time? A. Not word for word.

Q. How long had you been with the Buckeye people at that time? A. Well, I remember—I suppose six or seven months up to that time, something in the neighborhood of that.

Q. What was the date of this meeting? A. I don't remember the exact date of it.

Q. Was this the only meeting of the sort that you attended? A. At that place?

Q. Anywhere? A. No, sir.

Q. You attended a great many? A. Several.

Q. Miners' meetings? A. Yes, sir.

Q. And always for the purpose of getting the miners to use Buckeye powder if you could? A. I guess so.

Q. You attended so many of these meetings, do you think you can distinguish one meeting from another? A. Not every one. 1322

Q. You have no doubt, I suppose, as to what was said and done at this particular meeting, as you have detailed it? Can you remember what was said at every one? A. Not every one.

Q. You have no doubt as to what was said and done at this particular meeting, as you have detailed it? A. In regard to those points that we were considering, and that we would consider would be a positive stand that most any party would take at a meeting of that kind, you would remember the instance.

Q. That is, you mean you know what you probably would have said on such an occasion; isn't that what you mean? A. Yes, that's about it. 1323

Q. You know what you probably would have said? A. Yes, sir.

Q. And that is what you mean here? A. Yes.

Q. Well now, what year was this? A. The year 1907.

Q. And what month? A. January.

Re-direct examination by Mr. Abbott:

Q. Have you or not, refreshed your memory concerning what occurred at this meeting in any manner, recently? A. I have, sir.

1324 *Horace Clark—Direct*

Q. From what did you refresh your memory? A. From a letter I had written to Mr. Waddell about that time.

Q. I show you a paper writing and ask you to examine the same and state whether or not that is the letter you have reference to? A. This is the original which was sent to Mr. Waddell at that time.

Q. It is in your handwriting? A. Yes, sir.

1325 Letter offered in evidence. Objection sustained.

Deposition of HORACE CLARK, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Clark, where do you reside? A. Peoria.

1326 Q. How long have you resided in Peoria? A. All my life.

Q. Not being before a jury I am compelled to ask you how old you are? A. 49 years old, 9 months and 2 days.

Q. What is your business at the present time? A. President of the Clark Coal Company.

Q. What was your business during 1903 to 1909? A. General manager of the Clark Coal Company.

Q. At that time? A. At that time.

Q. Where were your mines located during the years 1903 to 1909? A. In Limestone Township, Peoria County.

Q. By what name or under what name are your mines operated? A. At that time it was the Empire Mines, No. 1 and 2.

Q. And they were under the Clark Coal Company? A. Yes, sir.

Q. They were known as the Clark Coal Company? A. Yes.

Q. In your mining operations did you use black blasting powder? A. Yes, sir.

Q. What kind of black blasting powder did you use? A. Generally du Pont.

Q. During the years 1903 and on, did you use du Pont powder? A. Partially so, yes.

Q. Did you know the corporation, or manufac- 1328
turing plant, known as the Buckeye Powder Company? A. Yes.

Q. Where was that located? A. About a mile and a half west of Edwards Station, Illinois. The main offices were in Peoria.

Q. A mile and a half west of Edwards? A. Yes.

Q. Were you in any way interested in the Buckeye Powder Company? A. Yes.

Q. What was the business of that company, if you know? A. Manufacturing powder.

Q. What kind of powder? A. Black powder. 1329

Q. Did you use any of the Buckeye powder in your coal mining operations? A. Yes.

Q. How much did you use? A. A very limited amount.

Q. You say you were interested in the Buckeye Powder Company. How much of an interest did you have in that company? A. $1,000 worth of stock.

Q. How long did you continue to own that stock, or rather when did you first acquire that stock? A. On its organization.

Q. Did you continue to ow nit when it went out of business? A. Yes.

Q. At that time? A. Yes.

Q. During the time that you were—during the

period from 1903 to 1909, when you said you were using du Pont powder, from whom did you purchase that powder? A. Their agents, Dooley Brothers.

Q. During the time I have mentioned? A. Yes, sir.

Q. And Dooley Brothers are located where? A. Peoria.

Q. Did you purchase your powder in the open market, or were you under contract? A. Under
1331 contract.

Q. Were you under contract during the entire period? A. Yes, sir.

Q. Have you got those contracts with you? A. No, sir, they have been destroyed.

Q. Do you remember what they provided as to their terms?

Mr. Katzenbach: That is objected to on the ground that the witness has stated that the contracts were with Dooley Brothers, and Dooley Brothers are not a defendant
1332 in this suit, or in any wise connected with it, being an independent firm, purchasing and selling powder, and for that reason the question is objected to as irrelevant and incompetent.

Mr. Abbott: I didn't understand the witness to say his contracts were with Dooley Brothers?

Mr. Katzenbach: I understood him to say so.

The Witness: They were the agents of the du Pont people.

Mr. Katzenbach:

Q. Was I mistaken, Mr. Clark, in my under-

standing that your statement was that your contracts were with the Dooley Brothers? A. Dooley Brothers, as the agents of the du Pont Company.

Q. Was the du Pont Company a party to the contracts? A. As I remember it, yes.

Mr. Abbott:

Q. Do you know what those contracts provided as to price you paid for your powder from time to time? A. I can not recall exactly the exact price we paid those particular years, but I think the price was $1.10—along about that. 1334

Q. Was any rebate provided for? A. Nothing but a cash discount.

Q. Being a stockholder in the Buckeye Powder Company and using black blasting powder, will you state what reason if any there was, for your not purchasing your black blasting powder of the Buckeye Powder Company? (Objection overruled.) A. Do you mean why we didn't buy all the powder—

Q. Yes, why didn't you purchase powder of that company that you were interested in? (Objection overruled.) A. The reason I bought the stock in 1335 the Buckeye Powder Company was to have an opportunity to have two sources of supply for our powder, believing that it was to the interest of any mine to have two kinds of powder on sale. I wasn't able to buy in large quantities Buckeye Powder. I was not able to buy any large quantity of it because the miners wouldn't use it.

Q. Your miners would not use it? A. No.

Q. That condition continued did it, or did it not, during the period from 1903 to 1909? (Objection overruled.) A. Do you mean why we didn't buy all the powder?

Q. Yes. Now answer my question. I will ask you whether that continued, whether that condition did continue, and how long it continued after the

Buckeye Powder Company commenced its operations? A. All the time they were in business.

Q. I show you a letter, written on the letterhead of the Clark Coal Company, dated at Peoria, Illinois, December 28, 1907, and ask you to examine the same and state if you recognize the signature? A. I do.

Q. Whose signature is that? A. My own.

Q. That is your signature? A. Yes.

Q. Is that a letter you wrote? A. Yes.

1337

I offer the letter in evidence. Same received as Plaintiff's Exhibit P-96, and read to the jury as follows:

Peoria, Illinois, December 28, 1907. Buckeye Powder Company, Peoria, Illinois. Gentlemen: Mr. Waddell's letter of the 26th at hand. We only wish it was in our power to use Buckeye Powder exclusively, but as you know our miners positively will not use anything but du Pont, and much as we would like to help out our friends, it seems as if

1338 we can not do it. Perhaps during 1908 something will turn up whereby an effort can be made again for another trial, and we will be very glad to co-operate with you. Respectfully yours, Clark Coal & Coke Company, by Horace Clark, Secretary."

Q. Now, what powder are you using at the present time? (Objection overruled.) A. du Pont and Western.

Q. By Western powder, what do you mean? (Objection overruled.) A. The product of the Western Manufacturing Company.

Q. Where is that manufactured? (Objection overruled.) A. The former location, the same location as the Buckeye powder.

Q. Are you under contract at the present time for the purchase of black blasting powder? (Objection overruled.) A. Yes.

Q. With whom are you under contract? (Objection overruled.) A. Dooley Brothers, as agents for the du Pont Powder Company, and with the Western Powder Manufacturing Co.

"Cross examination by Mr. Katzenbach:

"Q. The miners are paid for screening the same price as they get for lump coal? A. Yes, sir. 1340

"Q. And you thought by having a test in the mines the miners would become more careful and would use more care? A. Yes, sir.

"Q. And that was the primary reason for your test, as I take it? A. Yes, sir.

"Q. Are you still a stockholder in the Buckeye Powder Co.? A. No, sir.

"Q. To whom did you sell your stock and when did you sell it? A. I sold it about three years ago to somebody unknown to me. This transactions was handled through the Merchants National Bank 1341 of this city.

"Q. You endorsed your stock certificate in blank and received the money for it? A. Yes, sir.

"Q. And have you ever found who was the purchaser of it? A. No.

"Q. Through what bank was the transaction made? A. The Merchants National.

"Q. The Merchants National Bank? A. Yes, sir.

"Q. Of Peoria? A. Yes, sir.

"Q. Who is the president of the bank? A. Ferdinand Luthy.

1342 *Samuel W. Stephens—Direct*

Deposition of SAMUEL W. STEPHENS, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Stephens, where do you reside? A. I live in Kansas City, Kansas, 905 Central Avenue.

Q. Where did you reside during the years 1905 and 1906? A. In 1905, I resided in Missouri, Adair
1343 County, adjacent to mine No. 31, Great Northern Fuel Company's mine, south of Novinger, about two miles, on the I & St. L. branch of the railroad.

Q. At that time, what business were you engaged in? A. Mine foreman for the Great Northern Fuel Company, for mine No. 31.

Q. As such, what were your duties? A. At that time I had supervision of the mine and the pay roll; I kept all the time; issued all the store orders; bought all supplies at the mine and checked and handled the output of the mine to the company's
1344 office in Novinger; and was in fact, in charge of everything connected with that mine.

Q. In your mining operations did you have occasion to use any black blasting powder? A. Well, we used a great deal of powder at the mine that was under my supervision, so far as the distribution and handling for the company was concerned; I had charge of ordering supplies, keeping the supplies and giving the supplies to the miners at that mine and to look after the results of the powder in and about the mine and safe guard the miners, so far as the use of powder at the mine was concerned.

Q. What kind of black blasting powder were you using in the early part of 1905? A. Well, my records show that we used du Pont——

Q. State what your recollection is regarding the

matter? A. I know we used du Pont powder.

Q. Any other? A. And I remember we introduced Buckeye powder.

Q. About what time was it that you introduced Buckeye powder? A. My recollection is about the first of June, 1905, I am not positive.

Q. How long did you continue the use of Buckeye powder? A. We used Buckeye powder until after we had had a strike and then that strike was, as near as I can remember, in July.

1346

Mr. Button: Same years?

A. In 1905, and I afterwards sold what Buckeye powder I had; I had 250 kegs on hand, or about that.

By Mr. Abbott:

Q. State according to the best of your recollection what was the occasion of this strike to which you have referred? A. Well, just previous to the time we had this strike our manager called me on the 'phone and said— — 1347

Q. Just state what you yourself know and omit any reference to what the general manager said to you? A. Well, the district foreman of the Mine Workers and another gentleman came down there—

Q. Who was the district foreman? A. Mr. Phillips.

Q. Who was the other gentleman? A. I can't recall his name; he was a representative of the du Pont Powder Company, introduced to me as such.

Q. Would you know the gentleman if you saw him? A. I ain't positive; he was rather a heavy man; it has been quite a while back, and I ain't positive that I would know the man. He was a man about the size of the man sitting over there.

1348 *Samuel W. Stephens—Direct*

Q. Which one? A. The heavier of the two men; about his size possibly not quite as heavy, but about his height.

Q. The gentleman you are pointing to,—is that the gentleman?

(Mr. Spicer stands up.)

A. That is the gentleman.

Q. That is Mr. Spicer? A. I thought it was Spen-
1349 cer, but it might have been Spicer; it is quite a long time, I haven't given this issue consideration; I have been called on suddenly.

Q. That is the man you were pointing to? A. Yes, sir.

Q. State what occurred at that time? A. Well, Mr. Spicer, or Spencer, and a man by the name of Phillips, who was a sub-district president for the Mine Workers in that district, they came down there and I introduced them to Mr. Hayes and Mr. Jackson and Mr. Bisby, was the Pit Committee at that time and they were talking about the Buckeye
1350 Powder. (Objection overruled.)

Q. This conversation occurred in your presence? A. Yes, sir.

Q. Can you relate what you heard at that time? (Objection overruled.) A. Well, Mr. Spencer and Mr. Phillips, I know they were coming, of course, and I took them down and introduced them to the committee, and I was of the understanding that it was relative to the use of powder; that was my understanding of it, that it was regarding the fact that we were using Buckeye Powder and we were going to use du Pont powder.

Q. You introduced these men to the committee for what purpose? A. For them to instruct the committee as to the fact that this was a non-union

powder and that the du Pont's was; and that we were willing and anxious for a change.

Q. How did you learn that the Buckeye powder was a non-union powder and the du Pont powder was a union powder; where did you get that information? A. That was the information I got from Mr. Spicer and Mr. Phillips; I got that information through the conversation we had at the time of the committee——

Q. What occurred after that? A. I left the committee and went down on about my work and the 1352
next think I knew I saw was a notice—a written notice at the top of the mine that there would be a meeting called at Novinger that evening to discuss non-union powder at Union hall.

Q. Have you ever seen that notice since?

Q. Do you know where the original notice is at this time? A. No.

Q. Do you recall whose name was signed to it? A. Yes.

Q. Whose? (Objection overruled. A. Joseph Rutherford. 1353

Q. Who is he? A. The secretary for the local union and check weighman for Mine 31.

Q. After that was posted, what occurred? A. I know that all the miners went to Novinger and the next morning they didn't come to work.

Q. What do you mean? A. They went to the local meeting and the next day we had a strike on.

Q. How did you receive that information? A. As foreman of the mines I had my engineer and my day man blow the whistles and get up the steam and the following A. M. none of the miners reported, and I went to the boarding house adjacent to the mine and Mr. Hayes informed me, as committee of the miners, that they had ordered a strike, and

that there would be no more work done until we had du Pont powder at that mine.

Q. At that time did you have any Buckeye powder on hand? (Objection overruled.) A. Yes, sir, about 250 kegs.

Q. At any time did you have any Buckeye powder on hand? A. Yes, sir; about 250 kegs.

Q. Did you succeed in using any of that powder afterwards? A. Not at that mine; I sold the pow-
1355 der to a small individual company that was digging coal for farmer trade located close to where 31 was.

Q. How long did that strike continue? A. I am not positive as to the exact time, but the best I can remember about a week or ten days.

Q. It lasted a week or ten days? A. Yes.

Q. How did it terminate? A. Well, I was instructed to get du Pont powder and I got a team and went up to No. 2 Rombauer.

Q. What did you do with the powder you got of Mr. Rombauer? A. Sold it to the miners.

1356 Q. From whom did you afterwards obtain your powder? A. I don't know; it was sent down there in a car and I unloaded it; I don't know anything about it.

Q. Did you continue to use du Pont powder from that time on? A. Yes.

Q. Did the miners come back to work and continue to work as soon as you supplied them with du Pont powder? A. Yes; I think it was about a week until we got du Pont powder, and then they went back to work; it might have been ten days.

Q. Referring to the date when you discontinued using Buckeye Powder as you stated a while ago, I think you said you thought it was in June, 1905? A. Yes.

Q. Will you state upon what you based that in-

formation? A. I believe it was June or July; I am not positive as to the exact date.

Q. Upon what do you base your recollection? A. Upon what do I base my recollection? On a record that I have of the powder on hand.

Q. Have you got that record in your possession? A. Yes, sir.

Q. Will you kindly examine it and refresh your memory as to the exact date, if you can, when you discontinued the use of Buckeye powder? A. It must have been September instead of July, we had 1358
this strike according to my record now. Here it was along between the 1st and the 15th of September as near as I can recall from this record; my memory serves me, it was in July, but I think from my record it was in September, between the 1st and 15th of September.

Cross examination by Mr. Button:

Q. Who was the general manager or president at that time? A. Mr. I. B. Grant was general manager. 1359

Q. Was he president of the company, too? A. I don't know that he held the title of president.

Q. How many mines did the company operate? A. Well, at the time I think we were operating Mine No. 1, Mine No. 23, Mine No. 21 and Mine No. 31 in that territory.

Redirect examination by Mr. Abbott:

Q. State if you know about how many kegs of powder were consumed in your Mine No. 31 over which you had charge, after this strike which you have testified occurred, per month? A. Well, to the best of my recollection, we would use about 220 or 240 kegs a month.

Q. At that mine? A. Yes, sir.

Q. How long did that continue? (Objection overruled.) A. Until I closed the mine down in September, 1906.

Q. Did the mine continue to do business after that? A. Well, it was leased to a party for about ninety days.

Q. Then after that it discontinued? A. Yes.

Recross examination by Mr. Button:

1361

Q. Then this company discontinued operations less than a year after this occurrence you have testified to? A. Well, yes, a little less than a year.

Q. What do you say your position was at the Mine No. 31—mine manager? A. I held the title as mine foreman, and at that mine I kept the pay-roll.

Q. Well, you were mine foreman? Did you have the same duties at these other three or four mines? A. Well, they gave me a little more work than they did the other fellows; they made me keep my own pay-roll and handle my own supplies.

1362

Q. Did the other mines have a mine manager also? A. Yes, sir; mine foreman.

Q. Did you yourself have anything to do with the contracting or purchasing of powder? A. No, sir; not on powder.

Q. What was the capacity of Mine 31? A. I got each day's run down (looking at a book). Some days 269,000 and 300,000 another.

Q. In a general way? A. About 300,000 of coal or 300 tons was about the average.

Q. How long had you been there as mine foreman when that began? A. I began in March or April, 1904; I ain't just sure which month it was.

Q. You had been there a little over a year when this strike occurred? A. Near a year and a half.

Q. You are a certified mine foreman? A. I have been examined by the examiners of the State of Missouri.

Q. At that time? A. Yes, sir.

Q. Are there a good many other companies in that vicinity operating coal mines or were there at that time? A. Manufacturers' Coal and Coke Company, Rombauer Coal Company, G. B. Havens & Company and the Midland Coal & Coke Company. I believe that was all the principal companies. There were one or two smaller companies. 1364

Q. From what you say, I judge the Rombauer Coal Company was using du Pont powder at that time in that vicinity? A. Yes.

Q. Can you state what these other companies were using? A. I am not positive, but I think practically all were using du Pont at that time.

Q. What powder was your company using when you first went there in 1904? A. We used some—from the time I went there until I went to 31 we had used some Austin powder and tried Excelsior powder, and I ain't sure but we had a small amount of powder that was manufactured down at Columbus, Kansas, or close to Columbus, Kansas. 1365

Q. When you say you began the use of Buckeye Powder first? A. I think along about the 1st of June.

Q. 1905? A. Yes; we got a few sample kegs; we got a small shipment of sample powder just previous to that.

Q. You had nothing to do with the making of the contract for that powder or for the purchase of it? A. No, sir.

Q. Then your recollection is that you used only Buckeye powder from May or June to September of that year? A. Yes; we had it on hand and I had disposed of it in small amounts; I didn't get all of

it sold out until about the 1st of January, 1906; it was along in September we discontinued the use of it at the mine.

Q. You say one day a Mr. Phillis came down there with a man you can't recollect; what was Mr. Phillips' first name, do you know? A. No; I don't remember; I always addressed him as Mr. Phillips.

Q. Do you know where he is now? A. I saw him a little over a year ago.

1367 Q. Do you know where he is? A. No, I saw him just a short while back; but I didn't ask him his whereabouts.

Q. You stated that these men, he and another, came down there and you introduced them to the Pit Committee. What was his name? A. Mr. Hayes.

Q. What is Mr. Hayes' first name. A. Robert F.

Q. How many were there on the Pit Committee? A. Three.

Q. Do you recollect the other names? A. Jonathan Jackson, and S. P. Bisby.

1368 Q. Do you know where they are? A. I know where Mr. Hayes is.

Q. Where? A. Sitting right over there.

Q. He is present? A. Yes, sir.

Q. You stated that you knew in some way beforehand that these gentlemen wished to talk to the Committee about Union Powder; where did you get that information? A. Mr. Grant called me on the 'phone—

Q. Please answer my question, I asked the name of the person from whom you got it, from Mr. Grant? A. Yes, sir.

Q. Then they had a meeting and you didn't attend it? A. No, sir.

Q. And then you had your strike? A. Yes.

Q. And then you got some du Pont powder and the men came back? A. Yes.

Q. You have had a good deal of experience, have you not, in the mining business? A. Yes, I have dug coal and worked in all capacities.

Q. And generally speaking, it is true that the miners have their own ideas and opinions as to the kind of powder that they want to use? A. Yes.

Q. And if they insist upon having a particular brand of powder they are very apt to get it before they are through? A. I have always found that they did get it.

Q. And it is also true all through this region 1370
that the wages made by miners depends upon the amount of coal they are able to get out? A. Yes.

Q. He is paid by the tonnage he gets out? A. The tonnage and yardage.

Q. It is also been your experience hasn't it, that the question of how much coal a miner can get out depends in some great measure upon the efficiency and quality of the powder he uses does it not? A. Yes, sir.

Q. Do you know where Mr. Joseph Rutherford is? Is he here? A. He will be here in a few minutes. 1371

Q. Is he around? A. Yes, sir.

Q. May I look at the records from which you refreshed your recollection as to the date of discontinuance? A. (Showing counsel the book) On hand April 30, at the close of business each week I made a record of the amount of powder on hand and the amount of coal produced, and you see here "on hand May 31." You will find I got those records right along, all the way through, and at the expiration of this book, I commenced over here in another book.

Q. Does this record end on September 1, 1905? A. You see there is a great deal of that work that interlapsed with this.

Q. Then this other book is the one in which they finally quit using it? A. Yes; I have a record of September 20th received from Novinger, powder—

Q. As I understand your recollection, you hadn't used du Pont at this mine until the event of this strike in September? A. Yes, we had been using du Pont powder exclusively, previous to that date; I mean, until we introduced Buckeye powder; previous to that time, we used du Pont powder.

1373 Q. I understand you to say it was Austin and Excelsior powder? A. We had tried out these powders, but we used du Pont.

Q. I think you inadvertently omitted the du Pont. When did you begin the du Pont powder? A. You asked me what powders other than du Pont we had been using, and I understood—

Q. However, I want to get at the facts; when did you begin using du Pont? A. The du Pont was used in the mine at the bottom. We had du Pont powder and used it; at various times we tried out these other brands, but the mine was opened at the

1374 bottom with du Pont powder.

Q. Then, isn't it true that you were using du Pont powder there when you went there? A. When I went there, we were using nothing but dynamite.

Q. You don't mean that you mined coal with dynamite? A. I shot coal, rock and everything away with dynamite when I first went on the mine, and we used du Pont powder when we made coal.

Q. Then du Pont powder was being used there before Buckeye powder? A. Yes, sir.

Q. And it was being used at the time you began using Buckeye powder. A. Yes, we used up du Pont after we received the Buckeye.

Q. Do you know how long they had been using du Pont powder this time? A. I opened this mine from the start, and the first shot of powder on the bottom with black powder was du Pont powder.

Q. Then, they used that powder from September, in 1904, up until— A. June, 1905, or July.

Q. Up until June or July, 1905? A. Yes, up until June or July, 1905, I used du Pont powder I had after we introduced Buckeye powder.

Q. What about the Austin and Excelsior powders? A. We had a small amount of them but they were not used.

Q. They were not definitely adopted? A. No, sir.

Q. But the du Pont was adopted? A. Yes, sir.

Q. Did the miners ever definitely adopt the Bucy- 1376
eye powder and demand it? A. Well, it was tried out and agreed to by the miners at that time and they seemed to be very well satisfied with it until——

Q. Who came down there on that business? A. Well, that was handled by the superintendent; he sent a sample down there and I introduced the powder and took the matter up with the miners at my mine and got them to use it and try it out and they tried it out and then they as a whole agreed to use it.

1377

Q. Where did you get hold of it? A. I was instructed by the superintendent to introduce Buckeye powder in the mines.

Q. Who was the superintendent? A. The general manager, Mr. Grant.

Q. Mr. Grant was spending his time there at that time, wasn't he? A. No, sir; Mr. Grant rarely ever was there more than an hour at a time, and not often more than a week.

Q. He was general manager? A. Yes, sir.

Q. And as such he had charge of the purchase of powder, did he not? A. Yes.

Q. And you received instructions from him? A. Yes.

Q. And where were his headquarters? A. At Novinger.

1378 *Samuel W. Stephens—Recross*

Q. And he was in constant communication with you? A. Yes, sir.

Q. By telephone? A. Yes.

Q. Did he ever have any other business or did he at that time have any other business except to attend to this mine? A. No, sir; I believe not.

Q. Was he there until the mine shut down? A. He lived there.

Q. He was there as long as you were there? A. Yes.

1379 Q. What date was that? A. I left in January, 1906, and then went back in October, 1907, until March, 1908. I was there five months since 1906.

Q. The reason Mr. Grant wanted Buckeye powder in there was that it was cheaper? A. The reason he wanted du Pont in there was, because it was cheaper than Buckeye. (Motion to strike out answer denied.)

Q. I am referring to the time when you changed from du Pont to Buckeye; was not that true? A. I don't know that it was, or I don't know that it

1380 was not.

Q. I see you have some Buckeye powder on hand here in your memorandum book as early as March 31, 1905, 133 kegs; was that for the purpose of trying it out? A. That was when we were first trying it out, I think.

Re-direct examination by Mr. Abbott:

Q. Mr. Stephens, you testified that you were using du Pont powder previous to the time when you began using Buckeye powder. State if you know whether or not your company entered into a contract with the Buckeye Powder Company? A. I don't know as to that.

Q. Now, you also stated that the miners were

satisfied and got good results from the Buckeye powder. Did you not so state in your cross examination? A. I don't know whether I made that assertion or not; I don't remember making it. However——

Q. You did state, however, that the miners seemed to be satisfied with the use of Buckeye powder? (Objection overruled.) A. Yes.

Q. Do you know anything about what the miners found with reference to the use of Buckeye powder and the amount of coal which it was capable of 1382 producing, as compared with du Pont powder, which you had been using? (Objection overruled.) A. On a comparative check of tonnage we produced more coal with Buckeye powder than we did with du Pont.

Q. Who did that comparative checking? A. I checked it.

Q. And you got better results from Buckeye powder than from du Pont powder? A. I did on the trial test.

Q. Referring to your previous testimony, both 1383 on direct and cross examination, concerning the date when you ceased the use of Buckeye powder, I will ask you to state whether or not you have any knowledge of a notice which was served upon the officials of the company to cease using the Buckeye powder and begin using du Pont powder; did you see any such notice as that? Have you any knowledge of any such notice? A. No, sir; I haven't.

Recross examination by Mr. Button:

Q. About this checking business, Mr. Stephens, how is that checking done? A. Well, the time that we started to introduce Buckeye powder, I, for the benefit of the company, started comparing tonnage;

1384 *Samuel W. Stephens—Recross*

I would have everybody clean up; have a man clean up all the coal and after he had no coal on hand, I would issue to him a can of Buckeye powder, and then figure on the tonnage that he would produce with a keg of Buckeye powder, with the tonnage he would produce with a keg of du Pont.

Q. With what he had produced some time previous? A. Yes, sir.

Q. How long a period did you keep those records?
1385 A. We had a man working in the same work, and he would use a keg of du Pont powder and would clean up every bit of coal they had; and then I would compare the tonnage.

Q. How long did that continue? A. I don't remember, but I think probably that it was about thirty days.

Q. Where did the tests occur? A. We were making tests continually with different miners in different parts of the shaft.

Q. You don't mean that you would shoot nothing but Buckeye powder in the whole plant? A.
1386 No; if a man wanted du Pont we would let him try it.

Q. Where are those records? A. The only records I have are blotters I took with me when I left the mines.

Q. But it was all a matter of record? A. I don't know how far the record went after I submitted it.

Q. You made a written record of it? A. Yes; I don't remember what they did with it.

Q. What was the difference in tonnage? A. It would vary from ten to fifteen per cent.; some men it wouldn't run as high as others.

Q. Consequently the miners that were using Buckeye powder got ten per cent. more wages than du Pont? A. Well, I don't know——

Q. It must be so, isn't it? A. Well——

Q. I am asking for the facts? A. Well, yes.

Q. And that is what would happen right along, isn't it? A. Yes, sir.

Q. They were getting ten or fifteen per cent. more wages? A. Yes, sir.

Q. What is the average wage of the miners? A. It all depends on the men.

Q. What is the average? A. Well, an American miner in that district runs about 62 to 65; an Italian will run about 40 to 45, and an Austrian will 1388
run 55 dollars in two weeks.

Q. Fifty-five dollars in two weeks? A. Yes, sir; more than Italians, and not as much as the English or American miners; two weeks' full work.

Re-direct examination by Mr. Abbott:

Q. Mr. Stephens, counsel for the defendant, has asked you several questions concerning the benefits which the miner would receive using one grade of powder over another, in his wages. Will you state why, if you know, what is the reason that under 1389
such circumstances the miner would change from a powder which produced him better results, over to one which did not produce the same or as good results in wages? (Objection overruled) A. The reasons that they withdrew from Buckeye back to du Pont powder was because Buckeye powder was represented to be a non-union powder to the miners.

Re-cross examination by Mr. Button:

Q. Was the Buckeye Powder Company a union shop? A. I don't know.

Q. Have you any doubt of the question of whether these miners in their union knew? A. I don't know whether they did or didn't.

1390 *Samuel W. Stephens—Recross*

Q. Don't you know they have special means of knowing? A. I wrote the constitution for that local union, and was secretary of it, and I know that the union that they took, they certainly didn't investigate the matter very strong, or they wouldn't be quite so radical as they was in this particular case. (Motion to strike this answer sustained).

Q. My question was, whether these miners' unions had facilities for learning or making investigations of these matters through their affiliations
1391 wth other unions? A. As secretary of that organization, previous to this time we didn't correspond with organizations as to local conditions of various different companies, unless an organzaton would correspond with the local union and notify them if it was not a local organization.

Q. Who asked you that question? A. I was just answering the first question.

Q. My question? A. Yes.

Q. I didn's ask you whether you corresponded with some other union, and as Iunderstand you, that is what you were talking about? A. You asked me
1392 if I knew that these organizations was——

Q. You didn't seem to understand the question. The question is, are there not affiliations with these unions, such as would enable them to easily determine whether a particular factory is unionized or not. I didn't ask you whether you did determine it or not? A. Strong organized unions have a great many smaller unions——

Q. At the time you wrote this constitution you have mentioned, this contest between the Buckeye powder and du Pont powder had not begun? A. No, sir.

Q. Miners' unions are pretty strong, comparatively, are they not? A. They were not so strong at the start as at the time of this strike.

Q. They increased in strength? A. Yes, sir.

Q. And they are strong? A. At the time of this strike; yes, sir.

Q. And they were at the time of the strike? A. Yes, sir.

Q. They were connected with the State Federation? A. Yes.

Q. And the National? A. Yes, sir.

Q. And had ramifications all through the United States, even at the time you opened this mine? A. Yes. 1394

Q. You would consider that a pretty strong organization, wouldn't you, or would you not? A. Yes, sir.

Re-direct examination by Mr. Abbott:

Q. And they were pretty strong in the Novinger district at that time? A. Yes, sir, they were.

Deposition of JOHN KELLY, a witness produced 1395 on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Kelly, where do you reside? A. I reside at the present time at Laneville, Illinois.

Q. Where did you reside in 1905? A. At Novinger, Missouri.

Q. And 1906? A. Yes, sir.

Q. What business were you engaged in at that time? A. Mine foreman for the Great Northern Fuel Company, Mine No. 1.

Q. How many mines, if you know, did the Great Northern Fuel Company have at that time in opera-

tion? A. I believe at that time there must have been four; No. 1, 23, 31 and 21. That is my best recollection. I think they were all in operation at that time.

Q. What was your particular title and your particular duties at Mine No. 1? A. Mine foreman.

Q. What were your duties as mine foreman? A. Looking after the interests of the mine, and the day men and the general conditions about the mine.

Q. Was a part of your duties the purchase or
1397 use of supplies used by the men in the operations of the mines? A. No, sir; I didn't buy any supplies.

Q. Did you have any occasion during your performance of your duties as mine foreman at Mine No. 1 to use any black blasting powder? A. Yes, sir.

Q. What kind of blasting powder did you use? A. Well, sir, we used the Buckeye powder and the du Pont powder.

Q. When did you first begin the use of du Pont powder? A. Well, sir, we opened the mine with du Pont powder.

1398 Q. When was that? A. I think that was about '93, I think, when we started on that shaft.

Q. Do you mean 1903? A. Yes, sir; 1903, that's my best recollection; it might have been '04.

Q. How long did you continue to use du Pont powder? A. Well, sir, I couldn't tell, to be honest with you; I couldn't give the date.

Q. After you ceased using the du Pont powder, if you did cease, what powder did you begin to use? A. Well, sir, I used Buckeye for a while; we used Buckeye for it looked to me like four or five months. It appears that way to my recollection—but just how long we did use it——

Q. After you ceased the use of Buckeye powder, what powder did you begin to use? A. We had to use the du Pont then.

Q. What was the occasion, if you know, of your ceasing the use of Buckeye powder and beginning the use of du Pont powder? A. Yes, it was because of a strike in the mine.

Q. How did that strike occur? A. The strike occurred, that they wouldn't use any more Buckeye powder on account of not being union made powder.

Q. How did that information come to your attention? A. Through the Pit Committee at the mine. (Motion to strike denied.)

1400

Q. What was the Pit Committee? What were its particular duties with reference to the mine operators? A. Well, sir, they looked after the interest of their men, of the union miners.

Q. And what authority did they have to speak for them? A. They had full authority. The Pit Committee has full authorities from the mine workers.

Q. Proceed to state further what you know about any information that came to you from the Pit Committee concerning the further use of Buckeye powder. (Objection sustained.)

1401

Q. Do you know anything about any meeting held by the miners in your mine for the purpose of considering the question as to what powder they use? A. Yes, sir.

Q. State what you know about that. (Objection overruled.) A. Well, sir, they had a meeting to that effect; that's what brought up the trouble; they held their meeting in their hall, and they decided they wouldn't use any Buckeye powder on account of being a "scab" powder; that's all I understood about it.

Q. Did you have anything to do with any person connected with the Pit Committee in arranging to have a meeting called? A. No, sir; none whatever.

Q. Did any one approach you on the subject of holding a meeting? A. No, sir.

1402 *John Kelly—Direct*

Q. How did you receive information that the miners had decided not to use Buckeye powder? (Objection sustained.)

Q. How did you receive information that the miners had decided not to use Buckeye powder? A. By the Pit Committee.

Q. Was it in writing? A. It was verbal.

Q. The verbal information was given you direct? A. Yes, sir.

Q. By members of the Pit Committee? A. By
1403 members of the Pit Committee; that was their business.

Q. How much powder did you consume in your mines after you ceased using Buckeye Powder and began using du Pont powder? A. I don't think I used a keg; my men wouldn't use any more of it and I daresn't send it down.

Q. How much powder did you continue to use in your mining operations there? (Objection overruled.) A. Well——

Q. How much? A. You mean how much du Pont
1404 and Buckeye were used at the same time daily?

Q. No; what I want to know is, after you ceased using Buckeye powder you used du Pont powder? A. Yes, sir.

Q. How much du Pont powder did you use in continuing your mining operations? A. We went clear through until the company broke up.

Q. What did the company break up? A. About two weeks before Christmas, I think, two years ago —about the 25th day of December, two years ago.

Q. You can tell about how many kegs of powder you consumed per month in your mine after you ceased using Buckeye powder? (Objection overruled.) A. From 25 to 30 kegs a day.

Q. And you continued from that time until the company went out of business? A. Until the company went out of business.

Q. And that 30 kegs a day, as I understand you, was du Pont powder? A. Yes, sir; you daresn't use any other—just as well might make it plain—we daresn't use any other, or we would have a strike.

Cross examination by Mr. Button:

Q. This meeting—were you present at this meeting of the miners? A. No, sir. I daresn't no more go there than a rabbit.

Q. And consequently what you learned about it, 1406
somebody told you? A. Yes, sir; the Pit Committee.

Q. Did you use Austin and Excelsior powder in your particular mine? A. A few kegs, not worth speaking of.

Q. But mostly du Pont? A. Yes, sir.

Q. Then the principal powder you used up to some time in 1904 was du Pont? A. Yes, sir.

Q. Then they put in the Buckeye? A. Yes, sir.

Q. Do you know where that powder came from? A. No, sir; I don't.

Q. It came down there in ordinary kegs? A. 1407
Yes, sir.

Q. With the union label on all of them? A. I declare if I could say.

Q. You would not be surprised to find out that was the fact? A. No; I wouldn't, because my recollection is not good. In handling works, you don't naturally pay any attention to what is coming. I couldn't say if there was a union label.

Q. You have seen Buckeye kegs with union labels on them? A. I may have, as the fellow says, just handled it and paid no particular attention to it.

Q. You were aware of the fact that those were union mills at that time? A. I couldn't say as to that, because I paid no attention.

Q. You couldn't say at the present time whether

you knew that fact in 1904 or 1905, or not? A. I don't know.

Q. Your recollection is not very clear on that subject? A. No; it is not.

Q. About when was it you started to use Buckeye powder in 1903? A. I couldn't be positive; I know when I opened the mine, and I think it was in 1903 or 1904.

Q. Do you mean you were using it first at the first opening of the mine, Buckeye? A. No, sir; I
1409 haven't heard of it; I hadn't heard tell of such a powder made.

Q. I may have misunderstood you. You didn't use it until when? A. Mr. Stephens' report was about the time the powder come. I couldn't tell no more than the man in the moon. I just remember the powder coming.

Q. It might have been a year or two later? A. It might have been. I know the powder come to the place.

Q. Did your mine continuously operate until two
1410 years—— A. Yes, sir.

Q. And you say you used thirty kegs a day; you don't mean 365 days in the year? A. No; we didn't work Sundays.

Q. Can you give it by the month? A. We would use in the neighborhood of 400 kegs a month.

Q. That is, in your one mine, No. 1? A. In No. 1, yes, sir; practically along that neighborhood. That is, in good running time. There are slack times and we didn't use powder in slack times.

Q. I suppose after this strike, when you got du Pont powder, that came down there all plastered up with union labels, didn't it? A. I can't say.

Q. Don't you know, as a matter of fact, there was never any union label on du Pont powder that went into that mine? A. There appears to me there

wasn't; that's my opinion; I wouldn't be positive about it.

Re-direct examination by Mr. Abbott:

Q. Mr. Kelly, do you know whether there was a representative of the du Pont Powder Company at your mine about the time when this strike occurred? A. I remember some gentleman coming there.

Q. Did he come to see you? A. It appears to me 1412
as though he did.

Q. Do you remember who he was? A. No, sir.

Q. Wouldn't you know him if you would see him? A. No. I just have a faint recollection of the trouble starting and that's all.

Re-cross examination by Mr. Button:

Q. You say you don't recollect whether any one did come or nt? A. I have a faint recollection of somebody coming there.

1413

Deposition of ROBERT F. HAYES, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Hayes, where do you live? A. I live at 351 Everett St., Kansas City, Missouri.

Q. Where were you living during the year 1905? A. Well, I'll tell you. It has been quite a while back, but still I remember I was living at Mine 31.

Q. What was your business at that time? A. Mining.

1414 *Robert F. Hayes—Direct*

Q. As a practical miner? A. Yes, sir.

Q. You were a member of the mining association at that point? A. I was.

Q. What was it technically called? A. The United Mine Workers of America.

Q. What local? A. I disremember the number.

Q. What, if any, position did you hold in the association or with reference to the mines at that time? A. Well, I was a pit committee, a local representative of this mine.

1415 Q. You were a member of the pit committee? A. Yes, sir.

Q. Who were the other members of that committee? A. Well, as well as I remember, it was a fellow by the name of Jonathan Jackson, and Fred Bisby, I think it is.

Q. Do you know anything about a strike that took place at that mine in the fall of 1905? A. Well, I do, some. Of course, my recollection is a little hazy on that point; but I recollect a disturbance of some kind.

Q. Do you know how that came about? A. Well,
1416 I think it was relative to the powder question.

Q. What powder was being used in the mine previous to the strike if you know? A. Buckeye.

Q. Were you or were you not called upon by any person representing any other powder, just previous to that strike? A. Well, as well I remember, we were.

Q. Do you remember who the person was who called upon you at that time? A. No, I don't.

Q. You don't know his name? A. No, sir, I don't remember.

Q. Do you remember how he looked? A. No, sir; I don't think I remember the man; I don't think I would know the man.

Q. Did he or did he not, advise you where he

came from? A. Well, I believe he did, as well as I remember.

Q. Who did he say sent him? (Objection sustained).

Q. Do you remember how he looked? A. No, sir.

Q. What was it that he called for; what did he say to you? A. I don't remember, what the conversation was, only in regard to powder.

Q. What did he say to you in regard to powder? A. I can't just remember. 1418

Q. You say he said something to you in regard to powder; state your best recollection (Objection overruled) A. To my best recollection, it was something in substance to the effect that the powder we were using was not union made powder, and the powder he represented was; that's the best of my recollection.

Q. Did he ask you to do anything with reference to that question (Objection overruled)? A. I don't remember; I'll answer it in this way: That our sub-district representative brought it up to us and requested us to take action. 1419

Q. Who was he? A. John Phillips.

Q. What did Mr. Phillips say to you about it? A. I don't just remember what he did say.

Q. Did you take any steps in answer to the request that Mr. Phillips made of you? A. We did.

Q. What steps did you take? A. Posted a notice, and had a special meeting, and the consequence was, we had to strike to get the du Pont powder.

Q. Were you present at that meeting? A. Yes, sir.

Q. What was said or done at that meeting as near as you can recall, about the reason the meeting was called? (Objection sustained).

Q. State as nearly as you can recall what trans-

pired there and what was said and done? (Objection overruled).

Cross examination by Mr. Button:

Q. Which one of the three gentlemen was the chairman of your pit committee, do you remember? A. I don't remember.

Q. Do you remember whether you were or not? A. No, sir; I can't tell.

1421 Q. Are there records that would how? A. I don't think there is.

Q. You don't remember about that? A. That's just merely a matter of form.

Q. You had a pit committee, or various pit committees, attending to various things there, about all the time, didn't you? A. Yes, sir.

Q. And these committees are appointed for the time being in the meeting, and simply on motion, are they not?

Q. That is the way they are appointed, isn't it? A. The men are nominated and voted on.

1422

Q. In open meeting? A. Yes.

Q. When anything comes up that they think ought to have the attention of the Committee, they name the Committee right there? A. They have a committee standing at every mine all the time; there is no such thing as a mine being without one.

Q. And what is that? A. The Pit Committee.

Q. You were elected this way? A. Yes, sir.

Q. How long did you serve on it? A. I don't remember.

Q. Probably a year or so? A. Probably six or eight months.

Q. How long had you been there? A. I have worked in that field seven years.

Q. At this mine? A. I don't remember how long.

Q. Had you come there recently? A. The mine

hadn't opened; it hadn't been operated so awful long.

Q. Were you there when it first opened? A. The entries were back, I should judge a hundred feet when I went there.

Q. How long have you been a miner? A. When I was thirteen years old.

Q. How long is that? A. I was born in 1880.

Q. That would be 1893? A. Something like that.

Q. Do you know where Mr. Jackson or Mr. Bisby are now? A. I do not. 1424

Q. All the talking and action of the Pit Committee takes place through the Chairman, doesn't it; he does the talking? A. Not generally; that is not generally so; at times.

Q. When you make an announcement to the mine operators, it is usually done through the chairman? A. Yes, sir.

Q. I take it from the way you answered these questions—this being a long time ago, your recollection is rather vague, isn't it? A. Well, yes; in some instances; I don't just recall things like— 1425
that is like I could at an earlier date.

Q. And it comes to this, doesn't it, that you recollect there was some disturbance between these two powders, and you had a meeting and a strike? A. Yes.

Q. How many saloons are there around there where they had this beer—

Mr. Button: This relates to the other matter.

The Court: I know, but you examined him.

Mr. Button: I don't mind it, I had just as soon read it. (Reading) Q. How many saloons were there around there where they had this beer? A. None, now.

Q. How many were there at that time? A. I don't remember.

Q. It was more than one? A. Yes.

Q. This meeting at the saloon wasn't a formal meeting? A. It wasn't at the saloon.

Q. Where was it? A. About a quarter, or half a quarter out of town, about three blocks.

Q. Was this a formal meeting at that local? A. No, sir.

1427 Q. Some of the miners gathered there and had a keg or two of beer? A. The men working for the Great Northern Fuel Company implicated in this.

Q. They were not all there? A. I don't suppose so.

Q. It is not an unusual thing for miners to drink beer? A. Not any more than anbody else.

Q. Do you remember about union labels being on the Buckeye Powder Company's kegs? A. I don't know positive.

Q. Do you remember whether there was any on the du Pont kegs? A. I don't remember.

1428 Q. You have talked this matter over recently, have you not? A. Not very much.

Q. Who have you talked with? A. With the man that subpœnaed me here.

Q. Mr. Abbott? A. No, sir.

Q. Who? A. Mr. Stephens.

Q. Did he serve a subpoena on you? A. No.

Q. You talked it over with him? A. Not very much.

Q. You talked over the points involved, I suppose? A. A few.

Q. What are you doing now? A. I am not doing anything at the present time; my wife is sick now.

Q. Oh, I don't want to know what you are doing at this particular time, but whether you are working for any company at the present time? A. No, sir.

Q. What is your occupation? A. I am a plasterer's laborer.

Q. When did you last give up mining? A. The last mining I did was a little over two years ago.

Deposition of JOSEPH F. RUTHERFORD, a witness produced on behalf of the Plaintiff, being duly sworn, read as follows:

1430

Direct examination by Mr. Abbott:

Q. Where do you live? A. 1934 Park Avenue, Kansas City, Kansas.

Q. Where did you live during the years 1905 and 1906? A. At Novinger, Missouri.

Q. What business were you engaged in at that time, 1905 and 1906? A . In 1905 and 1906 I was digging coal and check weightman, I believe.

Q. By whom were you employed in that capacity? A. By the Great Northern Fuel Company as miner and by the United Mine Workers as check weigh- 1431 man.

Q. What were your duties as check weighman in representing the United Mine Workers? A. I stood between the miners and operators, trying to see that the miners had justice in the weights of coal.

Q. And what did you do to ascertain that fact of how much coal a mined produced? A. I watched the beam on the scales to see the coal was right, and kept tab on the sheets on each car of coal, and computed it after the end of the day's run.

Q. Did you have anything to do with the use of black blasting powder in that time? A. Yes, sir.

Q. What powder was being used in the spring of

1905? A. We were using the du Pont, to the best of my recollection at that time.

Q. And did you continue to use du Pont? A. Well, no; we used du Pont part of that season.

Q. When did you cease to use the du Pont? A. I can't tell you the exact date.

Q. What powder did you use after you ceased using du Pont? A. There was some sent there for a sample, if I remember right; I don't remember the name of it; and then we had some Buckeye,,
1433 two different grades of that, I believe.

Q. When did you begin using Buckeye Powder? A. I couldn't tell you the exact date.

Q. How long did you continue to use Buckeye Powder? A. Well, that would be hard for me to tell positively, two months, maybe three, and it may have been longer.

Q. Did you hold any other office, or did you sustain any other relation to the miners' union except check weighman? A. Yes, I was recording secretary.

1434 Q. Of what? A. Of the local.

Q. What was that local at that time? A. I don't remember whether we had a number or not; the Great Northern local I couldn't tell.

Q. I will ask you to state whether or not you recall any question that arose between the operators of the mine and the miners' union which you represented, regarding the use of Buckeye powder? A. Yes, a number of discussions.

Q. You can? A. Yes.

Q. State what it was. A. There was a discussion about the powder being the best powders and our contract called for the best of powder, and some of them claimed that the du Pont powder was better powder than the Buckeye powder, and I know my experience was the other way. I kept tab of the

coal produced, and I was in favor of Buckeye powder; I remember that.

Q. What happened after this discussion you related? A. Some of the boys took it up and they wanted me to post a notice for a special meeting.

Q. Yes. A. And I had to post a notice at the mines for a special meeting.

Q. When? I don't know the exact date.

Q. I will ask you if you had conversation with anyone who purported himself to represent the du Pont Powder Company, with reference to the use of du Pont powder? (Objection sustained.) 1436

Q. Do you know who that man was? Do you know his name? A. Well, I don't know whether I could say what his name was or not; I don't remember his name.

Q. Do you know him—do you think you would know him if you saw him? A. I think I would.

Q. Do you see him in this room? A. I think I do.

Q. What gentleman is it? A. The gentleman over there (pointing in the direction of Mr. Spicer.) 1437

Q. Mr. Spicer? A. I think he is the gentleman I saw with Mr. Phillips, when discussing the question, or one something like him.

Q. Who was Mr. Phillips? A. He was our sub-vice-president, I think.

Q. What was said to you by Mr. Spicer, the gentleman who you have identified at that time, with regard to the use of Buckeye powder? A. The main talk I had with Mr. Phillips and Mr. Spicer, to the best of my recollection, was, not in regard to the quality of the powder——

Q. State the conversation as near as you can recall. A. They both represented to me or made me believe——

1438 Mr. Button (Interrupting): That is objected to as a conclusion.

Q. State as near as you can what they said? A. (Continuing) That the Buckeye Powder people was not authorized, and it wasn't a union made powder.

Q. And what did he say with reference to the du Pont powder, if anything, as to whether it was union or non-union? A. That is, was union pow-

1439 der; that it was organized or reorganized.

Q. What, if any, effect did that have upon your subsequent conduct in relation to the use of Buckeye powder? A. Just as much as it would on any other subject; I would be very favorable to organized labor; if the results were anywhere near equal.

Q. Was or was not a meeting held by the miners to consider that question of whether they would use, or continue to use, Buckeye powder, or adopt du Pont powder? A. Yes, sir.

1440 Q. Were you or were you not present at that meeting? A. Yes, sir.

Q. Did you or did you not participate in the discussion of the matter? A. To the best of my recollection, I did.

Q. What position did you take at that meeting with reference to the continued use of Buckeye powder? (Objection sustained.)

Q. After this meeting was held, did you as recording secretary of that union, make any record, or any notice concerning the result of that meeting? A. To the best of my recollection, I did; for I don't think I ever neglected to do my duty.

Q. What steps would you have taken in notifying the operator? A. I would address a circular letter to Mr. I. B. Grant, the superintendent, stating the results of the meeting.

Q. As I understand it, to the best of your recollection, you did that? A. Yes, sir.

Q. Do you know where that notice is that you served upon the Great Northern Fuel Company's officials at that time? A. No, I don't; I presume they have it filed with the papers.

By Mr. Button:

Q. Who has? A. The Great Northern, I suppose.

1442

By Mr. Abbott:

Q. It has never been received back by you? A. No, sir.

Q. I will show you a paper writing and ask you to examine the same and state whether or not you recognize the contents thereof? A. Yes, sir.

Q. After this notice was served upon Mr. Grant, what, if any action was taken by the operators with regard to the use of Buckeye powder?

1443

Mr. Button: That is objected to on the ground it has not been proven what the contents of such notice was.

Mr. Abbott: I will state that we will endeavor to identify the writing asking this witness at this time to save recalling him.

(Reading): (Stenographer repeats the question).

A. Why, it was discontinued; we got du Pont powder in the place of it.

Q. Do you know how long they continued the use of du Pont powder? A. No, I don't.

Q. How long were you employed at the mine after that circumstance? A. Possibly a year.

Q. Did or did not they continue the use of du

Pont powder during the time you were there? A. Yes, sir.

Q. And did they use any more Buckeye powder during that period? A. Not that I know of.

Q. What was the situation in the Novinger Field during this time, that is during the year 1905 with regard to the union or non-union sentiment?

Cross examination by Mr. Button:

1445 Q. When did you first come into the employ of the Great Northern Fuel Company? A. Well, I couldn't tell you the exact date of that; I worked there about two years and a half, I guess.

Q. When did this change of powder take place? A. In 1905, I believe.

Q. What time of the year? A. Along in the summer months, about August, I guess or September, or somewhere along there.

Q. I understood you to say a while ago, you were not certain. Are you certain now? A. No, sir.

Q. You are not certain? A. No, sir; not the
1446 exact date.

Q. Are you certain of the year? A. Of the year, yes.

Q. You are sure it was 1905? A. 1905.

Q. Can you tell about how long you had been at that mine at that time; how long previously? A. At Mine 31?

Q. No; I mean working for this company? A. They have three or four mines.

Q. They are all around there? A. Yes, sir; I worked at No. 1 and No. 31.

Q. How long have you been working at one of those mines of the Great Northern? A. Possibly a year.

Q. Is that the best you can do? Aren't you sure

whether it was a year or two years? A. It might have been over a year—I couldn't tell.

Q. Likewise you couldn't tell the exact year this powder trouble occurred? A. Yes, if I refresh my memory.

Q. When did your memory get refreshed? A. When I would refer to my note book I got.

Q. Have you done so? A. A little, yes.

Q. When? A. A month or six weeks ago.

Q. How did you happen to do that? A. Mr. Abbott was over to see me and asked me what I 1448
knew about this particular case, and when I went home, I got to looking up my own statement on the amount of coal dug and I referred to the books.

Q. Consequently you are certain that it was in 1905? A. Pretty positive of it, yes.

Q. What powder have you been using before Buckeye? A. Before we used the Buckeye?

Q. Yes. A. It was du Pont.

Q. What other powder? A. That is the only other powder I used at that mine.

Q. You didn't have charge of all four mines? A. 1449
No, sir; I didn't have charge of any of them.

Q. What is the name of your position? A. Check weighman.

Q. How long have you been a check weighman? A. I guess I served in that capacity five or six months.

Q. In 1905? A. I wouldn't say all together in 1905; I was check weighman——

Q. Well, five or six months then before the powder trouble do you say they struck? A. Possibly three months, at Mine 31.

Q. Had you been a check weigher before those months? A. Yes, sir.

Q. Where? A. At Mine No. 1.

Q. How long were you a check weigher there?

A. I believe I was only appointed temporary there during the man's absence.

Q. That was your first experience? A. Yes, sir.

Q. A temporary appointment at one of the mines? A. Yes, sir.

Q. And that was at Mine 1? A. Yes, sir.

Q. Prior to a check weigher, what were you? A. I dug coal and worked at the carpenter's trade.

Q. How long have you been digging coal? A. Possibly a year and a half or two years.

1451 Q. What mine did you dig coal in? A. My first experience was in a drift at Des Moines, Iowa.

Q. What mine was that, what company? A. Just a little drift, and I had it leased myself.

Q. You were the operator? A. Yes, sir; there were two miners there.

Q. What year was that? A. That must have been about 1897 or 1898.

Q. What powder did you use? A. Didn't use any powder.

Q. Was there any black powder used in that

1452 operation? A. No, sir.

Q. What was the next experience you had? A. At Mine 31, the Great Northern.

Q. Did you dig coal there or were you check weighman? A. Both.

Q. Then you never dug coal except for a limited period? A. About three or four years.

Q. At Mine 31? A. No, at this drift.

Q. Including when you were operating that drift up there? A. Yes, sir.

Q. Most of your time at the Great Northern Fuel Company's mine was a check weigher, during which time you didn't dig coal, is that correct? A. No, I did not; I think I dug coal there more than I was check weigher.

Q. Then, you must have been—your employment

must have begun about the beginning of 1904 with that company; is that right? A. Yes; in 1903 I worked there.

Q. During that period, what powder did you use? A. Just the two kinds of powder.

Q. Which? A. The du Pont and the Buckeye.

Q. Did you use them both? A. Yes, sir.

Q. When did you begin the use of Buckeye? A. I used Buckeye in mine 31 along about May or June.

Q. Which year? A. 1905. 1454

Q. You had been using du Pont powder all the time previous to that date? A. Yes, sir.

Q. Did you use any Austin? A. I don't believe I used any of that Austin powder.

Q. Excelsior? A. I never heard tell of that.

Q. What business are you in now? A. I have been in the position of carpenter foreman for the water plant on the Kansas side.

Q. When did you stop mining? A. I stopped mining when I left the Great Northern Fuel Company, and have not mined any since.

1455

Q. When was that? A. It was in 1907, I think.

Q. Now, you have testified that when this powder matter came up, you were requested by the miners to put up a notice for a special reason, and they were discussing the merits of the respective powders; that is what you heard them discussing at the time they asked you to call this meeting? A. What?

Q. The miners asked you to call a special meeting of the union? A. Yes, sir.

Q. You testified a while ago that when they asked you that they were discussing the relative merits of the Buckeye and du Pont powder; that's right, isn't it? A. Yes.

Q. Then later, was it, that you had this conver-

sation with Mr. Spicer and Mr. Phillips? A. I wouldn't be sure whether it was later or at this particular time.

Q. In regard to this letter that you have identified, did you ever see that particular paper before that was shown you a few minutes ago? A. No, sir; I don't think I ever saw that paper before, that I know of.

Q. You, at that time, in 1905, when this discussion about du Pont and Buckeye powder was being
1457 had, were very much in favor of union labor, were you not? A. Yes, sir.

Q. And you still are? A. Yes, sir.

Q. So much so that you would have been willing at that time to take a very strong position in favor of union goods. A. Yes.

Q. And you did take that position, you testified? A. Yes.

Q. Weren't you considerably disappointed when this du Pont powder came down there and didn't have the shop label on it?

1458 Q. When the du Pont Powder Company shipped this powder down there, did it have the union label on it? A. I couldn't say.

Q. That was, so far as you now understand it, the very point of this powder discussion; that the du Pont would have the union label on it? A. Yes.

Q. And yet you say you didn't notice? A. Yes.

Q. You didn't take the trouble to look? A. No; possibly at that time I would have known whether it had or not, but I coudn't say positively whether it did or not.

Q. Well, if it hadn't it on, you would have made objection then, wouldn't you? A. I believe I would.

Q. As weigher, did you have to look at the powder to handle it? A. Yes; sometimes they would call for coarse and fine.

Q. Don't you remember that the Buckeye kegs

had the union label on them? A. To the best of my recollection, some of them had labels on and some of them didn't.

Q. You know enught about organized labor to know that such labels would not be there unless it was made in a union factory? A. On the contrary; I know different.

Q. They do that sometimes? A. Yes.

Q. You were convinced that that was what the Buckeye Company had done? A. No, sir.

Q. You didn't investigate it? A. No, sir. 1460

Re-cross examination by Mr. Abbott:

Q. And you acted accordingly? A. Yes.

Q. I show you a paper writing which I showed you awhile ago, marked for identification P 167 and ask you to look at that paper and state whether or not you can from it refresh your recollection as to the date when the Great Northern Fuel Company ceased to use Buckeye powder? A. No, I couldn't do that.

1461

Re-cross examination by Mr. Button:

Q. I think you stated before, that you do not recollect Mr. Spicer discussing this union business with you, didn't you state that on your direct examination? A. No, sir.

Q. You didn't state that? A. No, sir.

Q. I though you stated it was Mr. Phillips that did the talking? A. Mr. Spicer might not have said anything to me, but Mr. Phillips was discussing it with me and we were discussing it together.

Q. All you are sure of, you remember that either of them discussed this union business with you? A. Yes, sir.

1462 *William S. McCaull—Direct*

Deposition of WILLIAM S. MCCAULL, a witness produced on behalf of the plaintiff, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. McCaull, you reside in Kansas City, I believe? A. I do.

Q. What is your business at the present time? A. Attorney at law, president of the McCall-Dryer Tie Company.

1463 Q. Did you ever have anything to do with the company known as the Great Northern Fuel Company? A. I organized it and was president of it until about the end of 1905.

Q. Where did that company operate; what was its business and where did it operate? A. In Adair County, Missouri, and Coalfield.

Q. At what point? A. Novinger.

Q. It was a local mine? A. Yes, sir.

Q. How many mines did the company own and control at Novinger? A. Five.

Q. Can you recall the names and designations
1464 of the mines? A. No. 1, 21, 22, 23 and 31. 22 was never operated; it was simply opened up.

Q. Did you yourself, have anything to do with the operations and oversight of those mines? A. Only as president of the company. I. B. Grant, was the superintendent in charge of the operation and construction.

Q. Did you have anything to do with the purchase, or contracting for the purchase of supplies in that mine? A. It was my duty, except as I delegated it to Mr. Grant, to do certain parts of it.

Q. Did you have anything to do with black blasting powder? A. I did.

Q. What powder did you use in your mining operations previous to the spring of 1905? A. The Excelsior, du Pont, Austin and Buckeye.

Q. When did you first begin the use of Buckeye powder? A. During some time in 1905; I can't tell the exact date.

Q. Can you approximate the date? A. Along about May or June, I think. Our Austin contract—

Q. Immediately preceding the use of Buckeye powder, what powder were you using? A. Austin for a couple of months prior, and du Pont prior to that, with a few kegs of Excelsior that we started in with in sinking the first shaft.

1466

Q. At the time you began using Buckeye powder you were using Austin powder? A. Austin powder.

Q. What caused you to change from Austin powder to Buckeye powder? A. The price; and I expect the men requested it, but I am not certain as to that; it was a question of price, the Austin was costing us $1.45 a keg, I think, and it would pay to change. I thought it was too much.

Q. Did you simply buy Buckeye powder in the open market, or did you make a contract with them? A. A contract.

1467

Q. How long did you continue to use Buckeye powder under that contract? A. From the time we commenced, which I think was along about May or June, or July, until about the 15th of October, or thereabouts.

Q. What caused you to stop using Buckeye powder about the 15th of October, 1905? A. The final cause was, the miners refused to use anything but du Pont, and the principal cause was, we wanted cheaper powder and the du Pont was ten cents a keg cheaper than we were paying the Buckeye and we wanted to get away from that contract.

Q. From whom did you receive any offer of prices of du Pont powder while you were using Buckeye powder; who made the prices to you? A. I believe the first price was made by Mr. Spicer.

Q. The gentleman who is present in that room? A. The gentleman who is present in the room; I had found out what Rombauer was paying before meeting him.

Q. Who was he? A. The president of the Rommauer Coal Company in the same field.

Q. After you received these offers from Mr. Spicer of better prices for du Pont powder, what steps, if any, did you take to call the matter to the attention of the Buckeye Powder Company? A. I believe I
1469 called it to the attention of the Buckeye before I had an interview with Mr. Spicer. I found what our competitors were getting it for, and I put it up to the Buckeye to see if they would lower their prices.

By Mr. Button:

Q. That was in writing? A. Yes, sir. (Objection overruled). A. (Continued) I failed to get any response from that and I told Mr. Grant to ar-
1470 range to get hold of the du Pont people and it was then I had my interview with Mr. Spicer, in the office at Kansas City.

Q. State what occurred at the interview with Mr. Spicer in Kansas City? A. I told him we wanted du Pont at the same price, and asked him if he knew of any way that we could get the miners to ask for du Pont powder, and if he could, I would be very glad to sign a contract; that I wanted to get the ten cents a keg refund.

Q. What suggestion did he make? A. He said he would see what could be done, and he would go to Novinger to see what could be done, and I told him I would order as soon as I felt safe that the Buckeye Powder Company would not sue us for breach of contract.

Q. What happened after that, so far as Mr. Spicer was concerned? A. Shortly after that Mr. Grant sent me a letter from Mr. Rutherford, secretary of the Local Union——

Q. Sent you a letter signed by Mr. Rutherford? A. Yes, sir.

Q. Have you that letter? A. No.

Q. Do you know where it is? A. I presume it went to the furnace; at the time I was discharged by the Federal Court as receiver of Great Northern Fuel Company, all the papers not pertaining to live 1472
claims and matters of that sort, were handed to the janitor to go to the furnace. In that package was a package of papers, four or five or six inches high marked "powder matters," and I presume it was in that pile.

Q. You made a search? A. Yes, sir; I made a search all through the letters, and can't find any trace of it.

Q. I show you Plaintiff's Identification 167, and ask you to examine the same and state whether or not such paper has any reference to the document 1473
that you have just testified to?

> Mr. Button: That is objected to; we object to the witness stating what the paper has reference to, as the paper will show for itself.

Q. I ask you to state whether or not you recall the subject matter of the document which you now have in your hand? A. I do.

Q. When did you first see that subject matter? A. When Mr. Grant transmitted Mr. Rutherford's letter to him. I might say that Mr. Rutherford and I were old room-mates for a good many years, and I am familiar with his handwriting.

Q. You recognize this document as being a correct copy of the notice which was served upon you at that time by Mr. Rutherford? (Objection overruled.) A. I wouldn't say it was a correct copy; I can't remember word for word; I remember though at that time I received that I wrote the Buckeye people and enclosed a copy of Mr. Rutherford's notice. As near as I can remember, this is the sum and substance of what I sent to them.

1475 *By Mr. Button:*

Q. You mean to say it is the document you sent to them? A. I think that it is not, because I don't recognize that typewriter and the form of the letter; the machine I was using at that time was a little smaller type than that.

By Mr. Abbott:

Q. At the time you sent this paper to the Buckeye Powder Company, do you remember to whom
1476 you addressed it? A. I think to Mr. Burrows, St. Louis.

Q. Did you address him in writing? A. Yes.

Q. Have you got the original letter you sent to him at that time? A. I have not. Our office copy, carbon copy.

Q. Have you the carbon copy? A. Yes. That was destroyed.

Q. Now, Mr. McCaull, after you had this conversation with Mr. Spicer, when did you next see him? A. In St. Louis some time a little later.

Q. Did you have any conversation with him at that time? A. Yes; I signed their contract or order for some du Pont powder.

Q. You signed a contract? A. Or order.

Q. Was any reference made in that conversation A. Yes, sir.

to the cessation of the use of Buckeye powder? A. Well, something was said. I remarked to him he done a good job in getting us away from that contract; saving us ten cents a keg; and one of my last acts as president was, to either renew the contract or sign an additional order for du Pont powder, so as to hold that contract during the balance of the time.

Q. You were on friendly terms with Mr. Spicer? A. Yes.

Q. And are yet? A. Yes, he did me a good turn 1478
and I would do him one if I could.

Q. Was there any conversation had between you as to what steps Mr. Spicer took to bring about the change? (Objection overruled.) A. I couldn't repeat any exact words that were said, only in a general way that he did a good job and knew how to reach the business.

Q. Do you know anything that was done at Novinger by Mr. Spicer? A. No, sir; the results were what we were after, and I didn't care how he got them.

1479

Q. Did you have any discussion with Mr. Spicer at any time regarding the fact that the Buckeye powder was a union powder? A. I did, the first time I met him in my office.

Q. What was said at that time? (Objection overruled.) A. When we were dicussing how to get the miners to ask for a change of powder, so that we could break our contract, our Buckeye contract, the question came up about the union powder, and I stated to Mr. Spicer that I understood Buckeye was a union and du Pont was a non-union powder and it would be up to him to get hold of the boys at the mine and show them that the Buckeye had since become a non-union powder, and that du Pont was operating some union mills, and he said that

could be easily fixed, and he would explain it to the boys that du Pont could furnish them with union made powder, and I told him if he couldn't furnish union made powder he might persuade the Pit Committee that the Tinners' Union label on the keg might be sufficient, and he said he would see what he could do.

Q. At the time when the notice was served on you to change from Buckeye powder to du Pont powder, what were the conditions, so far as Buck-
1481 eye powder that you had on hand was concerned? (Objection overruled.) A. When we received the letter sent by Mr. Rutherford as recording secretary of the local union, we had part of a car of Buckeye powder on hand. I communicated with Mr. Grant to get the boys to use up what we had, but I understand the boys refused to do that, and that they had to job it out to some of the firm's mines.

Q. Mr. Spicer got quicker action than you contemplated? A. I didn't expect the miners to call a strike; I expected them to ask as to change, and
1482 it took me by surprise when they struck, and no du Pont powder in sight, and I couldn't get it under a week, and that they would not use up the other powder.

Q. Did you take any steps to secure additional time; did you make any effort to get time within which to comply with the order? A. I believe I instructed Mr. Grant to call on the district officers or state officers and take the matter up about out being under contract with the Buckeye Powder Company, and get the miners to use it; that they were not justified to compel us to change the powder until we used up the powder on him.

Q. What was the result? A. I couldn't say; my recollection is, they refused to use it, and it was

jobbed out to small users, although it is possible they might have used some of it.

Q. How many kegs of powder did you consume, or did the Great Northern Fuel Company consume in its various mines at Novinger, at the time when it changed from Buckeye powder to du Pont powder, and how many kegs did you conttinue to use down to 1908? (Objection overruled.) A. Mine No. 1 was the only mine being run full force, that is, it was what we call the developed mine; the 1484
others were in the course of development. All the mines together were using, during the year 1905, a car load every second month, with 21, 23 and 31 developed to a capacity from 150 to 300 tons a day, they should have all used together at least one car load every month. But when I left them, the three latter mines were not fully developed.

Q. In other words, about how many kegs per year did all your mines consume during all the time you were with them after they began to use du Pont powder? A. A car load every second month, six car loads a year, barring strikes. 1485

Cross examination by Mr. Button:

Q. How long were you in the management or the presidency of this company, Mr. McCall? A. It was organized in January, 1903, and I sold out, I think it was in December, 1905. Then the property was run by others, until I was appointed Receiver by the Federal Court in March, 1911. I closed up the Receivership about March, 1913.

Q. And you are a lawyer by profession? A. Yes, sir.

Q. You practised law prior to going into this business? A. Yes, sir.

Q. And still are practising law in Kansas City?

1486 Q. How long does this Receivership last? A. The company failed to meet its payroll the 26th of November, 1910; I was appointed Receiver in the United States Court, Judge Macpherson, I think it was the 6th or 7th of March, 1911. From November until March I had the power of attorney from the president to try and adjust their affairs as attorney representing the bonholders to try and adjust it with the——

1487 Q. Did you negotiate a contract for the purchase of powder yourself? A. Judge McPherson named me as Receiver.

Q. Did you negotiate a contract for the purchase of Buckeye powder yourself? A. My recollection is I did; I think Grant got hold of them first.

Q. Do you know where that contract is? A. I think it is in the furnace.

Q. Was it executed in duplicate? A. I think it was.

Q. And, undoubtedly, the Buckeye Powder Company had a copy? A. I think so.

1488 Q. Do you recollect the date that contract bore? A. No; but I think it was some time a few months after January, 1905.

Q. Was it a contract for a year? A. Yes, sir.

Q. A few months after January, 1905? A. Yes.

Q. What was that date? A. The date of the Austin.

Q. And you say it was for a year? A. Yes; my recollection is the Austin contract was dated the 20th of January, 1905, and finally executed in April, 1905, and I think we probably used two or three cars of their powder, and then one of Buckeye, and my recollection is, that the Buckeye was a yearly contract.

Q. As a matter of fact, you took powder under that contract only for two or three months? A. Yes.

Q. When was it that you found out about this contract with Rombauer? A. I judge it was in July or August, possibly September; I think it was in August.

Q. Did you see the contract? A. No, but I got it from the old Major himself.

Q. He told you? A. Yes.

Q. You don't whether this information was correct, from your personal knowledge? A. No, sir.

Q. What price did he tell you he had? A. $1.05.

Q. You were paying the Buckeye $1.15? A. Yes. 1490

Q. Up to that time, I suppose you hadn't taken up with Mr. Spicer, or anybody with the du Pont Company, the question of buying powder? A. If we organized the company in 1903, I took it up with the du Ponts and they turned me down, unless I would tell them who the stockholders were, and that I couldn't do, because J. S. Keefer, Vice-President of the American Steel and Wire Company—

Q. Speaking of the period of the existence of this Buckeye contract, you have it down to the point where you discovered from Rombauer that he had a cheaper price when you were getting it from the Buckeye. My question was, whether up to that time you had any negotiations with the du Pont Company about changing their powder? A. Not until that time. 1491

Q. Then you took it up with the Buckeye people, and that wasn't satisfactory to you, and then did you send for Mr. Spicer? A. I think I had Grant get word to him some way, I wanted to see him.

Q. And he did see you? A. Yes, sir.

Q. And you told him you had written a contract with the Buckeye Powder Company, but because the du Pont Powder Company was selling powder ten cents cheaper, you desired to work up some situation under which you could break that contract? A. That's the thing in a nut shell.

1492 *William S. McCaull—Cross*

Q. You understood there was not any justification in the situation; you understood that it was a fictitious situation that was to be created? A. Yes —no, sir.

Q. Didn't you understand that the Buckeye Company had ceased to be a union factory? A. No, I didn't know, I didn't care.

Q. You suggested that it would be necessary to make the miners believe a fact which you knew was not true? A. I didn't know whether they were
1493 union or not; they claimed they were union, and they refused to reduce their price. I felt justified in getting away from them if I could.

Q. It was anything to create a situation that would save you ten cents a keg, was it? A. That's about it.

Q. That was the whole situation? A. I guess that's right.

Q. And when you found you had on hand a little more powder of the Buckeye than you expected, you were rather sore that you had done it? A. We
1494 didn't want it done so quick; I didn't think the union moved so fast.

Q. In fact, this arrangement, such as it was, was entirely initiated by you, and would not have been entered into unless you had started it, according to your own story? A. No, I can't say as to that.

Q. The du Pont Powder Company had not, up to that time, tried to see you on the subject? A. I think they have been at Novinger and seen Grant, and I told them I wanted to see them at Kansas City.

Q. How much powder did you have on hand, Buckeye Powder, at that time? A. I think upwards of a car.

Q. It amounted to the proposition of starting a strike in your own mine? A. That's what it resulted in, I didn't expect it.

Q. But that's what it amounted to? A. Yes.

Q. You knew, if you didn't do that right away, it would result in a strike? A. They got right out for the strike.

Q. How long did you know Mr. Phillips? A. I never met him unless it was on pay day some time, I don't remember him.

Q. You were never interested in the Buckeye Powder Company? A. No, sir.

Q. Do you know Mr. Waddell? A. Only through correspondence. 1496

Q. You never met him? A. I don't think I ever did.

Q. Who did you negotiate your Buckeye contract with? A. I think all correspondence was addressed to E. C. Burroughs, who was at the mine a few times; I never met him; I only went to the mine once a month or twice in two months.

Q. Did you sign a du Pont contract? A. I know I signed some paper with Mr. Spicer in St. Louis; I can't say whether it was a contract or an order. I naturally would sign it, unless in my absence Mr. 1497
Underwood or Mr. Hill would sign it, or Mr. Grant, if he was there.

Q. Can you give the date of this first conversation with Mr. Spicer? A. No.

Q. You can not? A. No.

Q. Can you give the month? A. Possibly in September of that year, or October, I wouldn't be certain which, some time prior to this strike, maybe one week or two weeks; it might possibly be, that by going over the books I might get some data that would refresh my memory; I can tell when I met him in St. Louis, because I looked up my diary yesterday as to that.

Q. Can you identify the date of the second conversation with Mr. Spicer? A. No.

1498 Q. Was anybody else present at either of them? A. Mr. Underwood might have been present, and Miss Drake, the stenographer.

Re-direct examination by Mr. Abbott:

Q. Did you sign a contract with the du Pont Powder Company, then, after you changed from Buckeye powder? A. I either signed a contract or
1499 an order for so many cars of powder; I couldn't say which it was.

Deposition of J. A. ROBERTS, a witness called for the Plaintiff, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Roberts, where do you reside at the present time? A. 54 Madison Avenue, Chicago, Illinois.

1500 Q. Give you full name, please? A. J. A. Roberts.

Q. I will ask you if at any time you were connected with the concern known as the Weaver Coal and Coke Co.? A. Afterwards the Manufacturers' Fuel Company?

Q. Where was that firm doing business at the time you were connected with it? A. Here in the Marquette Building, Chicago.

Q. And when was it that you were connected with it? A. 1903 and part of 1904.

Q. Now, what was your relation to the company at that time? A. I was purchasing agent.

Q. Did you know the plaintiff in this case, the Buckeye Powder Company? A. I knew of them, their representative, Mr. Miller.

Q. Did you have any business communications with them? A. I had correspondence with them from time to time.

Q. I show you a paper and ask you to state if you have ever seen that document before? A. That is my signature and I take it that I wrote it.

Q. And the letterheads? A. That is the letterhead we used at that time.

Q. This is a letter that was written by you on January 26, 1904? A. Yes.

1502

Mr. Abbott: I offer this letter in evidence.

Mr. Katzenbach: The letter is objected to on the ground that it is a communication between the plaintiff and the Weaver Coal & Coke Company and that the Weaver Coal & Coke Company is not a party to this suit; and therefore the letter is irrelevant, immaterial and incompetent.

Which objection was sustained, to which ruling the plaintiff then and there excepted and said exception was allowed.

1503

The letter so refused reads as follows:

On Letter Head of Weaver Coal & Coke Co.,

CHICAGO, Jan. 26th,/04.

Buckeye Powder Company,
PEORIA, Illinois.

Dear Sirs:—

In the near future we expect to contract for our season's supply of powder for our several mines,—

1504

approximately, Thirty Thousand (30,000) kegs.

Kindly quote us your very lowest figures on this amount and advise just how promptly shipments can be made upon receipt of our specifications from time to time. This powder is for shipments to our several mines in ILLINOIS, INDIANA, OHIO and WEST VIRGINIA. Add, in your quotation to us, whatever other information, which you may think of service to us.

We would suggest in connection with this, that
1505 should any of your representatives be in this city, in the near future, that he call on us with whatever figures and facts he may have with him.

Awaiting your prompt attention, we are

Yours truly,

Weaver Coal & Coke Company,
J. A. Roberts,
Purchasing Agent.

1506 Q. Did you make a contract for your powder as stated in this letter about that time? A. Yes.

Q. With whom did you make the contract? A. The Indiana Powder Company.

Deposition of PETER W. KEITH, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Keith, where do you reside? A. Kansas City, Missouri.

Q. How long have you resided there? A. Since the fall of 1908.

Q. What is your business? A. Chief Clerk in the General Purchasing Agent's office of the Central Coal & Coke Company.

Q. You are Chief Clerk? A. Yes.

Q. The Central Coal & Coke Company is a corporation? A. Yes, sir, of the State of Missouri.

Q. Who is or was the purchasing agent of the Central Coal & Coke Company, if you know, during the years 1903 to 1909? A. Thomas Mackie.

Q. What relation do you sustain to Mr. Thomas Mackie? A. Assistant. 1508

Q. Did you during that period I have mentioned act as an assistant? A. Yes, sir.

Q. Are you acquainted with his signature? A. Yes, sir.

Q. Where is Mr. Mackie at the present time? A. In Kansas City, he lives.

Q. Where? A. Weir City, Kansas.

Q. He is not in the city at the present time? A. No.

Q. You are acquainted with his signature? A. Yes, sir. 1509

Q. I show you a letter on the letter head of the Central Coal & Coke Company dated Kansas City, Missouri, May 24th, 1906, and I ask you to state whether or not you recognize the letter and whose signature is attached thereto, if you know? A. It of course is Mr. Mackie's name, signed by myself.

Q. You signed his name to that document by his authority? A. Yes.

Q. You were permitted to do that? A. Yes.

The letter was offered in evidence and said offer was objected to on the ground that it is immaterial, irrelevant and incompetent, and said objection was sustained.

To which ruling of the Court plaintiff by

1510 *Peter W. Keith—Direct*

its counsel then and there excepted and said exception was allowed.

The letter so offered and refused reads as follows:

1511

Kansas City, Missouri, May 24, 1906.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:—

We will soon be ready to enter into a contract for our powder requirements for the ensuing year or for the next two or three years, and would be pleased to have you make us a proposition cover-
1512 ing same.

Kindly let us hear from you at your earliest convenience, and greatly oblige,

Yours truly,

Thomas Mackie,
Genl. Pur. Agt.

Q. I show you another paper, on the letter head of the Central Coal & Coke Company, purporting to be a letter dated Kansas City, Missouri, August 15, 1906, and I ask you to examine it and state whether or not you recognize the same and whose signature it is attached to it. A. I recognize the letter.

Q. And the signature? A. The signature being my own signature of Mr. Mackie's name, by myself.

Q. You wrote that by his authority? A. Yes, sir.

Q. And signed his name to it? A. Yes, sir.

Q. By his authority? A. Under general authority in the sense that I would not sign his name to any letter if I were not generally authorized to do so.

1514

The letter was offered in evidence and said offer was objected to on the ground that it is immaterial, irrelevant and incompetent, and said objection was sustained.

To which ruling of the Court the plaintiff by its counsel then and there excepted and said exception was allowed.

1515

The letter so offered and refused reads as follows:

Kansas City Mo., August 15, 1906.

Mr. R. S. Waddell,
Prest. Buckeye Powder Co.,
Peoria, Ill.

Dear Sir:—

Referring to your letter of May 26th quoting prices on powder delivered at our various camps for the ensuing year, beg to state that this matter

has just been determined and I regret to advise that you were not the successful bidders.

Yours truly,

Thomas Mackie,
Gen'l. Pur. Agent.

Q. Mr. Keith, do you know how many kegs of powder were used by the Central Coal & Coke
1517 Company each year during the years 1903, 4, 5, 6, 7 and 8? A. No, sir, I don't know.

Q. Have you any general idea? A. Well, in a general way, I should say——

By Mr. Katzenbach:

Q. Is this from your own knowledge, or from something somebody else has told you? A. No, this would be of my own knowledge in a general way; we would use—it would fluctuate between 150 and
1518 225,000 or 300,000 kegs.

Q. Never less than 150,000? A. I should think so; I couldn't say that positive—or thereabouts.

Mr. Katzenbach: Cross examination is waived.

Deposition of JOHN W. FERGUSON, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Ferguson, where do you live? A. In Kansas City, Kansas.

Q. How long have you resided there? A. About thirty years.

Q. What is your business at the present time? A. I am a general contractor at the present time.

Q. What was your business during the years 1903 to 1908? A. Well, probably to 1907 I was engaged in the coal mining business.

Q. With what company, and at what place? A. I was president and treasurer of the Waverly Coal & Mining Company, situated at Waverly, Missouri.

1520

Q. What was the business of that mining company? A. Producing and mining coal.

Q. Did you use black blasting powder in the operation of your mine? A. Yes, sir.

Q. What kind of powder did you use? A. Several kinds; we used du Pont powder and Buckeye powder and a little Excelsior powder.

Q. How many kegs of powder about per year did you consume in your coal operations during that period? A. We would use in the neighborhood of—Well, if I had my book I could tell exactly.

Q. Well, at the present time? A. Right around 1521 four or five thousand kegs a year.

Q. Never less than four? A. I don't think so.

Q. And never more than six? A. I should think not.

Q. I mean, never more than five? A. I think not.

Q. Of whom did you purchase your du Pont powder? A. I purchased it of the agency that was right here in Kansas City; I think a man by the name of Clark.

Q. The agency of the du Pont Powder Company? A. Yes, sir; I think a man by the name of Clark.

Q. Did you purchase that powder in the open market from them or were you under contract with

them? A. I purchased, I think, probably in the open market, but most of it was purchased under contract.

Q. You stated that you used at some time Buckeye Powder? A. Yes, sir.

Q. I will ask you if you have any knowledge of Buckeye powder that you ordered from the Buckeye Powder Company, which you afterwards cancelled? A. Yes, sir; I had one car load I cancelled after I had ordered it.

1523

Q. Do you remember when that was? A. Either the latter part of 1902 or the first part of 1903.

Q. Upon what do you base your independent recollection at this time of that matter? A. My independent recollection?

Q. Do you have independent recollections? A. Not exactly; I referred to some of my letters at the time.

Q. Have you those letters in your possession? A. No; you have them there.

Q. I will show you a letter written on the letter

1524 head of the Waverly Coal Mining Company dated Kansas City, Kansas, February 17th, 1906, and I ask you to examine the contents of the letter and the handwriting, etc., and state whether or not you recognize it? A. Yes.

Q. Do you recognize it? A. Yes, sir.

Q. Whose is it? A. That is my handwriting; that date is wrong I gave you.

Q. What is the date? A. It is—this is given here, I see, as February 17, 1906; my idea was, either the latter part of 1905 or the first part of 1906; that is what I really wish to testify.

Q. You wish to correct your testimony in that regard? A. Yes, sir.

Q. Now, having refreshed your memory from the documents which I show you, I ask you to state

whether the contents of that document—well, state the circumstances as they occurred at that time? A. I don't understand.

Q. I say, having refreshed your memory from the documents which I showed you, I ask you whether the document correctly states the circumstances as they were at that time? A. Yes, undoubtedly.

Q. Those are the facts? A. Yes, sir.

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The letter was offered in evidence and said offer was objected to on the ground that it is immaterial, irrelevant and incompetent, and said objection was sustained.

To which ruling of the Court the plaintiff by its counsel then and there excepted and said exception was allowed.

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The letter so offered and refused reads as follows, to wit:

(Letter head of Waverly Coal and Mining Co.)

Kansas City, Kansas, Feb. 17th, 1906.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:—

I wired you today cancelling car of CC Special Powder. I am somewhat tied up with the du Pont Company and I am obliged to do this. If you have

invoiced this car and it is shipped or if you consider that the powder belongs to us, ship it at once and date your invoice Feb. 16th. Ship by as slow freight as you please, as I do not care for it before the 1st of March, or even the 10th of March. I say this because I do not wish to pay for it until say 90 days. If you are willing to do this, ship it as directed, but don't give me away to the du Pont powder people.

1529 I will be clear of them in a few months. Wire me what you do. Saying you had shipped Feb. 16.

Respectfully,

Waverly Coal & Mining Co.,
by J. W. Ferguson, Pres.

Deposition of CLARENCE G. THURSTON, a witness produced on behalf of the plaintiff, being duly

1530 sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Thurston, what is your full name? A. Clarence G. Thurston.

Q. Where do you live? A. Bevier, Missouri.

Q. How long have you resided at Bevier, Missouri? A. About fourteen years.

Q. What business are you in now? A. Producing coal.

Q. Coal mining? A. Coal operator.

Q. And what company are you associated with? A. The Northwestern Coal & Mining Company.

Q. What business were you in between the years 1903 and 1909? A. I was connected with that company.

Q. The Northwestern? A. Yes, sir.

Q. What position do you hold and did you hold at that time in that company? A. At that time I think I was treasurer. I have for several years been Secretary and Treasurer.

Q. What is the business conducted by the company that you have just montioned? A. Mining business.

Q. In the mining of coal, do you use black blasting powder? A. Yes, sir.

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Q. Did you use black blasting powder during the years 1903 and 1909? A. Yes, sir.

Q. Of whom did you purchase the black blasting powder you used during that period? A. Well, commencing the last of 1903 up to and including a part of 1908, nearly all of 1908, we purchased of the Buckeye Powder Company of Peoria.

Q. Did you purchase black blasting powder of any other company during that period? A. I think not.

Q. You did not? A. I think not.

1533

Q. Then I understand you to say you used Buckeye powder exclusively during the period that you have just mentioned? A. Well, we bought it exclusively, I think, except some times owing to delay in transit; we borrowed it and would return it later.

Q. When any delays occurred? A. Yes, sir.

Q. After you ceased buying the Buckeye powder, of whom did you buy black blasting powder? A. The Western Manufacturing Company.

Q. Where is that located? A. At Peoria.

Q. Do you know whether there was any relation between that company and the Buckeye Powder Company? A. Any relation between them?

Q. Yes. A. As I understand, they were the successors of the Buckeye Powder Company.

1534

Q. Are you still using that powder? A. Yes, sir.

Q. And have you bought any other powder of any other company, person or corporation but the Western Manufacturing Company since you ceased buying of them? A. No, I have not; we have bought some——

Q. But have you bought any of any other company since 1903? A. No.

1535 Q. Have you any recollection as to the number of kegs of powder you got from the Buckeye Powder Company during the period you have mentioned? A. I looked over our records yesterday and I find we purchased during that period of Buckeye powder (looking at paper) 47,760.

Q. Was all that powder used in your mine at Bevier? A. All, I think, but 400 kegs; that was returned on the lot we probably loaned to our competitors.

Q. Will you state why the four hundred kegs you referred to were returned; I didn't understand you.

1536 Q. Now, during the time that you purchased Buckeye powder were you approached at any time by any persons and offered other powder for use in your mine? A. Very often.

Q. You say very often? A. Yes.

By Mr. Katzenbach:

Q. Did you do the purchasing of all your powder for your company? A. I ordered it all, and I think I made all the contracts.

Q. Contracts with the Buckeye Powder Company? A. Yes, sir.

Q. With the Buckeye Powder Company? A. Yes, sir, and as to the price, I couldn't say exactly if it had been offered at much less we would probably have bought elsewhere. I suppose other companies were——

1537

By Mr. Abbott:

Q. Those were not written? A. Yes, sir; the price I think we paid for the first powder was $1.20 a keg and it was lowered by degrees until I think the minimum was 97 1/2.

Q. Were you under contract with the Buckeye Powder Company during most or all of the period you have mentioned? A. Practically; we made contracts and renewed them from time to time, and I don't know how many contracts were made; I think one or two of them were for one year, with the privelege of two years at our option."

1538

Cross examination by Mr. Katzenbach:

Q. Mr. Thurston, you purchased your powder from the person that offered you the best price like everybody else, didn't you? A. Yes, I tried to.

Q. You got your powder where you got it the cheapest? A. Yes, I think so.

1539

Depositions of R. S. TENNANT, a witness for the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Tennant, where do you live? A. Terre Haute, Indiana.

Q. How long have you lived there? A. Thirty years or more, I don't know just how much.

Q. What business were you engaged in during the years 1903 to 1908? A. Perhaps I can better answer that in this way, I am a lawyer and my interests at that time were various, including the coal business.

Q. What coal mines or companies did you have

any interest in at that time? A. Principally the owner and president of the Indiana Bituminous Coal Company, and the Cloverland Coal & Mining Company.

Q. In your mining operations, did you have occasion to make use of black blasting powder? A. Yes.

Q. Did you know at that time a company known as the Buckeye Powder Company at Peoria, Illinois? A. Yes, sir, I did.

1541 Q. Did you have an business with that company? A. Yes, sir.

Q. When did you first begin to have business with that company? A. I don't know.

Q. Do you know when the company first began business? A. No; I know I began business with them shortly after they began business, but I can't remember the year.

Q. Shortly after they began business? A. Yes, sir.

Q. How long did you continue to do business with that company? A. Until I largely retired 1542 from the active conduct of mining.

Q. About when was that? A. 1907 or 1908; I am not sure what time I quit the active management; it must have been in 1906, 1907 or 1908.

Q. How long did you continue to do business with the Buckeye Powder Company? A. The best of my recollection is, I closed with them in 1905 or 1906.

Q. I show you a letter, purporting to be written on the letter head of the Indiana Bituminous Coal Company, and ask you to examine the same and state whether or not you recognize the document? A. This is my letter.

Q. Does the examination of that letter serve to refresh your recollection as to the date you ceased to do business with the Buckeye Powder Co.? A.

It shows I was doing business with them in 1905 and previously; I gave an order for a car of powder; I don't know whether I did any business later or not.

Q. That is a letter written by you? A. Yes, sir.

Q. That is your signature? A. Yes, sir.

Letter offered and received in evidence and read to the jury as follows:

Indiana Bituminous Coal Company, 1544
Cloverland Coal & Mining Company.

Terre Haute, Ind., Feb. 2d, 1905

Buckeye Powder Co.,
R. S. Waddell, Pres.,
Peoria, Ill.

Dear Sir:—

Enclosed I hand you check for $428.00 payment of balance due you on powder account. I also re- 1545
turn your receipt for $500. which retain, receipting our voucher for the full amount and return to us.

I note the receipt of your letter of the 26th. I am loath to withdraw my trade from you, the treatment and product have been satisfactory in the past and relations agreeable, but in these close times I feel we have to sacrifice our friends when it costs us money to hold them.

I will do this, however, as a sort of farewell. I will take one car of powder from you—a small car not above 400 or 500 kegs, and pay you $1.05. I won't be sure about the 60 days' payment but perhaps we can use the powder by that time and will try to satisfy you.

Please note now from you, I want this price to be confidential as it would interfere with prices from other parties if known.

Ship the car to Cloverland Coal & Mining Co., Cloverland, Ind. (on the Vandalia). You can ship immediately, as that mine has a small supply on hand just now. Send number of car and date of shipment and follow with tracer.

Yours truly,

R. S. Tennant,
President.

Q. I will ask you to state whether or not you did cease to do business with the Buckeye Powder Company at or about the time this letter was written? A. Some time in that year, I closed business with them.

Q. State what reason you had for closing business with the Buckeye Powder Company at the time you indicated? (Objection overruled.) A. Because I could buy cheaper elsewhere.

Q. After you ceased to do business with the Buckeye Powder Company with whom did you begin to do business or continue to do business? A. I would like some information there; I bought powder subsequently from the du Pont Powder Company, the Hazard branch, or the Indiana Powder Company, I remember the bills came to us——

Q. You may proceed to state how you recall that? A. I recall that the bill came with the general head of the du Pont people with the subhead of these other people.

Q. Have you any of those bills at the present time in your possession? A. Yes, but they are not accessible; I have them somewhere in the vault with a carload of material; I presume they are there.

Q. Can you recall at this time what price you paid the du Pont Company for the powder you purchased after you ceased doing business with the Buckeye Powder Company? A. My recollection is between 90 cents and $1, to the best of my recollection.

Q. How many kegs of powder did you consume at the two companies which you described you were interested in, from the time when you ceased doing business with the Buckeye Powder Company until you ceased to be connected with these two companies in 1908? (Objection overruled.) A. I was using them from ten to twenty-five cars a year from one or two cars a month. 1550

Q. How many kegs did each car contain? A. Contained 800 to 1,000.

Cross examination by Mr. Button:

Q. Whom did you buy from before you started in with the Buckeye Powder Company? A. Largely from the du Ponts.

Q. Why did you change to the Buckeye? A. As I recall, on account of friendship for the management of the Buckeye. 1551

Q. Mr. Waddell? A. Mr. Waddell.

Q. And you had known him previously? A. Yes, sir.

Q. At the time when he had worked for the du Ponts? A. Yes, sir.

Q. You knew he had been in their employ for twenty years? A. I knew he was with them.

Q. You were not interested in the Buckeye Powder Company? A. Not at all.

Q. Do you recall what this receipt is for—$500—which you sent back to Mr. Waddell mentioned in this letter? You say "I also return your receipt for $500"; what does that mean? A. The $500 had

1552 *R. S. Tennant—Cross*

been paid without sending a formal voucher, and the $428——

Q. That was the balance of the bill? A. Yes, sir; the total was $900 or whatever that figure is.

Q. You were not paying him for anything else besides powder? A. No.

Q. This letter states you were going to pay him $1.05 for this carload. A. I agreed to pay that.

Q. How much had you been paying him previously? A. I think the same price.

1553 Q. Are you sure about that? A. Well, fairly so. I know——

Q. Did you get any rebate or discount? A. No.

Q. It was $1.05 flat? A. Yes, sir.

Q. Did he refuse to sell you powder cheaper than that? A. Well, not as cheap as other companies did.

Q. Are you very clear in regard to the amount you paid to the Hazard or du Pont? A. The gross amount?

Q. No, the price per keg. A. I should say that

1554 probably the statement in that letter was correct.

Q. The statement here? A. I should say that was accurate.

Q. There is nothing here said about it. Are you clear in your mind about how much you paid for du Pont powder, du Pont or Hazard powder, when you made the change? A. I can't say. $1.05 must have been a lower price.

Q. I am trying to get at your recollection. You don't recall what the price was? A. I do not.

Q. There was considerable competition among a good many companies? A. Yes, sir.

Q. You had offers for powder from the Egyptian Miami and King's? A. Yes, sir, lots of them; a bunch of them.

Q. Did you buy any powder from any other

companies besides the Buckeye and the du Pont and Hazard? A. I think not.

Q. I suppose you are still friendly with Mr. Waddell? A. I haven't seen him for, I don't know how many years.

Q. You have not looked up your books or vouchers to refresh your recollection about the actual prices? A. I have not.

Redirect examination by Mr. Abbott:

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Q. You stated on cross examination that you had offers from a number of powder manufacturing concerns, and that there was a considerable competition. As I understand your testimony on direct examination you finally went to the du Pont Powder Company because it made you the lowest price of anybody? Am I correct in that? A. You are correct. I went to the du Pont Company because it offered me the lowest price.

Recross examination by Mr. Button:

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Q. What other prices were offered you? A. I don't know; I can't remember.

Q. And you don't know what the price of the du Pont powder was? A. No.

Q. Do you recollect any other companies besides the Hazard, du Pont and Buckeye, being mentioned in your direct examination? A. I think there was no other company mentioned.

Q. Then it could not have been true that you stated in your direct examination that the du Pont price was lower than that of any other except the Buckeye, no others having been mentioned? A. I don't understand your question. What I want to say is——

Q. I want an answer to the question. A. Your question is not intelligent; it lacks clearness.

Q. I will try to explain it. Mr. Abbott made a statement to you in the form of a question, to the effect that you had testified on direct examination that the du Pont price was lower than all other prices—of Buckeye and all other companies. Now, inasmuch as no other company but the Buckeye was mentioned in your direct examination, how could that be so? A. You don't have to name the
1559 other companies when you say that is the lowest price of any; I answered that the du Pont price was the lowest.

Q. Of all companies? A. You can say all companies—that's moonshine.

Q. Do you say of all companies they were the lowest? A. I say of all companies they were the lowest.

Q. How much? A. I don't know.

Q. Were they lowest during the period you traded with them? A. My recollection is that they must have been, or they would not have been given
1560 the business.

Q. Have you any recollection about it or is that your conclusion? A. I have a very good recollection about it.

Deposition of THOMAS JEREMIAH, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Jeremiah, where do you live? A. Willisville, Illinois.

Q. What is your business? A. General Superin-

1561

tendent of the Willis Coal Mining Company.

Q. How long have you been engaged in that business? A. Twelve years.

Q. What business is the Willisville Coal Mining Company engaged in, and has been during the time you have been superintendent? A. Rock business and coal business. One of them is called the Columbia Quarry Company, and the other the Wills Coal Mining Company, and I represent also the Mid-Valley Oil Company.

1562

Q. Have you had occasion to use black blasting powder in your operations of the Willisville Coal Company? A. Yes.

Q. What kind of black blasting powder have you used? A. I have—do you mean in these last twelve years?

Q. What kind of black blasting powder have you had experience with in coal mining operations? A. I think most all sizes and almost all manufactures that is made for practical use in mines.

Q. Have you ever used any black blasting powder known as the Buckeye Powder? A. Yes, sir.

1563

Q. When did you first begin to use Buckeye Powder? A. I am not positive of those dates. My records at the office will show.

Q. Can you state approximately about the time when you began using it? A. I think about 1903 to 1905. I am not positive of these dates. My record will show exactly.

Q. How many kegs of black blasting powder did you use from the period 1903 down to the time—— A. I think it was 1905.

Q. When you began using it? A. No, I said I think it was from 1903 to 1905, I am not positive.

Q. How many kegs of black blasting powder did you use during the time you indicated of Buckeye Powder? A. Something over 28,000. I'm not going to be positive.

1564 *Thomas Jeremiah—Direct*

Q. 28,000 kegs? A. Yes.

Q. State in your own way just what were the results that you had from the use of black blasting powder, that is Buckeye Powder? (Objection overruled.) A. I don't know in what way you mean by results. The powder was perfectly satisfactory to me. I never had any trouble using it.

Q. Did you ever have any complaints regarding the use of Buckeye Powder from the miners who used it? (Objection overruled.) A. No, I can say
1565 I never had complaints from the miners that used it, with the exception of one individual.

Q. Tell about that, will you, what the complaints were and the circumstances surrounding it? (Objection overruled.) A. When I started using the powder I never had any powder commission at my mine. All the tests were made by myself, and I put it up to the Mines Committee at the time of making a change. I said to our people, "You make the contract and furnish a certain grade of powder and we will use it," and I made practically all
1566 the tests. I have taken it up with the different mine committees before I would change the powder, and I would tell them I would make a change and that I wanted to get practically the same brand or grade of powder I have been using, and when I made this change to the Buckeye Powder I told Tom Reynolds that I would take it up with the mine committee, and I didn't think it was necessary for him to go down. He afterwards asked me if I had any trouble and I told him with one individual. He noticed there had been a change and he come to me personally, and said the powder wasn't as good as the one we had been using, so I went to the mine committee and told them that he had registered a kick, and I told him to send his powder out and I would send him another keg.

The mine committee and myself took the powder that he sent out, poured it into another keg of a different brand, sent it back into the mines and I asked him the following day how the powder was working and he said that it worked fine. I remember making a statement to Tom Reynolds, and I told Tom that was the only complaint. That is the only one I had.

Q. Mr. Jeremiah, what other occupations or offices do you hold at the present time? Are you connected in any way with any of the state or- 1568
ganizations of the miners or coal operators? A. I am a member of the mine investigating commission of the State of Illinois. I am a member of the executive board of the Operators' Association of the 5th and 9th District. I am president of the Village of Willisville, and a member of the Prairie County Fair Association. I am president of the Willisville Breeding Association.

Q. State what the duties are of the Miners' Investigating Commission? A. To take up the laws and go over them each year and make such neces- 1569
sary changes as we think would be applicable to the condition of mining from year to year, and make our reports to the State Legislature.

Q. What were the laws, if any, and the rules and regulations, if any, which obtained with reference to the various grades of powder during the years 1903 and 1909? (Objection overruled.) A. They practically had no law regulating the standard of powder until last year.

Q. By standards of powder, what do you mean? A. The different sizes.

Q. Since 1909 has there been any change in the law so far as you know with reference to the standard sizes of powder which may be used in the State of Illinois? (Objection overruled.) A. Yes.

Q. State, in a general way, what the rules and regulations were between 1903 and 1909 concerning the grades, the various grades of powders. How did you determine what a certain grade of powder was at that time? A. Well, I determined mine with a screen, and I couldn't find there was any uniformity in the brand. Mr. Waddell will remember that I had a perforated screen and I don't care what he wanted, I wanted this size of powder
1571 because I wanted the same size I had tested out as near as I could. I never paid any attention to the different brands, but they had "F" brands, single F's and CCC's.

Cross examination by Mr. Katzenbach:

Q. Mr. Jeremiah, this time you sent for Mr. Waddell to come down and see the powder. That was because there was different sized grains in the same keg. A. I didn't send for Mr. Waddell. I had the question up with his agent and himself, and
1572 Mr. Waddell, that was the only time I saw him until I met him in Chicago. The agent brought Mr. Waddell down.

Q. Mr. Waddell came down to your mine? A. Yes, sir.

Q. What brought him down there, your request? A. My request to him, yes, to make this powder uniform. I suppose Mr. Reynolds had that matter up with him.

Q. It wasn't uniform and you wanted him to make it uniform? A. The powder?

Q. The Buckeye Powder. A. I hadn't made any contract with them. I didn't purchase it. I wouldn't make a contract until after we had tried this powder.

Q. This was a special kind of powder that you told them you wanted? You wanted a special

grade? A. It was the same size I had been using because I have tested the other out and it gave me satisfaction, and our company had taken the matter when they wanted to change the contract, and took that position. If you make your contract, and if they make a contract to standard, we would use the powder, and so far I have used it without any trouble, without having any trouble, and we never had a commission to my mine to say what powder I should use. I want to state we had no contract with Mr. Waddell when he came down there, be- 1574
cause the company was particular not to go into any contract until I had my side of it covered up.

Q. In the mines of your company do you do much undercutting of coal? A. Yes.

Q. The veins are very large? A. Yes, sir.

Q. And that is a particularly good sized vein, is it not? A. Not for Southern Illinois. They run up to eleven feet.

Q. And what was this? A. This was six feet.

Q. And you undercut and then you use the powder after undercutting? A. Yes, sir, now I do. At 1575
that time they were not machine mines. I used two different kinds of machines.

Q. And the machines are used for undercutting? A. Yes, sir.

(Reading): "WILLIAM J. FLAUAUS, sworn in behalf of the Plaintiff, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Flauaus, where do you live? A. At Du Quoin, Illinois.

Q. How long have you resided at Du Quoin? A. Since 1881.

Q. What business are you engaged in now? A. Foreman, top foreman at the mine.

Q. What mines? A. At the Queen Mine.

Q. What business were you engaged in during the years 1907 and 1908? A. I was check weighing for miners.

Q. At what mine? A. At the Majestic.

Q. Who was the owner of that? A. Mr. Eden was superintendwent; it was known as the Clear Clinch property.

1577 Q. Where was it located? A. About four miles and a half southeast of Du Quoin.

Q. What position did you hold other than the one you have testified to in 1907 and 1908? A. Along in this year I was secretary of the Local 98 of Mine Workers.

Q. What association? A. The United Mine Workers of America.

Q. Did you ever have any experience in practical mining yourself? A. Yes, sir, I had some in the neighborhood of between one and two years' ex

1578 perience; in fact, I started in as a trapper boy.

Q. Have you had any experience with the use of black blasting powder? A. None, only that time while I was at the case.

Q. Was black blasting powder used in this time while I was at the case?

Q. Was black blasting powder used in this mine where you were employed during 1907 and 1908? A. Yes, sir.

Q. What kind of powder was employed? A. Why, it was Miami F. F.

Q. Now, state how long previous to 1907, if you know, that any powder was used in this mine where you were operating? A. I couldn't state the stipulated time, but it was a year or two it had been used there.

Q. In your position as secretary of the local, did you have anything to do with the miners employed in that mine? A. Oh, yes.

Q. Do you know of your own knowledge, of any request, or any information that was requested in regard to the black blasting powder then being used in the mine? A. Yes, sir.

The reading of the remaining portions of the deposition was objected to and said objection sustained, and the same was excluded, to which ruling 1580
the plaintiff's counsel then and there excepted, which exception was allowed.

The portion excluded reads as follows:

A. I will state that being the secretary of the Local and when they had a meeting, when any objections 1581
came up in regard to powder they were using, quite a number of the miners stated that they were getting inferior powder, and that their contract called for $1.75 for their keg, and they were getting powder that wasn't up to the standard; they were getting inferior powder, they said, and they ought to get a good standard powder; and we had quite an argument in the Local that night, and I was secretary of the meeting this night when the objection came up in regard to the powder; and we had quite an argument that night, and the Local officials were instructed to take it up with the company and see if something was wrong, or something could be done.

Q. What was the result of the instruction which

was given to you by the Local; what steps, if any, did you take? A. I went with the president, and we took it up with Mr. Eden; we went together, and we took it up with him and Mr. Eden told me he was surprised to learn there was any kick coming on the powder; that they had to change contracts in recent years, and he said they had made a new contract some few months prior to this, and he didn't know why all the powder shouldn't be the same, and he seemed to leave the impression that
1583 the men just wanted to kick; but it kept getting worse, and they had a devil of a time, and they didn't get as much tons of coal as they used to do. So we reported that to the men; that was about all we could do; and he said he would take it up with the powder company immediately and see if they were not sending powder according to agreement. It went on for a week, and the miners got me on a foot car, and we called an indignation meeting, and we took the powder question up, and they stated that no other man should buy a keg of that powder;
1584 and we run for about five days, and we didn't get out much tonnage; nobody was shooting much. Finally we took the case up with the State officials, and they came down, and they failed to do anything, and he ordered a strike on us; prior to that we were fooling around there. I was coming up the street one evening, and while I was there, one fellow came up the street and hollered, "Hey, Flossy, I want to see you"—that's what they used to call me, some of the fellows, "Flossy"; and he said a fellow over in the saloon wanted to see me and the officers of the Local. I goes over to the Palace saloon, and I met a large gentleman named McCollie, and he introduced himself, this fellow did, and we got familiar, and we called him "Mack." So he got newsy, and he wanted to know my posi-

tion in the Local, and I told him the secretary; and he said, "I want you to get some of your officers and practical miners together, and I want to have a talk with them. You are making a fight upon our powder." Of course, I didn't care a damn——

By Mr. Katzenbach:

Q. This was Miami powder? A. Yes; and I said "All right." I went out and counted up nine or ten or fifteen of the boys, and we set around a nice 1586
big table and he out with a row of bills, and he said, "Give these boys something to drink." Well, we wasn't going to let that go by, and we sat there until the saloon closed, talking powder. And he showed us a lot of samples, and showed us that it was impossible for that powder to be wrong; and he said he had all grades of powder from "C," "F," all the way along, and some was as big at marbles; and he gave me bottles of powder to show to the miners; and he said that I could keep it in my desk and display it to the miners.

Q. Who gave you this powder? A. Mr. Mc- 1587
Collie, he gave it to me; I took it up and showed it to the boys, and they all swore that wasn't the powder that was in their kegs. We didn't know what was up the tree, and we wanted to be on the right side, so they fetched in some that was in their kegs; and all the mines that were in the one local, they had 1,100 members, and one man was using King's, and another was using Du Pont, and we told these boys to fetch in samples and we would see what was doing. When they fetched in from the other mines, we didn't get any King's; I believe they said they were out; we didn't get any King's, they were borrowing powder. You see one mine would be using King's and another mine using Du Pont's, and we didn't get any King's; they said they

were out, and they were borrowing Du Pont's; they were out of King's at that time. We got some Du Pont's from Forester's, and we put them alongside of the samples Mr. McCollie gave us, and you couldn't tell the difference in the powders; but not one of them fetched the powder that our boys was using; there was quite a difference.

Mr. Katzenbach: I move to strike out the answer as being hearsay, and incompetent,
1589 irrelevant and immaterial.

By Mr. Abbott:

Q. Now, state more clearly what you mean—I will ask you what you did, if anything, after you had these samples and made these comparisons which you have indicated. A. Yes, sir, we took the samples down to Mr. McCollie, and in the meantime, Mr. Sharp; he claimed he was the representative of the Illinois country, and he was helping Mac demonstrate this powder, and Mr. McCollie
1590 said, "There does appear a little difference, and in order to give it a start, I will order a dozen kegs or so sent out from our office, and I want you to pick good men and let them try it"; that's what he said, and I said "All right"; he said, "They'll get a free keg of powder, and you won't have any trouble selecting your men." Well, that powder worked fine; for about a week we would meet him over in our headquarters—it was in the saloon; and we kept notifying other miners, and inviting them in; and finally, it got to be a pretty nice thing, that powder man being there treating them nights. On Saturday evening Mr. McCollie said that he was told that you couldn't get a drink here on Sunday; I said, "That's all right," and he said, "I'll tell you what I want"; I said, "All right, anything that's le-

gitimate is all right." He said, "We want to demonstrate to you that our powder is all right," he said, "Mr. Sharp and myself worked among the miners while Mr. White is sales agent—he does the selling, but we are attending to the miners' troubles, and we want them to decide to use our powder." He said, "Get as many of the boys for a nice time to-morrow." He said he was told they couldn't get a drink, but that would be all right. He said, "Do you know where we could get a good hall?" and the bartender said, "Yes; I know a 1592
place and a fellow who's running a barber shop up there, and they have a club room there," and he said, "They have cards and things, and you could have a few drinks, and I could get that for you"; and he said, "You get it, and I will pay whatever is right"; and he said, "It falls between you to fix up a list of what is good, and we want to have a hell of a blow-out"; and I said, "All right, how many do you want?" and he said, "Any miners you want to ask up"; and I asked the bunch, and he jacked out this big roll, and gives me in the neigh- 1593
borhood of forty-five or fifty dollars—I can't recollect now the exact amount—and he said if that wasn't enough, that he wasn't broke, that I should draw on him for more. And I gets a lot of chickens and gets in with the young lady to fry them up, and I ordered ten or fifteen kegs of beer, and then I invited the boys to the blow-out; he told me to do that, and that he wanted to meet the miners and to become more friendly, and he said that he didn't want us kicking on the powder; if there was anything wrong, he wanted to know it. And we had a damned jolly time all day Sunday, and Mr. McCollie was a fun-maker for us, and he sung and made speeches, and we had a splendid time, and there was about half of the committee up there; the rest of them were average miners.

1584 *William J. Flauaus—Direct*

Q. What committee? A. The powder committee.

Q. A regular or a special committee? A. A special committee.

Q. Who were the members of that? A. Jim Cross——

Mr. Katzenbach: That is objected to as incompetent, irrelevant and immaterial.

A. George Armstrong, and I can't think of all of
1593 them at this time.

Mr. Katzenbach: I move that the answer be struck out as incompetent, irrelevant and immaterial, and hearsay, and not connected with the defendants or other parties interested in this action.

Q. What were the powers of this special committee? A. They were appointed to meet with the operators and also the representative of this powder, and see if they couldn't get an adjustment of the
1596 reason why this powder was inferior as it was.

Q. Did they afterwards meet with the powder men? A. Yes, sir.

Q. Tell what steps were taken, if any, after that, to determine the matter of the quality of the powder.

Mr. Katzenbach: That is objected to as incompetent, irrelevant and immaterial.

A. After Mr. McCollie had sent for these sample kegs, he said "They come out of the magazine, and the car is loaded in the same manner." That showed up pretty good, and we called upon Mr. Eden and bought the powder again. He said, "I can give you Du Pont powder," and I said, "No, under in-

structions from the Local, we don't want nothing but 'Double F' Miami powder."

Q. Had you made any test or trial in which Du Pont powder figured? A. In the same thing, not a quarter of a mile away——

Q. At this time? A. We made the test later on.

Q. Then, go on with your story. A. So Mr. Eden got awful mad at me; they called me "wind jammer" or something. It didn't make any difference to me which powder they used, one was about as costly as the other; and that's what he said, and I said the boys didn't want Du Pont, they wanted "F. F." Miami; and we got in a wrangle. 1598

Q. What was the result of the notice or demand which you gave to him? A. The boys came out on strike; they wanted that powder, and we didn't care, we had our nice time; and so the boys, they came out on strike.

Q. Why?

Mr. Katzenbach: That is objected to as irrelevant and immaterial. 1599

A. Because Mr. Eden then wouldn't make use of Miami powder; so we came out on strike and sent for the State officers, and they came down there, and he came down there, and I believe he used these words—he said, "Boys, I believe you have played behind the curtain long enough, it's time to raise it; you come out until the company gets you the powder you think you can do the work with." We were out on strike for several weeks, and I kept getting commissaries from the State.

Q. By "commissaries" what do you mean? A. You know when you are ordered on strike by the State officials, they pay the miners so much a week.

Mr. Katzenbach: I move to strike out the

answer to the last question as being hearsay and incompetent, irrelevant and immaterial.

Q. I wish you would state, if you know, what was the result of this strike which was called; how long did it last?

Mr. Katzenbach: That is objected to as incompetent, irrelevant and immaterial.

1601 A. Well, it lasted several weeks. In the meantime, while the strike was going on, we discharged some of them off the committee; one of the committee wanted Du Pont powder, and they told him he wasn't right, and one of them got him. Mr. McCollie had promised them a box of shells to go hunting with, and he hadn't got them; and we kept getting commissaries, and it run away up into the thousands; and it come time then for the convention at Peoria.

Q. The convention of what? A. The miners.

1602 Q. What convention is that technically known as? A. The United Mine Workers' convention at Peoria. And so we selected a couple of delegates to go up there, and knowing that we were still on the commissary list, I got a letter stating we were off the commissary list; and they sent our delegates back to tell them there had been some fraud about the thing—that the powder men had bought some of us local officials.

Mr. Katzenbach: I move that the answer be struck out as incompetent, irrelevant and immaterial, and containing hearsay testimony.

A. (Continued.) So our delegates went back to the convention, and the miners got back together again, and they decided to have a test between the

Du Pont and Miami powders; and the miners were to select a miner, and the company was to select a miner, and the miners was to put a man on top to count the tonnage, the per cent. of screening and the lump coal.

Q. Was that test held or not?

Mr. Katzenbach: That is objected to as immaterial, and irrelevant.

A. Yes, sir. 1604

Q. What was the result of that test, if you know?

Mr. Katzenbach: The same objection.

A. We got a notice from the convention that we should go to work, and that we would have that test. When I got the communication, I called a special meeting of the miners and protested against any such decision; so they sent a committee to the convention to serve notice that if we didn't get to work and take up the test, we would be fined ten dollars; so we had a test, and we tested Miami so 1605 many days and Du Pont so many days, and there was such a little difference in the test of the powder, and the difference was nothing much—and we returned to work.

Q. You did return to work? A. Yes, sir, after we had been out several weeks, I guess. Counting wages and the money we derived from the State funds, amounted to over seven thousand dollars.

Q. What powder did you use after the test? A. Miami.

Mr. Katzenbach: I move to strike out the preceding answer, on the ground that it is hearsay and incompetent, irrelevant and immaterial.

Q. How many members of your Local Union were there at the time of this difficulty that you have testified to? A. The time we had the powder strike?

Q. Yes. A. Well, the membership of the Local was between ten and eleven hundred; all the men affected by the strike was in the neighborhood of six or seven hundred.

Q. Now, do you know of your own knowledge, what was the action of the convention at Peoria with reference to the owner of the mine concerning
1607 that strike?

Mr. Katzenbach: That is objected to as incompetent and irrelevant and calls for hearsay.

A. I know that the operators made a demand that they be reimbursed.

Q. Do you know whether he was reimbursed or not? A. I do not.

Q. Do you know, of your own knowledge, whether any money was paid by either of the powder
1608 representatives that you have testified regarding, to any other person than yourself at that time?

Mr. Katzenbach: That is objected to as incompetent, irrelevant and immaterial.

A. I will only state in regard to the money transaction, all I know is what I got.

Q. Do you know who was the representative of the Du Pont Company that was there at that time?

Mr. Katzenbach: That is objected to. There is no statement that there was any representative of the Du Pont Company.

Q. I will ask you whether or not there was a

representative of the Du Pont Company there at the time of this disturbance? A. During the strike there was a man met me in the saloon there, and introduced himself, but what his name was, I don't know; I had one drink with him, and I don't remember his name. I told him to stay away.

Q. Can you describe him? A. Yes; he was about forty years old, forty years of age, and about my height, and somewhat slimmer than I am.

Q. Do you know where he came from? A. No.

Q. Don't you know where he came from? A. No; I know he was a man in the saloon.

Q. Did he give you his name at all? A. Yes; and said he was representing the du Pont Powder Company.

Mr. Katzenbach: That is objected to as irrelevant and immaterial and hearsay, and I move that the answer be struck out.

Cross-examination by Mr. Katzenbach:

Q. What was the date of this occurrence that you have been talking about? A. Along in the neighborhood of 1907 or the early spring of 1908.

Deposition of EMIL BRECHNITZ, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Brechnitz, where do you live? A. Belleville, Illinois.

Q. How long have you lived in Belleville, Illinois? A. All my lifetime.

Q. That makes it necessary for me to ask you how old you are? A. 34; I will be 34 in May, in 1879 I was born.

Q. What is your business? A. In the general mercantile business.

Q. Are you alone in business, or are you associated with someone? A. At the present time?

Q. Yes. A. I am associated with my brother; it is a corporation; my brother, myself and my mother; my mother has one share.

1613 Q. What is the name of the corporation? A. Brechnitz Brothers' Mercantile Company.

Q. That is in Belleville? A. Yes, sir.

Q. What is the business of the Brechnitz Brothers' Mercantile Company? A. We do general grocery business, and handle some dry goods, shoes and black blasting powder.

Q. How long have Brechnitz Brothers' Mercantile Company been doing the business you have just stated? A. I am under the impression it is four or five years that the corporation was formed.

1614 Q. Previous to the incorporation, how was the business carried on? A. In the name of C. G. Brechnitz.

Q. How was the business carried on during the years 1903 to 1909? A. At that time it was carried on in the name of C. G. Brechnitz, and my brother and I conducted the business.

Q. You stated that, as a part of your business, you dealt in black blasting powder. I wish you would give the history of your dealings in black blasting powder, how you began and generally, just how you carried on that business. A. Well, you have reference to just my experience?

Q. No, I mean the experience of C. G. Brechnitz, the business which was carried on under that name, and which you were conducting. A. My father has

been in the powder business, I think, ever since 1874, and I came into the business, I think, in 1889.

Q. At the time when you entered the business in 1899, did you have any special customers to whom you sold black blasting powder? A. Yes, sir.

Q. Can you, at this time, give a list of those customers? A. I guess I can pick you out some. You have reference—at that time I was selling Oriental Powder; do you want me to give those customers?

Q. What I desire to know is, with whom you 1616
were conducting business, in black blasting powder, at the beginning of your entering into the black blasting powder business. (Objection overruled.) A. At that time, we were buying powder of Mr. J. L. White, and he handled the Oriental and Austin Powder; we were buying both, mostly Oriental Powder.

Q. How long did you continue to handle the Oriental Powder? A. We continued to handle Oriental Powder, I am not positive, but I think two or three years from that time; at any rate we 1617
handled the powder until the price of powder went up to $1.35; whatever the year is—I can't remember.

Q. Was it the price of powder going up to $1.35 that caused you to retire from the selling of Oriental Powder? (Objection overruled.) A. We didn't retire entirely; the price of powder was put up to us at $1.35 and the price of the powder, it was sold to the large miners at $1.25.

Q. State again if that was what caused you to retire? A. We didn't retire, I say, the price of powder to us was $1.35, and the price was sold to large miners as $1.25.

Q. You mean the powder? A. Yes; we couldn't supply the larger trade, and we had the smaller

trade we supplied from that time on. At that time we made a switch, and we quit buying Oriental Powder and bought some from Barron and Hawley.

Q. How long did you buy from ther? A. I think a year will cover it; I am not positive of the date.

Q. Do you know the Buckeye Powder Company and when it entered the business? A. The Buckeye Powder Company was commenced—I don't know—
1619 the Buckeye powder was the next I bought, the next parties from whom I bought powder was the Buckeye Powder Company.

Q. Where was it located? A. Peoria, Illinois.

Q. When did you begin buying powder from the Buckeye Powder Company? A. I think it was in the year 1903.

Q. When you began buying powder of the Buckeye Powder Company, did you have certain customers with whom you handled that powder? A. Do you mean to whom I sold it?

Q. Yes. A. Certainly.

1620 Q. Can you name the customers you had at that time, to whom you sold black blasting powder? A. Give me a few minutes' time.

Q. I won't trouble you at this time; did you make any special arrangement with the Buckeye Powder Company for the handling of its powder? A. Yes, sir.

Q. Was that arrangement in the form of a contract? A. Yes, sir.

Q. How long did you continue to handle the Buckeye Powder? A. I think that I handled that until some time in 1906.

Q. Can you remember the date? A. No; I only can remember when I started buying du Pont; that was the termination of the Buckeye.

Q. When did you start buying du Pont? A. That was in March, 1906.

Q. Can you recall about the number of kegs of powder that you bought of the Buckeye Powder Company during the time you were doing business with them? A. Do you mean in the three years?

Q. Yes. A. Well, I can't recall the exact amount, I will say some 20,000 kegs.

Q. What caused the change which you made from the Buckeye Powder Company to the du Pont Powder Company? A. Well, that is—there may be several answers to that. You see, during that time, the du Pont Powder Company, or rather at 1622 that time the Phoenix Powder, were selling to my customers, and it got to such an extent that I only had a few customers left; and that, together with the price, and the convenience of getting du Pont powder whenever I wanted it, caused me to switch over to them.

Q. Speaking of the price of the powders, what price did you receive from the due Pont Company at the time you decided to make the change to the du Pont Powder? A. I have that in contract form, and one of the conditions of the contract is that the 1623 price be kept confidential.

Q. You made a contract with them at that time? A. Yes, sir.

Q. Have you the contract with you? A. No, I haven't it here.

(Original contract subsequently produced by defendants and offered and received in evidence as Plaintiff's Exhibit 713 and read to the jury, as follows.)

"This contract made between the E. I. du Pont Company, a corporation of the State of Delaware, party of the first part, and C. G. Brechnitz, Belleville, Illinois, party of the second part. Witnesseth, that the party of the first part hereby sells and party of

the second part buys, all the black blasting powder in kegs of 25 pounds each, required for sale to customers of second party in the Belleville district for the period of one year from this date at the carload price of 95 cents per keg of 25 pounds, such quantity not to exceed 10,000 kegs including sales by E. I. du Pont Company to Prairie Coal Company. The following conditions are mutually accepted.

1625 A. First party agrees to allow second party the actual carload freight charges from shipping point to Belleville.

B. Terms are sixty days or two per cent. discount for cash if remitted within ten days from date of invoice.

C. Second party agrees to buy from first party in carload lots of 400 kegs of 25 pounds each.

D. The first party may furnish and the second party will accept under this contract

1626 powder of any standard brand, make and quality, equal to Phoenix or du Pont brands.

E. The first party is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

F. The terms and conditions as well as the existence of this contract to be confidential.

Dated at St. Louis, April 11, 1906.

(Signed) E. I. du Pont Company,
EUGENE DU PONT, G. S. A.
C. G. BRECHNITZ, E. B.

Witness: J. C. MACKLEM.
Witness: CHARLES B. SPICER,

Q. Had you any contract with the du Pont Powder Company while you were doing business with the Buckeye Powder Company? A. I never had two contracts in effect at the same time.

Q. So that your contract dated after the time when you ceased doing business with the Buckeye Powder Company? A. Yes, sir.

Q. How long did that contract continue? A. With the du Pont Company?

Q. Yes, the first one. A. One year.

1628

Q. At the end of that year, did you continue doing business with the du Pont Company under contract? A. Yes.

(Original contract subsequently produced by defendants and offered and received in evidence as Plaintiff's Exhibit 712 and read to the jury as follows:)

This contract entered into the 12th day of April, 1907, by and between E. I. du Pont de Nemours Powder Company, a corporation 1629
of the State of New Jersey, party of the first part, and Brechnitz Brothers' Mercantile Company, Belleville, Illinois, party of the second part.

WITNESSETH: That the party of the first part hereby sells and party of the second part hereby purchases all the black blasting powder, in kegs of 25 pounds each, required for sale to customers of second party in the Belleville district, for the period of one year from this date, at the carload price of 95 cents per keg of 25 pounds, such quantity not to exceed 10,000 kegs, including sales by E. I. du Pont de Nemours Powder Company to Prairie Coal Company. The following conditions are mutually accepted:

1636 increase or decrease shall be added to or deducted from the above prices.

The above prices are also based on present method of packing and transporting powder, but in case the present method of packing and transporting powder is prevented by law or railway association regulations during the existence of this contract, then in that event this contract may, at the
1637 election of the party of the first part be termniated.

The following conditions are mutually accepted: (2) Terms are thirty days, two per cent. for cash within ten days from date of invoice. (3) It is agreed that explosives furnished under this contract are for consumption of the party of the second part only and for sale except to its own sub-contractors or customers and that a violation of this clause gives the party of the first
1638 part the option of cancellation of this contract. (4) The party of the first part is not to be responsible for delays caused by strikes, accidents or causes beyond its control. (5) This contract to go into effect on the 10th day of July, 1908, and continue in force until the 10th day of July, 1909, and thereafter from year to year unless written notice is mailed to the address of either party, by the other, sixty days prior to the 10th day of July, of any year, in which event upon the arrival of such date the contract is to be terminated.

(6) This contract does not become binding until accepted by the E. I. du Pont de

Nemours Powder Company, at its main office at Wilmington, Delaware.

E. I. du Pont de Nemours Powder Co.,
By Walter C. Clark, Manager,
(O. K., Spicer).
Brechnitz Brothers' Mer. Co.
By Emil Brechnitz.

Accepted at Wilmington, Delaware,
July 17, 1098.
E. I. du Pont de Nemours Powder Co., 1640
By William Coyne.

(The following letter, produced by the defendants, with the said contract, was offered and received in evidence as Plaintiff's Exhibit and was thereupon read to the jury by plaintiff's counsel.)

In reference to the contract made July 10, covering your powder requirements for the year ending July 10, 1909, it is agreed and understood that we will allow you a com- 1641
mission of ten cents per keg on all purchases made under that contract during the contract term, and ten cents per keg on all blasting powder invoiced by us to the Prairie Coal Company, at $1.10 per keg, f. o. b. Belleville, under contract to be made with the Prairie Coal Company, the above commission to be paid on the condition that Brechnitz Brothers' Mercantile Company will maintain prices as published and quoted by us from time to time. The terms and conditions of the contract otherwise remain unchanged.

Yours very truly,
E. I. du Pont de Nemours Powder Co.,
By Walter G. Clark, Manager.

1642 *Emil Brechnitz—Direct*

(The reading of the deposition was continued as follows.)

Q. Counsel for defendants asked you a question concerning whether, after you left the Buckeye Powder Company the first purchase which you made of the du Pont Powder Company was under contract and you stated that it was not; will you state the circumstances and facts concerning any purchase or purchases which you made from the
1643 du Pont Powder Company before you entered into a contract with them? A. Why, about that time the mines worked briskly, being the termination of their contract, the first of April, which we didn't figure on, and before we knew it, we had a very scant supply of powder. I am not positive if I telephoned Mr. Waddell for a car or not, but if I did, it was refused, and we couldn't possibly get it there in time and I was compelled to buy powder elsewhere to keep up the trade I had at that time; I think he refused, that he couldn't, that he couldn't
1644 get it there in time.

Q. That was the first purchase? A. Yes, sir, of the Buckeye Powder Company.

Q. After you found you needed powder, then what did you do? A. After I found out I needed powder and couldn't get it at the proper time from the Buckeye Powder Company, I went to the du Pont, and I am not positive if I bought from the Austin Powder Company or from the du Pont, but at any rate, it was a small amount of powder I got from the Austin Powder Company, if I did; but after that supply ran out, I telephoned to the du Pont Powder Company for a supply.

Q. To whom did you make your application? A. To Mr. Spicer.

Q. State what occurred? A. I told Mr. Spicer

I needed powder and needed it right away, and as far as I remember, I offered him $1.05 for the powder.

Q. Did he accept that offer? A. Yes, sir.

Q. And how much did he deliver you on that order? A. I think it was either four or five hundred kegs.

Q. Now, after that order was given to them, did you make any further purchases of the Buckeye Powder Company before you entered into the 1646
contract with them? A. I think that was all I bought on the open market.

Q. Were there any other reasons at the time when you made these purchases you speak of, of other powder, why you decided to make a change from the Buckeye Powder, than those you have already stated? A. Well, as I stated before, the location of the mills was one; the convenience of getting the powder whenever I wanted it; and the price; and in order to keep the trade I had then, were the main reasons.

Q. You state in order to keep the trade you had 1647
then, what do I understand by that? A. Well, previous to that time, I was gradually losing out on the trade, and in thinking it over with my brother, I decided to tie up with the du Pont people, and in that way retain the trade we had at that time.

Q. Can you state now how many of your customers you had lost; you said you were losing out on the trade? A. You mean to ask the trade whom I sold Buckeye Powder to?

Q. Yes. A. I will begin on the railroad, on the L. & N. I sold the Valley Coal Company; I sold the Belleville and O'Fallon Coal Company; I sold the Glendale Coal Company, and I sold, but not delivered to the Kolb Coal Company—so that really was not a sale. Now, on the Southern Railroad,

1648 *Emil Brechnitz—Direct*

there was Louis Michaels. I will take the I. C. Railroad: The Hibberd Coal Company, and the Johnson Coal Company. And on the Electric, I sold Joseph Gest and also Joseph Michaelis, or rather the Superior Coal Company. And on the L. & N. Railroad, I also sold the Summitt and Fullerton Coal Company. That's all.

Q. You say you lost out with these customers, and you decided to go over to the du Pont Company after your experience. Was that the result of com-
1649 petition? A. Yes, sir.

Q. To whom did these customers of yours go, if you know? A. Well, they either went to the Phoenix or to the du Pont Powder Company to my knowledge.

Q. Did any of those companies enter into contracts with the du Pont Company to your knowledge?

By Mr. Katzenbach:

1650 Q. Would you know that from what somebody told you? A. No.

Q. Did you ever see the contract? A. No. You see, I didn't get a chance to answer the question. The only thing I knew, they were buying powder from the du Pont or the Phoenix Powder Company; that they had made a contract with the du Pont Company, I don't know.

By Mr. Abbott:

Q. And this matter of the location of the Phoenix Mill that you have spoken of, the same objection as to the location obtained during the time you were buying Buckeye Powder, as after you had left off buying Buckeye Powder, so far as the lo-

cation was concerned. A. The location was the same.

Q. How far was the du Pont mill from Belleville? A. From the city limits or from our place?

Q. Say, from your place of business? A. Seven miles, six and a half miles I think you can make it.

Q. Now, from what point did you make your deliveries of black blasting powder when you were handling Buckeye Powder? A. From our magazine.

1652

Q. And where was your magazine located? A. Within a half-mile from the city limits of Belleville.

Q. From what point did you make your deliveries of powder after you began doing business with the du Pont Company? A. Mostly all from the du Pont Mills, not all, but mostly all.

Q. Did you make any charge or profit on account of your using your magazine for handling the Buckeye powder? A. No, sir.

Q. Did you make any charge or profit or receive any benefit from the du Pont Powder Company by reason of the use of their magazines for making your deliveries? (Objection overruled.) A. Made a profit on the drayage, not on the magazine, but on the drayage.

1653

Q. What was your profit on drayage? A. It must have been between $3 and $3.25; I am not positive on that?

Q. Which way did you figure it in your calculation of your business with the du Pont Powder Company, $3 or $3.25? A. Well, I at the present time I am under the impression it is $3.25, but I may be slightly off on that; that is just as I have it in my mind at the present time.

Q. $3.25, what do you mean? A. Three and a quarter cents per keg.

Q. During the time that you were doing business with the Buckeye Powder Company, were there any changes made in the price of Buckeye Powder so furnished to you? A. From the first time I done business with them until the last?

Q. Yes. A. There was a gradual decline in the price of powder.

Q. To what was that decline due? A. To my mind it was the competition in the field.

1655 Q. You requested a reduction in the price from the Buckeye Powder Company? A. Yes, sir.

Q. Were your requests granted or not? A. They were.

Q. Did you give your reasons for requesting the price from time to time as you made your requests? A. Yes, sir.

Q. Were your requests granted or not? A. They were.

Q. Did you give your reasons for requesting the price from time to time as you made your requests? A. Yes, sir.

1656 Q. Now, Mr. Brechnitz, after you began doing business with the du Pont Powder Company in the year 1906, as you have testified, did you have any further business with the Buckeye Powder Company? A. No; after I ceased doing business with them in 1096, that was the last.

Q. Did you at any time have any further correspondence with the Buckeye Powder Company or did you make any further efforts to enter into business arrangements with them? A. I think I did.

Q. About when was that? A. Well, I suppose it must have been every time when my contract with the duPont expired; I always got into communication with the Buckeye Powder Company.

Q. Do you recall any correspondence or efforts to do business with the Buckeye Powder Company in the spring of 1908? A. Yes, sir.

Q. Did you have correspondence with them at that time concerning the purchase of black blasting powder? A. Yes, sir.

Q. State fully and in your own way how that matter came to be inaugurated and just how it proceeded. A. The way I remember it if I am not mistaken, I had an occasion to come to Springfield on some business, and I wrote Mr. Waddell that I would come and drop off at Peoria, and we talked over the price of powder, and Mr. Waddell was not inclined to make me a price on powder. I think 1658
his reason at that time was that there was an intention to sell out the mill, and, of course, that didn't suit me to any extent because I thought that this fight would come to an end sometime and that business would be more profitable later on; and we talked about the price of powder, and, as I stated before, he couldn't make a price; and later on we got together with a banker, some banker there at Peoria, and we talked over the situation; and I don't know who were the three who made mention about giving me a letter in which they named a 1659
certain price of powder, which was lower than the one I got from the duPont Powder Company. At the same time the terms of this letter to me were not to be carried out by the Buckeye Powder Company, and Mr. Waddell give me this letter to answer, or to his satisfaction to get me to vote in favor of selling out the mill, the way my recollections are just now.

Q. Have you got that letter at the present time? A. No, sir.

Q. Do you know where it is? A. I think that Mr. Spicer has that letter; at least I think he got it from my place there later on.

Q. It isn't in your possession at the present time? A. No.

553

Q. Do you know what Mr. Spicer did with it? A. Why he used it in evidence in the case of the Powder Trust, as he told me at that time.

Q. That was the case of the United States of America, Petitioner, against the E. I. duPont de Nemours & Company, et al., then pending in the United States Circuit Court for the District of Delaware? A. Yes.

Q. Now, I show you the record in that case, the defendants' record of exhibits, Volume 1, on page
1661 339, and I refer you to this exhibit, that is, defendant's Exhibit 192 (Plaintiff's Exhibit 1213) and I ask you to read it and state whether or not that is a correct copy of the letter which you have already testified to? A. That appears to be correct, to my mind.

Q. After that letter was given to you, did you have any further correspondence; did you have other correspondence with Mr. Waddell regarding this same transaction which you have testified to; when I say "Mr. Waddell" I mean the president of
1662 the Buckeye Powder Company? A. I don't catch the point just now; if you lead me into it, I can tell you.

Q. A while ago you testified you had written Mr. Waddell, stating that you were in the market for powder and that that led up to your meeting in Peoria. I want to show you a paper writing on the letter head of the Brechnitz Brothers Mercantile Company, dated Belleville, April 2, 1908, and ask you whether or not you recognize the handwriting, and, if so, whose is it? A. Yes, sir; that is my handwriting.

Q. Did you get an answer to that letter? A. Yes, sir; I got an answer to that letter.

Letter offered and received in evidence as

Plaintiff's Exhibit, filed and read to the jury as follows:

"Brechnitz Brothers, Merc. Co., Bellville, Ill., April 2, 1908. Buckeye Powder Company, Gents: I am in the market for a year's contract of powder. As I will be in Springfield between the 12th and 14th of this month I could take a run to Peoria and see you, or if you will come to St. Louis in the next week I can meet you there. Quite a few 1664
powder companies came to see me in the last few days and therefore would like to get this off my hands. Will use between 15,000 and 20,000 kegs.

Respectfully,

Brechnitz Bros. Mer. Co.,
D. B."

Q. Have you got the answer that you received at that time to the paper which has just been offered? A. I think I also gave that to Mr. Spicer. 1665

Q. Do you know where it is; have you ever received it back? A. No.

Q. I show you Defendant's Exhibit No. 193 (Plaintiff's Exhibit 1214) in the same volume of the record which I have already called your attention to; state whether or not that is a letter addressed to you by Mr. R. S. Waddell, President of the Buckeye Powder Company, under date of April 10, 1908? A. Yes; I guess that letter was written to me all right.

Q. Immediately following that, I call your attention to Defendant's Exhibit No. 194 (Plaintiff's Exhibit 1215) in the same record book, and ask you to examine the same and state whether or not that is a copy of a letter written to you by Mr. R. S.

1666 *Emil Brechnitz—Direct.*

Waddell, President of the Buckeye Powder Company, on May 13, 1908? A. That seems to me another letter.

Q. I now call your attention to Defendant's Exhibit No. 195 (Plaintiff's Exhibit 1216) on page 342 of the same book, to which I have already called your attention, and I ask you to examine the same and state whether or not that is a letter received by you from Mr. R. S. Waddell, President of the Buckeye Powder Company? A. That seems to be another
1667 letter I received.

Q. I call your attention to Defendant's Exhibit 196 (Plaintiff's Exhibit 1217) on page 343 of the same volume of the record, to which I have just called your attention, and I ask you whether or not you recognize the same as a document which you have had at any time in your possession? A. Yes, sir; I had that in my possession.

Q. With reference to Defendant's Exhibits of Nos. 192, 193, 194, 195 and 196 (Plaintiff's Exhibits 1213, 1214, 1215, 1216, 1217), which you have
1668 just examined and stated are correct copies of the documents which were at one time in your possession. I will ask you to state how those papers passed out of your possession and into whosoever possession they did pass, if you know? A. As far as I remember, Mr. Spicer asked me if I couldn't show him some of my correspondence with the Buckeye Powder Company, and, being with the duPont Company, I frankly consented to aid him in this way. I am sure I didn't expect this here, either.

Q. You gave him access to your files? A. Yes, sir.

Q. And he took from your files such papers as he pleased, did he? A. Yes, sir.

Q. You have not seen these documents from the time you turned them over until the present time,

when you examined this record? A. Not to my knowledge.

Q. They have never been received back by you? A. Not to my knowledge.

Q. I will ask you to state whether or not you have a letter dated March 13, 1905; you have such a letter? (Witness is shown letter.) A. I think I have such a letter.

(Documents offered and received in evidence as Plaintiff's Exhibits 1213 to 1217 1670
and read to the jury as follows:)

Plaintiff's Exhibit 1213.

"Memorandum made April 10th, 1908, between Buckeye Powder Company and Brechnitz Bros. of Bellville, Illinois.

Buckeye Powder Company has quoted and offered Brechnitz Bros. this date their supply of powder for one year estimated from 15,000 to 20,000 kegs, at one dollar per keg, delivered at Bellville, Illinois, in carload lots, terms 30 days or 2% discount for cash in 10 days, the above to be ac- 1671
cepted by Brechnitz Bros. on or before May 10th, 1908.

For the purpose of aiding Brechnitz Bros. in obtaining a better price from others, should they deem it desirable to use the letter for that purpose, the Buckeye Powder Company has to-day written an offer to Brechnitz Bros. of ninety-five cents per keg in carloads delivered at Bellville, the purpose being to have such letter used with other Powder Companies, and not to carry out its terms for the Buckeye Powder Company.

Signed by the parties this date.

Buckeye Powder Co.,
By R. S. Waddell, Prest.
Brechnitz Bros. Mer. Co.,
By Emil Brechnitz."

1672 *Emil Brechnitz—Direct.*

Plaintiff's Exhibit 1214.

Peoria, Illinois, April 10th, 1908.

Brechnitz Bros.,
Belleville,
Ill.

Dear Sirs:

We have not had the good fortune to share any
1673 of your business for the past year, and knowing that your contract with others expires this month or the first of next, we desire to make you an offer on your contract of 95 cents per keg in car loads delivered at Belleville, Illinois, terms 30 days or 2% discount for cash in 10 days, from date of Invoice.

We are quite anxious to enter the Belleville district and of course would prefer to do this through you. Please let us know when you will be ready to close your contract for next year.

1674 Truly yours,

(Signed) Buckeye Powder Company,
R. S. Waddell,
President.

Plaintiff's Exhibit 1215.

Peoria, Illinois, May 13th, 1908.

Messrs. Brechnitz Bros.,
Belleville,
Ill.

Dear Sirs:

At the time you called at our office about three weeks ago, the best offer you then had from the

DuPont Company through Mr. Spicer was a price of $1.10 less a rebate of 8 cents per keg, making $1.02 net. Have they made you any better offer since that time and what are the prospects of your relying on us for powder? We want to get our mills started in operation next week and desire to plan ahead to cover our requirements. I presume as the mines have not been in operation you still have a good stock of powder on storage. About how long will this stock run you. 1676

Truly yours,
(Signed) Buckeye Powder Company,
R. S. Waddell,
President.

Plaintiff's Exhibit 1216.

Peoria, Illinois, June 3rd, 1908.

Messrs. Brechnitz Bros.,
Belleville,
Ill. 1677

Dear Sirs:

In your last letter to me you stated that you expected to obtain from the DuPont Company a price of 95 cents per keg for powder delivered to you at Belleville, subject to 2% discount for cash in 30 days and you hoped to get a reply I think a week ago last Wednesday.

Did they make you the 95 cent price on these terms and have you closed your contract with the DuPont Company for your supplies for another year on this basis? If you did not obtain the 95 cent price, have you closed the contract, and if so, at what figure and terms? I hope that our competition has been of some aid to you.

I understand the mines in Southern Illinois are

1678 *Emil Brechnitz—Direct.*

not operating strongly and you are probably supplied with powder for at least another month. We found it necessary to start our mills about 10 days ago to take care of the trade that is depending on us for supplies. Will be glad if you would give my full advices of your arrangements and I hope they have been closed and are entirely satisfactory to you. If the Buckeye Powder Company cannot serve you, the determination of the DuPont Trust
1679 to shut it out of the trade is an inducement to obtain for you a heavy concession from the established prices of the Trust.

Truly yours,

(Signed) R. S. Waddell, Prest.

Plaintiff's Exhibit 1217.

Our Order 889 Peoria, Illinois Oct. 4th, 1905.
Your order—8/4/05

C. G. Brechnitz,
Belleville, Ill.,
1680

Bought of Buckeye Powder Company
Blasting Powder, Dynamite
and Fuse

Terms: Usual Folio 196

CCC CC C FFF FF F

800 Kegs	800 92 cts. per keg	736 00
	O. K.	14 72
	R. S. W. Jr.	
	Treas.	721 28
	(Mutilated)	52 80
		668 48

Via Peoria Ill. Cen
Car No. M. P. 19149

(Plaintiff's Exhibits P-67 and P-68 were offered and received in evidence and read to the jury.)

Q. I call your attention to plaintiff's identification 66, which was Defendant's Exhibit 196 (Plaintiff's Exhibit 1217) in the record to which I called your attention a while ago, and I ask you to examine the same and say what figures, if any, upon that document were made by you? A. I think this is the same bill I saw the other day with the gentlemen. 1682

Q. To whom do you refer? A. Mr. Spicer and Mr. Katzenbach—$14.72 are my figures and the $721.28 are my figures. I could tell better from the original, than from seeing it in print here.

Q. Are those all the figures that were made by you? A. For both parties concerned, I think that I really, to clear this up, ought to explain this bill here.

Q. Make your explanation in regard to that "identification 66." A. It seems to me that I originally got a bill from the Buckeye Powder Company, 800 kegs at 94c less 2% for cash, and in the meantime I wrote Mr. Waddell for a better price, and I think I received a reply from Mr. Waddell that he would change it to 92c and deduct 2% for cash. 1683

Q. Was that per cent. allowed? A. I think Mr. Waddell later on sent me a statement for $14.72.

Q. And that was paid by you? A. I had to pay it later on; yes; I was under the impression that the usual terms would be applied, but he must have had in mind to make a ninety-two cent net price.

Q. Do you recall the company known as the Dutch Hollow Coal Company? A. Yes.

Q. Was or was not that one of your customers? A. It was one of my customers.

Q. Do you recall the Little Oak Coal Company?

Q. Was or was not that one of your customers? A. Yes, sir.

(Objection overruled.) A. Yes, sir.

Q. Do you recall the Boehmer Coal Company? A. Yes, sir.

Q. Was or was not that one of your customers?

1685 (Objection overruled.) A. The Boehmer Coal Company, I didn't sell the Boehmer Coal Company, as to the Boehmer Coal Company; I sold the Michaelis.

Q. Mr. Brechnitz, in order to cover one point a little more clearly, I would like to ask you whether from time to time, you became advised of better prices and cuts in prices, which were made by your competitors, as you have testified you notified Mr. Waddell for the Buckeye Powder Company of these cuts and requested him to make a better price to you on account thereof? (Objection overruled.)

1686 A. You asked if I advised Mr. Waddell?

Q. Yes. A. Yes, I advised him.

Cross-examination by Mr. Katzenbach:

Q. Mr. Brechnitz, you have referred in your testimony to a trip that you took to Peoria, Illinois, and there you met Mr. Waddell and a banker, I think? A. Yes, sir.

Q. Do you recall whether the banker you met was Mr. Ferdinand Luthy? A. Yes, sir; I think that is the name.

Q. At that interview they desired you as a stockholder, to vote for some action to be taken by the stockholders of the Buckeye Powder Company? A. Yes, sir.

Q. And were you opposed to that action being taken? A. Yes, sir.

Q. So that it was then arranged that you should be given a letter under date of April 10, 1908, making an offer to deliver you powder at 95 cents at Belleville, Illinois, terms thirty days and two per cent. discount for cash in ten days, was it not? A. Yes, sir.

Q. And at the same time it was also agreed and arranged for, that this price was not to be binding upon the Buckeye Powder Company? A. Yes, sir. 1688

Q. It was not? A. No.

Q. And that was done in order for you to obtain a better price from other manufacturers of powder? A. Yes, sir.

Q. And this was assented to by the Buckeye Powder Company, was it not, through its office? A. Yes, sir.

Q. And this was arranged in the presence of Mr. Luthy, I take it? A. Yes, sir; but the conference came to an end, and the letter was drawn up afterwards, and Mr. Luthy came there afterwards. 1689

Q. He assented to it in the conference? A. Yes, sir.

Q. The purpose of this was to have the Buckeye Powder Company quote you a price for powder which it was not their intention to deliver to you at that price? A. Yes, sir.

Q. Now, Mr. Brechnitz, your attention was called to a printed copy of a bill dated October 4, 1905, and marked Plaintiff's Exhibit 1217; will you just take that in your hand, and state whether or not that was a bill that was originally 94 cents, and that you made the change to 92 cents? A. As I stated before, that is the case, as I have it in my recollection now.

Q. That is the case you have in your recollection? A. Yes, sir.

1690 Q. Now, then, I show you a bill dated August 29, 1905, for 800 kegs of Buckeye Powder, from the Buckeye Powder Company, and ask you whether or not that is the bill you have reference to? A. (After having been shown) "D-10 for Identification," yes, sir.

Q. Then you are mistaken, Mr. Brechnitz, in your testimony which you gave on your direct examination that that was the bill in which the change had been made by you? A. Yes, sir.

1691 Q. This is the paper? A. Yes, sir.

Q. And in this bill of October 4th, 1905, the item of $52.80, which has been deducted from the two per cent discount had been deducted, was for freight, I presume, that you had paid? A. Yes, sir.

Q. Then you had powder delivered to you in the fall of 1905, at 92 cents, less a discount of 2 per cent for cash, at your powder magazine by the Buckeye Powder Company, did you not? Well, it appears so here, but I may be mistaken; I am not positive on that point.

1692 Q. That bill refreshes your recollection, that the Buckeye Powder Company did deliver powder to your magazine at 92 cents per keg in the fall of 1905? A. As I said before, in reference—

Mr. Taylor: We will admit that we sold 800 kegs of powder to Mr. Brechnitz on October 4, 1905, at 92 cents net.

Mr. Katzenbach: We do not admit that at all.

Q. As a matter of fact, while you were dealing with the Buckeye Powder Company in the fall of 1905, the Buckeye Powder Company delivered to you powder at the magazine, at 92 cents per keg, did it not? A. Yes, sir.

Q. Now, then, in the month of March, 1906, you have referred to a conversation you had with Mr. Spicer, relative to the purchase of du Pont Powder, I think, have you not? A. Yes, sir.

Q. You have also stated that you called Mr. Spicer on the telephone? A. Yes, sir.

Q. And that owing to the shortage of powder in your magazine, you desired to purchase 400 kegs of the du Pont Powder Company? A. Yes, sir.

Q. And that the price you paid for that was $1.05 per keg? A. Yes, sir. 1694

Q. Now, then, you were the one who called up Mr. Spicer? A. Yes, sir.

Q. Now, then, your reason for doing that was because the Buckeye Powder Company could not supply you with the amount of powder you wanted? A. At that time, yes, sir.

Q. And you have also stated, I think, that there were other reasons that prompted you to desire to purchase powder of the du Pont Powder Company, have you not? A. Yes, sir.

Q. And I presume one of these reasons was that 1695
the powder was more satisfactory to many of the miners in the conditions at Belleville? A. Some places it was and some places the Buckeye Powder was not objected to.

Q. But in some places Buckeye Powder had been objected to? A. Yes, sir.

Q. Among your former customers? A. Yes, sir.

Q. And that was one of the reasons you had not been able to sell to your customers—— A. No.

Q. What was it? A. The main reason was the cut in price.

Q. You mean to say that you, as a commission man, had to have a price from a powder company and be able to sell it at an advance, is that it? A. Surely; I couldn't handle it for nothing.

1696 Q. Now there were other powder companies that called upon you during this time to sell powder? A. Yes, sir.

Q. You had calls from agents of the Equitable Powder Company, I suppose. A. I can't recall the Equitable just now, but I can recall Mr. J. L. White, and also the agent for the Barron-Halley people, Hoyt.

Q. What company did Mr. Hoyt represent? A. The American Powder Company.

1697 Q. You had representatives of the Miami Powder Company call upon you? A. That is the same as the American.

Q. And of the Egyptian Powder Company? A. No. I did have a quotation or correspondence from Kansas, from Gorham.

Q. From the Excelsior Powder Company? A. Yes, sir.

Q. Did you have any agents of the King Powder Company call on you? A. No, sir.

Q. Did you have any representative of the Aus-
1698 tin Powder Company call upon you? A. That was Mr. White.

Q. You sold powder out of your powder magazine I suppose to certain customers? A. Du Pont or Buckeye Powder?

Q. Both; the Buckeye powder you sold from your magazine? A. Yes, sir.

Q. When you sold Buckeye? A. Yes, sir.

Q. And did you ever fill any orders of du Pont Powder from your magazine? A. Yes, sir.

Q. Now, then, you had powder delivered to your magazine for 92 cents by the Buckeye Powder Company? A. Yes, sir.

Q. And after that you had powder delivered to your magazine, immediately afterwards, by the du Pont Company, at $1.05? A. Yes, sir

Q. Did you ever have any powder delivered to your magazines by the du Pont Powder Company at as low a price as 92 cents? A. Well, of course, the conditions of that are in this contract.

Q. Did you ever have any? A. On the face of it. It was not a 92-cent price.

Q. During the year 1905, couldn't these people that you have called customers of yours, like the Hibberd Coal Company and the Superior Coal Company, and the Summit and Fullerton Coal 1700
Company, buy powder from the various manufacturers in the open market as cheap as you could purchase it? A. During the year 1905?

Q. During the latter part of 1905 and the early part of 1906. A. Let's see—when did I state my first contract started with the du Pont concern?

Q. You first purchased of the du Pont concern in the month of March, 1906? A. Now, put your question to me.

Q. At the time, or immediately prior thereto, that you commenced to do business with the du Pont Company, did not these various coal com- 1701
panies which you have mentioned as your customers have by various powder companies, quotations so that they could buy powder in the open market practically as cheap as you could? A. I suppose they could.

Q. And that was a time when most of the coal companies were buying powder in the open market, were they not, from various powder companies? A. I don't know that; I suppose they could.

Q. These letters that you got from the Buckeye Powder Company which were not to be binding upon the Buckeye Powder Company were used by you in endeavoring to get a lower price for powder, were they not? A. Certainly; that's what they were for.

Re-direct examination by Mr. Abbott:

Q. Mr. Brechnitz, you stated a moment ago that on the fact of it your contract price was 95 cents, with the du Pont Powder Company, is that correct? A. Yes, that's right.

Q. Now, what did you mean by on the face of it? A. Well, of course, I figured that the drayage to me had to be taken into consideration as far as price was concerned; I received a drayage when-
1703 ever I made a delivery of a load of powder.

Q. What did that amount to? A. Between three and three and one-quarter cents.

Q. And you figured that that entered into the cost of the powder to you? A. Yes, sir.

Q. How did you arrive at your conclusion, that the price which you obtained from the du Pont Company was a better price than the price which you had been receiving from the Buckeye Powder Company. (Objection overruled.) A. Why, if I take 100 kegs of powder to a mine out of my maga-
1704 zine with Buckeye Powder, I would say I am making $8 on this trip to the mine, the difference between 92 cents and a dollar; if I get an order from this same mine for du Pont Powder, I am taking this powder from the du Pont magazine and hauling it to this mine, on which I am making $5, the difference between $1 and 95 cents, and three or three and a quarter dollars, making a profit on that trip of $8 or eight and a quarter.

Q. Did you get any discount for cash on your arrangement with the du Pont Company? A. Two per cent cash.

Q. And as I understand it, your price for Buckeye powder was 92 cents net? A. That is what is in my mind.

Re-cross examination by Mr. Katzenbach:

Q. Mr. Brechnitz, when there was a bill rendered to you by the du Pont Powder Company for powder under this contract which you have spoken of, as having been at 95 cents per keg, was the bill rendered to you for 95 cents per keg, whether you were the drayman or not? A. The bill was rendered at 95 cents.

Q. And then, did you render bills to the du Pont Company for any drayage that you would perform 1706
for the du Pont Company? A. Yes, sir.

Q. And they would pay you for that drayage? A. Yes, sir.

Q. Now, then, if the drayage, if you desired 100 kegs of du Pont powder delivered to your magazine, and the du Pont Company delivered it there without your teams hauling it, what was the price? A. 95 cents.

Q. Now, then, will you say that during the year 1906 that the amount of drayage per keg was not three cents? A. As I stated I am not positive on 1707
that.

Q. The bills which you rendered to the du Pont Company for drayage would determine that, would they not? A. They would.

Q. Are you not mistaken when you say that the bills from the Buckeye Powder Company were not subject to two per cent discount for cash? I. read from a letter of March 13, 1907, which you have stated was signed by Mr. Waddell, and addressed to Mr. C. G. Brechnitz, Belleville, Illinois, in which the statement is made: "Our rate of freight is 6¾ cents per keg, and the best we could do would be 92 cents per keg delivered at Belleville, subject to two per cent discount for cash?" A. When was that written?

Q. Do you recall that? A. Since I made that one mistake, I want to be a little more careful.

Q. I want to test your memory; will you state whether or not that is so? A. Yes, I think I recall receiving that letter.

Q. Will you say your never got the benefit of two per cent discount for cash from the Buckeye Powder Company? A. As I have it in my mind, sometimes they made a net price to me and sometimes they made a price and allowed a discount.

1709 Q. Now, then, I think you stated, did you not, on your direct examination, that one of the reasons which influenced you to desire to procure powder from the du Pont Powder Company was the irregular deliveries of the Buckeye powder and their inability to furnish you powder at the time? A. Sometimes I had to wait for the powder.

Q. And you thought it was more convenient for you to get it at the Belleville plant? A. More convenient; yes, sir.

Q. And that was the real reason why you made
1710 the change, was it not, because it was more convenient for you? A. The real reason was, that I wanted to keep the customers.

Q. And you could keep them better with the du Pont powder than the Buckeye? A. I am not complaining about either one.

Q. But you thought you could keep them better with the du Pont than Buckeye? A. No, I wouldn't say that.

Q. Then why did you change to du Pont? A. As I stated before, I didn't care about losing the trade I had, because of this competition in the price, I nearly had to get out of the business.

Q. After you purchased Buckeye powder, were you induced in any way by the du Pont Powder Company or any of its agents or representatives

to cease the purchase of powder from the Buckeye Powder Company? A. No.

Q. You have spoken of the Kolb Coal Company as being one of your customers; didn't the Kolb Coal Company cancel an order for Buckeye powder, by reason of the failure of the Buckeye Company to deliver it? A. Yes, sir.

Re-direct examination by Mr. Abbott:

Q. I show you the letter dated March 13, 1907, 1712
concerning which counsel for the defendants interrogated you a few moments ago, marked as Plaintiff's Exhibit 67, and I ask you to look at the name and state whether or not you were doing business with the Buckeye Powder Company at that time? A. No, sir; I was not doing business with them at that time.

Q. Now, in answer to the last question which was propounded to you by counsel for the defendants, which you answered in the negative, how did you arrive at that conclusion? (Stenographer repeats the question) A. I answered "No;" there was no 1713
one come and induced me to quit buying from the Buckeye.

Q. Do I understand you to mean that no one came and personally asked you to stop buying? A. Yes, sir.

Q. But you don't wish to retract anything you said about these other methods as to competitive prices? (Objection overruled) A. Those were the main reasons.

1714 *Emil Brechnitz—Recalled—Direct*

Deposition of EMIL BRECHNITZ, a witness recalled on behalf of the Plaintiff, was read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Brechnitz, at the time when you gave your former testimony in this matter, I neglected to ask you the question with regard to the number of kegs of powder which you purchased from the du Pont Powder Company after you ceased doing business
1715 with the Buckeye Powder Company. Will you kindly state now how many kegs of powder you have purchased from the du Pont Powder Company of du Pont powder since you ceased doing business with the Buckeye Powder Company? A. Now, let's see—

Q. Down to September 19, 1908? A. Now, the number of kegs that I purchased for myself I think amounts to about 8,000 kegs.

Q. Have you made any other purchase of anyone else, under your contract with the du Pont Powder
1716 Company, during that period? A. The Prairie Coal Company was included in my contract, although they bought direct.

Q. Under your contract with the du Pont Powder Company? A. Yes, sir.

Q. And you receive the same commission on powder which was purchased by the Prairie Coal Company as you do for powder which is purchased by yourself? A. I think you are getting that a little bit too complicated for me. I really don't recollect; I had a contract with the du Pont Powder Company, and just at the present moment I don't know whether they made me a net price without commission, or made me a price with commission; but at any rate, I received a commission on powder they billed to the Prairie Coal Company.

Q. You received that on the total number of kegs which you purchased from the du Pont Powder Company after you ceased doing business with the Buckeye Powder Company, down to September 19, 1908? A. I received the commission they billed to the Prairie Coal Company under my contract.

Q. What was the total number of kegs that you bought in your own name from the du Pont Powder Company and that was sold to the Prairie Coal Company on your account? A. Somewhere between twenty-two and twenty-three thousand kegs of powder was the total amount of powder. 1718

Q. Did you buy powder that was used by the Prairie Coal Company from the Buckeye Powder Company previous to your going over to the du Pont powder? A. Yes.

Q. How was that powder billed at that time? A. I billed that.

Q. So that when you went to the du Pont Powder Company you simply changed the manner of billing the powder which you received on behalf of the Prairie Coal Company? A. That's all. 1719

FRANKLIN W. OLIN was called for plaintiff, and, having been duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Olin, where do you reside? A. Alton, Ill.

Q. How long have you resided at Alton? A. Since 1902—I beg your pardon, 1892.

Q. 1892. What is your business, and what has been your business while residing at Alton? A. I have been engaged in the manufacture of powder and ammunition, and powder-making machinery.

Q. What particular company have you been operating at East Alton? A. The company I have been connected with the longest time there is the Equitable Powder Manufacturing Company.

Q. When was the Equitable Powder Manufacturing Company organized? A. I should say late in the year of 1891.

Q. Since you have been engaged—this Equitable Powder Manufacturing Company is engaged in manufacturing black blasting powder, I believe? A.
1721 Yes, sir.

Q. And has been during the entire period of its existence? A. It has at various times manufactured rifle powder.

Q. Do you know anything about an organization which was sometimes called the Gun Powder Trade Association, or an association between the explosives manufacturers? A. I know of an organization or association of the powder manufacturers, but I would not be able to state definitely that it was the Gun Powder Association.

1722 Q. What did you understand the name to be of that association; what was it called? A. Well, it was changed from time to time, as I recall the history, and I cannot give you the various names, but originally I understood it was called the Gun Powder Association.

Q. Yes, and how long did it continue to be known by that name? A. Well, my last knowledge of it was in 1903.

Q. Was the Equitable Powder Company a member of the association at any time? A. Yes, sir.

Q. When did it become a member of the association? A. Late in the year of 1896.

Q. Do you know anything about a system of rules or regulations which served to regulate the business of that association, known as the Compendium of

Rules? A. Why, I recall that they had a Compendium of Rules.

Q. Did you yourself ever have a copy of that document? A. I think we did.

Q. Have you got such a copy now? A. No, sir.

Q. What became of it, if you know? A. Well, I am not able to state definitely, but we lost our office by fire in 1900, and lost nearly all our records, and I am of the opinion that it was burned up in that fire.

1724

Q. Did you at any time receive any record or memoranda of any sort, concerning what was transacted at the various meetings of this association? A. We used to receive minutes of the transactions.

Q. Have you any of those minutes now? A. No, sir.

Q. From whom did you receive the minutes? A. Why, generally I think Edward Green was the secretary of the organization, during the greater part of our connection with it.

Q. During the time that you were a member of 1725
the association—that your company was a member of the association—did you at any time ever make application to the association for the privilege or permission to enter into contracts with your various customers? A. I think so.

Q. Can you recall of your independent recollection whether or not you made any such applications for such contracts as you made? A. Not specifically; no, sir.

Q. Did you make on or about the 15th day of February, 1900, through the permission and authorization of the association, a contract with the Big Muddy Coal & Iron Company of St. Louis? A. The Big Muddy Coal & Iron Company have been customers of ours for a long time, but I could not

say in what manner we applied for permission to make a contract.

Q. If you made a contract with them at this time that I have indicated—you were a member of the association, were you, at that time? A. In 1900?

Q. Yes. A. Yes, sir.

Q. Did the Compendium of Rules—of the rules which governed that association—require that before you made contracts with your customers, you should make application for permission? A. Not

1727 necessarily that we should.

Q. Not necessarily? A. No.

Q. What were the conditions under which you could make contracts without applying to the association? A. It was customary for the members to report any contracts that they made to the association, but not necesary to obtain permission to make the contract.

Q. Was it necessary to obtain authorization or ratification after the contract was made? A. It was customary for contracts to be ratified by the

1728 association, but it was left to each member to conduct his business, so far as making the contract or not making it, or at the price they would make it, as somewhat their own discretion.

Q. Now, then, suppose you made a contract without the authorization of the association, was there any penalty attached to the making of such contracts? A. Not in the connection of making the contract; no, sir.

Q. But suppose there was some violation of the rules of the association concerned in making that contract, then would there be a penalty attached to the making of the contract? (Objected to and objection overruled.) A. I would not say that it would be in violation of any rule.

Q. I will ask you to say whether or not there was

any regulation in any way by the association which affected the amount of sales that you could make within a given period to your customers? A. No, sir.

Q. Was there any provision with reference to undersales or oversales? A. Yes, sir.

Q. To a certain stipulated amount? A. Yes, sir.

Q. Now, then, if you oversold a certain amount, the amount which was allotted to you, was any penalty attached to that? A. Yes, sir.

Q. What was that penalty? A. It varied from 1730 time to time.

Q. Did you at any time, during the existence of your membership in the association, make any payments to the association on account of oversales? A. Yes, sir.

Q. Do you know what was the total amount—or when those payments were made, and what the total amount was? A. I cannot remember the date of the payments.

Q. I show you Government's Exhibit No. 216, Volume 4, of Petitioner's record of exhibits in 1731 what is known as the Government case, and ask you to examine that, and state whether or not you had anything to do with that document.

A. I should say that this is a copy of a statement that we supplied at our office.

Q. And do you recall whether or not you furnished that to the Government at that time? A. I think I did.

Q. Will you state generally what that relates to? A. This shows the different amounts that we paid at various times to the association on account of overselling our quota.

(The paper offered and received in evidence and marked Plaintiff's Exhibit No. 1222, of this date.)

1732 *Franklin W. Olin—Direct*

Mr. Abbott: Your Honor, this statement shows that from April 8, 1897, to February 24, 1904, inclusive, the Equitable Company paid out as penalties $105,734.46, and received as receipts for undersales $11,761.36.

Q. Now, was there anything in any of the terms of the contracts which you made with your various customers that were in any way regulated by the association? A. I think not.

1733 Q. In matters of terms you were to act independently? A. Yes, sir

Q. Have you any of those contracts at the present time, Mr. Olin? A. I cannot say without searching. I should think it rather doubtful, as our records in 1905 were under water, the greater part of them, and were destroyed by that means, and at the time of the Government case I was unable to find but very few of the papers that they asked for.

Q. To the best of your knowledge, then, all of these original contracts have been destroyed, they

1734 are not accessible? A. I might be able to find some, but I am not positive about that.

Q. Do you recall whether you had a contract during the period that the Equitable Company was a member of the association with the Kansas & Texas Coal Company of Missouri? A. I think so.

Q. And the Madison Coal Company of St. Louis, Missouri? A. Yes, sir.

Q. And the Mowequa Coal & Manufacturing Company of Mowequa, Illinois? A. Yes, sir.

Q. The Sorento Coal & Mining Company of Sorento, Illinois? A. Yes, sir.

Q. The Scripps Coal Company of Astoria, Illinois? A. I should say that they were one of our contract customers.

Q. The Tavern Rock Sand Company, Klondike, Missouri? A. Yes, sir.

Q. The Rich Hill Coal Mining Company of Rich Hill, Missouri? A. Some of their mines were under contract with us, not all of them.

Q. Do you recall any of the terms of any of those contracts? A. Not definitely; no, sir.

Q. Did you have any knowledge of the company known as the Phoenix Powder Manufacturing Company? A. Yes, sir.

Q. Was that company at any time a member of the association? A. Yes, sir.

Q. What relation, if any, did you sustain to 1736
that company during the time it was a member of the association? A. I was president of the Phoenix Company for seven years, and during that time it was a member of the association. I don't know after I severed my connection with it as to whether it continued or not.

Q. When did you sever your connection with it? A. I offered my resignation April 1, 1903.

Q. Then for seven years previous to that, to your knowledge it was a member of the Association while you were president of it? A. Yes, sir. 1737

Q. Do you know whether that company made any contracts through the authorization of the Association?

A. The Phoenix Company made their contracts in the same manner as the Equitable. They were at liberty to make contracts with their customers as they saw fit, and would report those contracts generally to the Association.

Q. And were they bound by the same rules as to oversales and undersales? A. Yes, sir.

Q. And they were compelled to make payments, and to your knowledge did they make any payments during that period? A. In the early part of my connection with them they were undersellers.

Q. Then they received money instead of paying money? A. Yes, sir.

Q. During the latter part of your connection how was it? A. They were oversellers to some extent.

Q. In that case they made payments on account of their oversales? A. Yes, sir.

Q. Do you recall what the penalty was per keg for an oversale? A. I cannot.

Q. Can you recall what the profit was, if you must call it such, for being an underseller, per keg? A. No, sir.

1739 Q. Do you have any recollection of any contracts that the Phoenix Company made with any of its customers during that period? A. It would be pretty hard for me to name the customers now.

Q. I will ask you if you know anything about Davidson & Fulton, Sparta, Illinois? A. I cannot identify them as customers of the Phoenix.

Q. Do you know anything about the Western Anthracite Coal & Coke Company at Duquoin, Illinois? A. The name is familiar to me as a coal operating company in Southern Illinois, but I know nothing in detail of their relation to the Phoenix.

1740 Q. The Illinois Fuel Company, Sparta, Ill.? A. No, sir.

Q. Do you know anything about an agreement called the "Foreign Agreement," or the "European Agreement"? A. I recall something of the history of hearing of that agreement.

Q. Did you have anything to do with any matter connected with the agreement known as the "Foreign Agreement"? A. Yes, sir.

Q. What was that? A. I cannot give you the details of the agreement, I don't know that I ever saw the agreement.

Q. I know, but what part was it—what did you have to do with that agreement? A. I think that we paid certain sums under what we understood was an agreement.

Q. Known as the "Foreign Agreement"? A. Yes, sir.

Q. To whom did you make those payments? A. I think originally to Eugene du Pont.

Q. Afterwards to whom? A. T. C. du Pont, as I recall it.

Q. Have you any memoranda at the present time, which would enable you to state what amount you paid on account of the "Foreign Agreement"? A. I think those amounts are in our books.

1742

Q. I show you Government Exhibit 215 in Vol. 4 of Petitioner's record of exhibits, and also Government's Exhibits 218 to 225 inclusive, and ask you to state whether or not those documents have any reference to payments which you made to either of the parties whose names you have given, on account of the "Foreign" or "European" Agreement? (Objected to and objection sustained.)

Q. Do you know anything about those documents, the numbers of which I have read to you, Mr. Olin? A. May I ask what the numbers of the exhibits are? I have 215 before me.

1743

Q. All of them right along there, 218 to 225, inclusive. A. I recognize these exhibits. 215 is a statement of the amounts that we paid to Eugene du Pont or T. C. du Pont.

Documents offered and received in evidence and marked Plaintiff's Exhibits 1223, 1224, 1225, 1226, 1227, 1228, 1229 and 1230, respectively, and read to the jury as follows:

1744 *Franklin W. Olin—Direct*

The Equitable Powder Manufacturing Co.,
Powder Manufacturers.

East Alton, Ill., Dec. 15, 1908.

Mr. F. W. Olin, President,

Addressed.

Dear Sir:—

1745 Relative to letters relating to European agreement I am unable to find anything in our files pertaining to this matter. I did find, however, in looking over our accounts that we have made the following remittances which are chargeable to this particular account:

March 8, 1898	$ 261.60
Sept. 27, 1899	656.83
Sept. 29, 1900	1202.94
" 30, 1901	1348.82
" 25, 1902	1031.78
1746 Oct. 15, 1903	291.81
Sept. 29, 1904	449.05
Nov. 11, 1905	826.06
	$6068.89

Yours truly,

(Signed) J. H. Moulton,
Sec'y.

Wilmington, Del., Sept. 11, 1900.

Mr. F. W. Olin, Presdt.,

Equitable Powder Mfg. Co., St. Louis, Mo.

Dear Sir:—

It is necessary that I make a remittance to Europe on the 3rd Proximo, and in order that the funds may be in my hands, I will be much obliged to you if you will, at your earliest convenience, send me the proportion due by your company on Black 1748
Powder; namely, $1202.94.

Yours very truly,

(Signed) Eugene du Pont,
Chairman.

Sept. 13, 1900.

Mr. Eugene du Pont,

Wilmington, Dela.

Dear Sir:—

Yours of the 11th in reference to remittance for 1749
the respective proportions on foreign matters received, and the same will have prompt attention. On account of the loss of our office by fire on Sunday night, and the loss of three wheel mills last night, I will have to ask for a little time in which to give attention to this matter, but will have the funds reach you before the third proximo. The matter of office fire and wheel mill explosion will be more fully discussed when I see you. The former was due either to railroad sparks or spontaneous combustion, and the latter to loose bolt in the wheel mill.

Yours truly,

President.

1750 *Franklin W. Olin—Direct*

Wilmington, Del., 20 Sept., 1900.

The Equitable Powder M. Co.,

Mr. F. W. Olin, Psdt.,

East Alton, Ill.

Dear Sir:—

1751 Your letter of 18th instant has been received, enclosing N. Y. exchange for $1202.94 to pay your Company's proportion of matter referred to in my letter of 11th instant.

Yours truly,

(Signed) Eugene DuPont,
Chairman.

Sept. 18, 1900.

Mr. Eugene DuPont,

1752 Wilmington, Dela.

Dear Sir:—

With this you will find New York draft for $1202.94 in response to yours of September 11th.

Yours truly,

President.

E. I. DuPont de Nemours & Co.,

(President's Office.)

Nov. 6, 1905.

The Equitable Powder Manufacturing Co.,
East Alton, Illinois.

Gentlemen:—

We have not as yet received your check for $826.06 which is now a month over due and about which we have written several letters. I presume you have overlooked this. We would thank you for remittance. 1754

Yours very truly,

(Signed) T. C. DuPont,
Chairman.

E. I. du Pont de Nemours & Co.,

(President's Office.)

Wilmington, Delaware, Oct. 18, 1905. 1755

Equitable Powder Mfg. Co.,

East Alton, Ill.

Gentlemen:—

I have not as yet received remittance from your Company for the amount due for the year 1904 to the European Companies about which I wrote you under date of Sept. 11th. The amount due from your Company is $826.06.

Yours truly,

(Signed) T. C. DuPont,
Chairman.

1756 *Franklin W. Olin—Direct*

E. I. du Pont de Nemours & Co.,

(President's Office.)

Wilmington, Delaware, Nov. 13, 1905.

Equitable Powder Mfg. Co.,
East Alton, Illinois.

Gentlemen:—

I acknowledge receipt of your favor of the 11th instant enclosing New York Draft for $826.06.

1757

Yours truly,

(Signed) T. C. DuPont,
Chairman.

Q. You are at the present time, I believe, connected with the company known as the Western Powder Manufacturing Company? A. Yes, sir.

Q. Located at Edwards, Ill.? A. Yes, sir.

Q. Do you have any other plants at which black blasting powder is manufactured except the Equitable and Western Powder Manufacturing Company? A. The Equitable have another plant——

1758

Q. I mean the Equitable Company? A. The Egyptian Powder Company.

Q. What plants are they that the Equitable Company is interested in? A. The Equitable owns the plant at East Alton, Ill., and the one near Fort Smith, Ark. The Egyptian owns the plant in Williamson County, near Marion, in Southern Illinois, and the Western Powder Company's plant.

Q. Do you have any interest in what is known as the United States Powder Company's plant? A. Not personally.

Q. I mean the Equitable Company? A. Yes, sir.

Q. About what per cent of the total of that company does the Equitable have an interest? A. A little over 30 per cent.

Q. Now, do you know a concern known as the Western Cartridge Company? A. Yes, sir.

Q. Does the Equitable Company have any interest in that? A. No, sir.

Q. Do you personally? A. Yes, sir.

Q. How long have you had that interest? A. Since the company was organized, I think in 1896.

Q. Does either, or has either the Equitable at Alton, or the Equitable at Fort Smith, or the Egyptian, or United States or the Western, ever furnished any powder to the du Pont Powder Company? 1760 A. Some of those companies that you name have furnished powder to the du Pont Powder Company.

Q. Will you state which ones? A. The Equitable and the Western.

Q. Now, did either of those other companies furnish any powder to any other manufacturer of powder, any other company engaged in the manufacturing and selling powder? A. Yes, sir.

Q. What other companies? A. The Equitable sells powder to the Austin Powder Company, the 1761 American Powder Company, Independent Powder Company; and the Western supplies powder to the American Powder Mills, to the Egyptian, to the Equitable, and du Pont.

Q. Have you any information at hand as to the total amount of kegs of powder that you have supplied on the order of the du Pont companies, from the Western Powder Company's plant? I have recently had some information compiled, I don't know—I think I gave that information to you, Mr. Abbott.

Q. Will you look at this and see if that is a copy? A. This is a statement prepared at my request showing the amount of powder that had been sold to the du Pont Powder Company.

Q. That was prepared from the books in your office? A. Yes, sir.

Q. By whom? A. The bookkeeper. I requested the manager to have the bookkeeper prepare the information, and that is the statement that the manager game me in answer to my request.

Q. You have examined the statement yourself? A. Yes, sir.

Q. To the best of your knowledge and belief, is it a true statement? A. I should say so.

1763

(Offered and received as an exhibit and marked Plaintiff's Exhibit 1232, as follows:

Statement showing powder manufactured by Western Powder Manufacturing Company, at Edwards, Illinois. From date of purchase, September, 1908, to December 31, 1912, as follows:

Month	1908	1909	1910	1911	1912
Jan.		17453	21165	19963	23459
Feb.		18701	17823	17252	22050
1764 Mar.		22115	21304	21509	23359
Apr.		16205	14318	0	9503
May		0	0	0	0
June		0	0	9560	0
July		0	0	0	0
Aug.		0	17936	0	5067
Sept.		0	20353	18760	11523
Oct.		0	19352	22442	19691
Nov.	10686	6010	20005	18581	20124
Dec.	15336	17752	17175	18667	16657
Total	26022	98236	169431	146734	151433

(The months where it is shown nothing made, were not operating.)

STATEMENT OF POWDER SOLD TO THE DU PONT COMPANY.

Year	No. Kegs	
1909	16905	First delivery made to
1910	46403	the du Pont Company
1911	18000	March 12th, 1909,
1912	41686	seven cars, 5,000 kegs.

Q. Now, do you know anything about whether 1766
your company has sold powder, black blasting powder—I mean the Western Powder Manufacturing Company—has sold blasting powder to the firm of Applegate & Lewis? A. I believe that concern is a customer of the Western, or has been.

Q. Do you know when they began to be customers? A. No, sir.

Q. Can you say whether it was during the year 1909? A. The name is familiar to me as customers of the Western Powder Company, but I cannot tell you the specific dates of any of the sales to the 1767
company.

Q. Have you sold any black blasting powder to the Clark Coal & Coke Company? A. I believe so.

Q. To A. Reents & Brother? A. I think so.

Q. To the Spoon River Coal Company? A. Yes, sir.

Q. To the North Western Coal & Mining Company? A. Yes, sir.

Q. To the Winters Coal Company? A. I am not sure of the Winters Coal Company.

Q. The Big Creek Coal Company? A. Yes, sir.

Q. Now, does the E. I. du Pont de Nemours Powder Company have any interest in the Equitable Powder Manufacturing Company? A. Yes, sir.

Q. What is the interest which it has in the Equitable Powder Manufacturing Company? A. They own 490 shares of the 1,000 total issue.

Q. When did they acquire that interest first? A. To the best of my recollection in the latter part of the year 1896.

Q. Have they continued to hold that interest down to the present time? A. Yes, sir.

Q. Were any of the members or officers of the
1769 E. I. du Pont de Nemours Powder Company at any time members of your Board of Directors? A. I am not positive of their connection with the du Pont Company; some of the men that I have assumed were associated with du Pont are members of our board.

Q. Will you give me the names of such persons as you have assumed were members of the du Pont companies that have at any time been members of your board? A. Charles L. Patterson and J. A. Haskell. Whether Mr. Haskell is connected with du Pont or not, I do not know.

1770 Q. How long has Mr. Patterson been a member of your board? A. I think five to six years to the best of my recollection.

Q. How long has Mr. Haskell? A. A longer time, 10 or 12 years.

Q. Have you a letter from the vice-president of the E. I. du Pont Powder Company to F. W. Olin dated November 18, 1908? A. Yes, sir.

Q. Will you produce it? A. (Letter produced.)

(Said letter marked for identification No. 1240.)

Q. Mr. Olin, did or did not you write a letter to Charles L. Patterson, vice-president, at Wilmington, Delaware, under date November 21, 1908, on

behalf of the Western Powder Manufacturing Company, and signed by F. W. Olin, president? A. I would not want to speak specifically, without identifying what might have been said. I do not remember the date of any of the correspondence as far back as that. 1771

Q. Before pressing that question, I will refer you to Plaintiff's Identification 1240, which you have already identified, and ask you to state whether that letter came to you in due course? A. Yes, sir; it did. 1772

(Letter offered and received in evidence, and read to the jury as follows):

E. I. du Pont De Nemours Powder Company
Wilmington, Delaware.
Vice President's office.

Address reply to

Drawer 1001, Wilmington. 1773

November 18th, 1908.

Personal

Mr. F. W. Olin, President,
Equitable Powder Mfg. Co.,
East Alton, Illinois.

Dear Sir:

File SD—8993—WD.

In confirmation of our interview in New York, I understand that the arrangement agreed upon is that we are to purchase at least 75,000 kegs of blasting powder a year from the Peoria mill, and have the privilege of taking 100,000 kegs if we want them, and the price to be paid for this powder is to

be 95c. a keg for 1-4 of our purchases and 97 1/2c. a keg for the balance, both prices being f. o. b. mill.

The arrangement to continue in effect for one year and thereafter indefinitely subject to a reasonable notice from either side of a desire to cancel it.

Will you kindly advise me if the foregoing is in accord with your understanding? If so, will you please suggest what notice you think would be reasonable to be given by either side in the event of wishing to terminate the arrangement? Will you
1775 also advise the date upon which you would like the arrangement to begin? I would add that it is my understanding that we will not be expected to take the uniform amount each month, but that the amount ordered per month may be varied to suit the requirements of our business, so long as our total orders for the year do not fall below 75,000 kegs, or over 100,000 kegs.

Yours very truly,

Charles L. Patterson,
1776 Vice President.

Q. Now, did you, Mr. Olin, at any time make a reply to that letter? A. I think so.

Q. Have you that reply at the present time? A. No, sir.

Q. What did you do with it? A. I was not able to find the reply in our files.

Q. Do you know what you did with that at any time? A. Not positively; no, sir; I am under the impression that that came up in the Government suit, and I have no record that indicates that the letter was taken out of the file.

Q. Now, will you look at Government's Exhibit 386, in the Government's suit, and state whether or not that is the document, the letter which you

wrote at that time? Let me see the original letter, please.

Q. (Letter handed over.) A. I should say that that is the reply to a letter of November 28th.

Q. Did or did not you furnish that to the Government? A. I am not positive; I think so.

(The letter referred to was offered and received in evidence and marked Plaintiff's Exhibit No. 1241, and read to the jury as follows: 1778

"Western Powder Manufacturing Co.
Manufacturers of specialties in
Blasting, Mining and Gun Powders

Mining Powder (Star) Brand — Received Nov. 22, 1908 Room 523.

General and sales office: Peoria, Ill.
Works: Edwards, Ill.
("Great Western") 1779

November 21st, 1908.

Chas. L. Patterson, V. P.,
Wilmington, Dela.

Dear Sir:—

Replying to your letter of November 18th, file S D—8993, I think the same fully covers our understanding and agreement as formulated in New York.

I should say that three months' notice might be considered as a reasonable time for either party to adjust themselves to new conditions—if the contract was to be terminated. We will be in position to supply you with powder in the near future as,

assuming that this matter is now closed, I have ordered a car of du Pont kegs, the same as we formerly manufactured for you and shipped to your Belleville Mill, for powder to be manufactured and shipped to Peoria. If this is not satisfactory, please advise.

Yours truly,

Western Powder Mfg. Co.,
(Signed) F. W. Olin,
1781 President.

FWO/S
Wm. Coyne 2/26/09."

Cross examination by Mr. Button:

Q. When your company joined the association in 1906, Mr. Olin, was that association governed by some written agreement, do you recollect? A. That was signed by the Equitable Company.

Q. Well, was there a written agreement either
1782 signed, or that governed the activities of the Association? A. I could not say that there was any agreement.

Q. Well, did the Equitable Association, the Equitable Powder Company, ever sign what was known as the "Fundamental Agreement," an agreement that is claimed to have been executed in 1889? I will show you a copy of that agreement, Plaintiff's Exhibit No. 1116, purporting to be signed by various people. The Equitable Powder Company never signed that agreement, did it? A. I don't think that my company ever had anything to do with this agreement.

Q. If there was an association that you joined, it was some other association than the one that is mentioned in this agreement? A. I think so.

Q. This agreement mentions the Board of Trade; is the Board of Trade connected with any Association you have anything to do with? A. Not that I recall.

Q. Which company acquired the stock of the Egyptian Powder Company? A. The Equitable Powder Manufacturing Company.

Q. Did it acquire more than a majority, more than half? A. Yes, sir.

Q. And what was the date? A. The early part of the year 1907. 1784

Q. Did the du Pont Powder Company have anything whatever to do with that acquisition? A. No, sir.

Mr. Abbott: What acquisition are you inquiring about?

Mr. Button: The Egyptian Company.

Q. Did the du Pont Company, or any one connected with that company know that you intended to acquire that stock? A. No, sir. 1785

Q. Did you conduct personally negotiations for the purchase of Egyptian stock, Mr. Olin? A. Yes, sir.

Q. Did you disclose your purpose to any one connected with the du Pont Company? A. No, sir.

Q. Did you keep those negotiations secret, Mr. Olin? A. Yes, sir.

Q. Was any suggestion ever made to you by the du Pont Company or anybody connected with it? A. None whatever.

Q. Asking you to purchase that stock? A. None whatever.

Q. Now, in reference to the interest of 30 per cent. of the stock of the United States Powder

1786 *Franklin W. Olin—Cross*

Company, when was that acquired by the Equitable, approximately? A. A little later in the year 1907, about the same time in 1907 as I acquired the Egyptian.

Q. Did you negotiate for the purchase of that stock personally? A. Yes, sir.

Q. Did you disclose your purpose in that regard to the du Pont Company, or any one connected with it? A. No, sir.

1787

Objected to on the ground that it was not cross examination. Objection overruled. To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

1788 Q. And likewise, did you keep those negotiations secret until they were consumated? A. Yes, sir.

Objected to on the ground that it was not cross examination. Objection overruled. To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

Q. The Western Powder Company was known as a concern that is organized, was it not? A. Yes, sir.

Q. Has the du Pont anything to do with the stock ownership of that concern? (Objection overruled.) A. I think the du Ponts have some of the preferred stock.

Q. Have they anything to do with the management? A. Nothing whatever.

Q. Never did have? A. No, sir.

Q. In reference to the stock ownership of the du Pont Company in the Equitable Powder Company, I understand that is 49 per cent? A. Yes, sir.

1790 Q. I desire to ask you as to the individual holders of the other 51 per cent, Mr. Olin, but I would like to have you state, if you have no objection, as to whether that 51 per cent is held by a very few individuals? A. Very few.

Q. And is that 51 per cent of stock harmonious in its action in reference to the control of the Equitable Powder Company? A. Entirely so.

Q. And has it been since the organization? A. Always been.

Q. And has that stock interest of 51 per cent always controlled the Equitable Company and its 1791 policies? A. Yes, sir.

Q. How many directors have the du Pont interests on the board? A. Two.

Q. How many of your interests? A. Three.

Q. Are there frequent directors' meetings, at which these two directors attend? A. No, sir.

Q. In a general way how often are those meetings held? A. The last meeting was subsequent to the annual meeting in February last.

Q. Now, in the practical operation of your company, and I refer to the period from its organization down to September, 1908, did the du Pont Company or any of its officers, as a matter of fact, ever dictate any policy of the Equitable Powder Company? A. No, sir.

Q. Did they ever have anything whatsoever to do with the prices at which you sold your product to any customer? A. No, sir.

Q. Did they know how much you were charging for your powder to various customers? A. Only as they could get it from the customers.

Q. You never told them? A. No, sir.

Q. And they were not consulted? A. No, sir.

Q. Was any arrangement whatsoever made with
1793 the du Pont Company as to a division of trade in reference to your customers, of the Equitable? A. No, sir.

Q. That was entirely managed by yourself and the other internal officers of the company, was it not? A. Myself, principally.

Q. Where are the executive offices of the company located, Mr. Olin? A. The two that were referred to—C. L. Patterson, I think——

Q. I mean the offices? A. Their principal offices are at East Alton, Illinois.

Q. And is it from that office that the sales are
1794 made and prices fixed, and customers attended to? A. Yes, sir.

Q. And of course the du Pont Company has no representative there and never did have? A. No, sir.

Q. Now in reference to the furnishing of powder to the various companies, is it customary, in business, in case of an explosion or otherwise, for one powder company to apply to other standard companies to help them to furnish powder for their customers?

Objected to on the ground that it was not cross examination. Objection overruled. To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

Q. Will you read the question? (The stenographer repeated the question.) A. Yes, sir, it is customary.

Q. And in case there is time enough to do it, has it been customary ever since you were in the business, to pack the powder in kegs for the purchaser? 1796
A. It has always been the custom to do that, if there was time to get the kegs delivered.

Q. Now, in one of these letters, Mr. Olin, I think the letter that you wrote to Mr. Patterson, you say that you will pack the powder in the du Pont kegs, similar to those that have theretofore been furnished. In that regard, I expect you run a keg factory, do you not, in Illinois? A. We have keg manufacturing machinery at our different powder plants and manufacture kegs for some other companies. 1797

Q. And the explanation of that reference is that you had theretofore on occasion sold kegs to the du Pont Company under order? A. Yes, sir.

Q. I suppose you have sold these kegs to other companies besides the du Pont? A. I did not get your question.

Q. I suppose you have sold these kegs to other companies besides the du Pont? A. Yes, sir.

Q. Where is that machinery located? A. At East Alton.

Q. Now, in reference to that arrangement which was made between you and Mr. Patterson for the purchase by the du Pont Company for a certain amount of powder, did they ever take the 75,000

kegs of powder in the year, that were mentioned in that letter? A. No, sir.

Q. And this statement shows that in 1909, they took something less than 17,000 kegs, did they not, to be exact, 16,905? A. 19——

Q. 1909. A. 16,905.

Q. Now, Mr. Olin, when that arrangement was made, as shown by these letters that passed between you and Mr. Patterson, had there been previ-
1799 ous negotiations in reference to the matter? A. I think not.

Q. Had there been negotiations about the purchase of the powder, previous to those letters? I ask the question, because one of the letters refer to the fact that you met Mr. Patterson in New York? A. That was the first conference, I think, on the subject.

Q. In this letter, Plaintiff's Exhibit 1240, the letter begins, on November 18th, 1908, "In confirmation of our interview in New York." A. Yes, sir.

1800 Q. Well, now, how long before this letter was that interview so referred to, do you recollect? A. I think that letter was in my office when I returned from New York, probably three or four days after our conference in New York.

Q. Well, now, previous to the purchase of the Buckeye Powder plant by yourself, had there been any talk between you and Mr. Patterson, or anyone connected with the du Pont Company, in reference to the purchase by the du Pont Company, or any of its interests, of powder to be manufactured at that Buckeye plant? A. No, sir.

Q. As I understand, you have already testified that the first negotiation about purchase of powder was three or four days prior to November 18, 1908, prior to this letter? A. Yes, sir.

1801

Q. That was the first you ever heard of it, was it? A. Yes, sir.

Q. And the second year, 1910, according to this statement, they took 46,403 kegs, is that right, Mr. Olin? A. I believe that is correct.

Q. And in 1911, 18,000? A. Yes, sir.

Q. And in 1912, 41,686? A. I think those figures are correct.

Redirect examination by Mr. Abbott:

1802

Q. You stated, Mr. Olin, that you didn't know anything about the document which was handed to you by Mr .Button, known as the "Fundamental Agreement"? A. Yes, sir.

Q. What agreement, if any, was there that formed the basis of the association of which you were a member? A. I don't know of any agreement, Mr. Abbott.

Q. Was there an agreement that you ever heard of, or knew of, called the "Understanding"? A. No, sir; I have no recollection of such.

1803

Q. Was there an agreement that you knew of, known as the "Abstract"? A. I believe that I have some recollection of some "Abstract"; what it was an abstract of I would not be positive.

Q. As a matter of fact, did you not at one time have a copy of what was known as the "Abstract"? A. I might have had.

Q. I show you Plaintiff's Identification P 3, and I refer you to page 999 of that document, and ask you to look at Exhibit 113, there, and state whether or not that has any relation to the document which you have testified you heard of as the "Abstract"? (Objection overruled.) A. I am not able to state that I have seen a document containing the same reading matter that this "Abstract" of July 1st contains.

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Q. Do you recognize anything in that matter in that document that is similar to what you have seen as the abstract? (Objection overruled.) A. The districts that are mentioned here are similar to the districts that were discussed as territory over which blasting powder was sold in the association.

Q. Is there anything else in there that you can see that is similar to anything that you saw in this abstract that you spoke of? A. I cannot state from

1805 memory now that I have seen this in any form before.

Q. I am not asking you to state whether you have seen that particular document, but I am asking you to state whether there is anything in that document which you now see before you, that is similar to this document which you have testified to as the abstract? A. Not positively; no, sir.

Q. What is your impression, what is your best recollection regarding that matter? A. It is a very difficult matter for me to form a conclusion as to what this is, as I do not recall having read it be-

1806 fore. The districts as recited here are somewhat familiar to me.

Q. Will you look in that document and see if there is anything there with reference to oversales and undersales? (Objection overruled.)

Q. At the same time see whether there is anything with reference to any committee, board of trade or other organization that you are familiar with in the operation of the association? A. This refers to an adjustment for oversales and undersales.

Q. Are the provisions that you note there provisions that you were familiar with in the operations of the association? A. The adjustment of oversales in this seems to be somewhat similar.

Q. How about the governing body, board of trade or advisory committee?

Mr. Button: There is no board of trade mentioned in it.

Q. I am asking the witness to indicate whatever he has in mind on that subject? A. An advisory committee is referred to here consisting of five members and a secretary and treasurer.

Q. Did they have anything similar to anything you knew of in the organization? A. Yes, sir; that is similar.

Q. Can you think of anything else there in that 1808
document there that has any resemblance to what you knew to be the manner in which the business of the association was conducted? A. There seems to be an advisory committee of five that was similar, that they report to a general meeting, which is also similar.

Q. In that connection, Mr. Olin, were you or were you not at any time a member of the advisory committee yourself? A. I was a member.

Q. Do you remember when you first became a member of the advisory committee? A. I cannot; 1809
I was not a member of the advisory committee as early as I was a member of the association.

Q. Can you remember about how many years you served as a member of the advisory committee? A. No; I cannot state that positively.

Q. All right, will you proceed now and indicate anything else in that document? A. That is about all I can identify that appeals to me as being similar.

Q. Will you look at the date of that document and see whether or not it has anything to do with about the time you joined the organization? A. It is dated about that time; yes, sir.

Q. It is July 1, 1896, was it? A. Yes, sir.

Q. You stated that there were only a few individuals who owned the 51 per cent of stock in

the Equitable Powder Company. Who were those individuals? A. Mr. C. F. McMurray and myself.

Q. Have you and Mr. McMurray owned that stock ever since the organization of the company? A. Yes, sir.

Q. The du Pont Company, which owns, as you have stated, 49 per cent of that stock, have they ever at any time participated in any of the meetings? A. Yes; they attend our annual meeting. We are a Jersey corporation, and our annual meet-
1811 ings are held in Jersey City.

Q. Who, as a rule, represent them at those meetings? A. There have been various representatives. I recall Mr. Haskell being present and Mr. Patterson, and Mr. Higgins. Mr. Higgins, however, I do not think was a du Pont employee.

Q. Did they at any time send proxies for any one to vote their stock? A. Yes, sir.

Q. Did they ever send you a proxy to vote? A. I think they have at times.

Q. At any of these meetings did there ever arise
1812 any contention between yourselves and themselves which caused a split in your vote, one giving one way and another another? A. I cannot say as to that.

Q. As a matter of fact, do you not work in harmony in the policy of that organization, do you not, as a matter of fact, cast your votes unanimously for any proposition that is considered in the matter of policy? A. No, sir.

Q. Will you give me instances when there has been a diversity of opinion between you? A. I cannot give you instances, but I know I control that company, and I manage its affairs, and vote as I please.

Q. Has there been any instance in which the du Pont Company has antagonized you in the matter of voting its stock? A. Yes, sir.

Q. Will you give that instance? A. I cannot give you the dates and details, but I recall that we have had dissenting votes.

Q. Has the du Pont Company at any time voted its 49 per cent solidly against you in any one case? A. I am not prepared to——

Q. You cannot recall any instance in which that was done? A. That would be in a stockholders' meeting. I am not prepared to state either way on that proposition.

1814

Q. You are unable to remember a single case in which there has been such a diversity of opinion between you that your vote on the proposition has been diverse? A. I would not from memory feel confident to make a statement.

Q. Before you bought the plant of the Buckeye Powder Company, did you ever have any business with that company representing the Equitable Powder Company? A. I might have had.

Q. You were inquired about concerning a custom that prevailed as to the buying of powder of other manufacturers, and having that powder put in the kegs of the particular company that ordered the powder? A. Yes, sir.

1815

Q. Did you ever make any purchases of that kind of the Buckeye Powder Company, while that company was doing business? A. We might have done so.

Q. Do you remember whether or not you made any purchases of the Buckeye Powder Company, of powder that was manufactured by them and had that powder put in your kegs? A. I cannot state positively, I know we tried to purchase powder from the Buckeye Powder Company, sent our sales manager there to Peoria, to see Mr. Waddell for that purpose. I recall his reporting that he could not reach an agreement with Mr. Waddell, spe-

cifically as to the quantity that he would deliver, or when he would deliver it, and doubted if we would get any powder.

Q. Now as a matter of fact I will ask you whether or not you purchased of the Buckeye Powder Company, 6400 kegs of Buckeye powder during the time that the Buckeye Powder Company was in business? A. We might have done so.

Q. And had it shipped to your customers from the Buckeye Powder Company's plant? A. We
1817 might have done so.

Q. I will ask you whether or not on subsequent occasions you did not make an effort to purchase further supplies of the Buckeye Powder Company for the same purpose, and were unable to do so? A. We tried to purchase powder, and it is necessary when we have accidents to get the powder.

Q. Did you not also, as manager or president, as the case may be, of the Egyptian Powder Company, make large purchases of Buckeye powder during the time of its existence, and have that
1818 powder shipped to customers of the Egyptian Powder Company? A. We might have done so.

Deposition of JAMES B. DOOLEY, a witness produced on behalf of the plaintiff, being duly sworn, was read as follows:

Direct examination by Mr. Abbott:

Q. Where do you reside, Mr. Dooley? A. Peoria, Ills.

Q. How long have you resided in Peoria? A. About 32 years.

Q. What is your business? A. Coal business; coal and blasting powder and mining supplies.

Q. Under what name do you conduct that business? A. Dooley Brothers.

Q. Under what name did you have that business during the years 1903 to 1908? A. Dooley Brothers, the same name.

Q. Is the Dooley Brothers a corporation? A. They are now.

Q. How long have they been? A. I think it was in 1909.

Q. Previous to that time, what was it? A. A 1820
partnership.

Q. Who were the partners? A. My brother and myself.

Q. In your business, the coal business, did you have occasion to use black blasting powder in any way? A. Do you mean sell it?

Q. Purchase it? A. Yes, we purchased it.

Q. What kind of glack blasting powder have you purchased and sold during the years 1903 to 1909? A. Du Pont blasting powder.

Q. Previous to that time, what kind did you use? 1821
A. Phoenix.

Q. Were you the agent of the Phoenix Powder Company before 1903? (Objection overruled.)

Q. What relation did you sustain to the Phoenix Powder Company at the time you were doing business for them? (Objection overruled.) A. We were agents for them.

Q. After you ceased to represent the Phoenix Powder Company did you enter into any arrangement of any kind with the du Pont Powder Company for the handling of their powder? A. Yes, sir.

Q. Was that arrangement in writing? A. Yes, sir.

Q. Have you got the contract with you at this time? A. The original contract?

Q. Yes. A. No, sir.

Q. Do you know where it is? A. I do not.

Q. Have you made a search for it? A. Yes, sir.

Q. And have not been able to find it? A. I have not.

Q. Have you any contract now with the du Pont Powder Company? A. Yes.

Q. In writing? A. Yes, sir.

Q. Have you that with you? A. It's among those
1823 papers there that you have.

Q. I submit to you a paper writing purporting to be a contract between Dooley Brothers and the E. I. du Pont de Nemoures Powder Company, and ask you to state whether that is the contract which is now in existence between your company and the du Pont Powder Company? A. Yes, sir.

Q. In how many parts is this contract made? A. That contract was in two parts; we have a copy, and I presume the powder company has a copy.

Q. Did you have contracts made in more than two parts? A. Not with the du Pont, that I re-
1824 member of.

Q. The other part of this contract was surrendered to the du Pont Powder Company? A. Yes, sir.

Q. As far as you know, it is in their possession? A. As far as I know.

Q. Does that statement hold good as to the other contracts which you say you have had with the other companies since 1903? A. I don't know; our contracts expired, and there was no further use for them.

Q. In regard to the last inquiry made as to the sales direct to customers of Dooley Brothers, I will ask you whether or not Dooley Brothers have any responsibility to the duPont Powder Company with reference to any such sales that may have been made by them? A. Yes.

1825

Q. State what that responsibility is. A. We are responsible for the payment of the account to them.

Q. You are responsible for the collection for sales they make? A. No; the sales we make.

Q. Where Dooley Brothers make a sale direct to a customer themselves, they are responsible for the account? A. Yes, sir.

Q. But where a sale is made by the Powder Company to some customer in this district, the Peoria Mining District, then they are responsible for the account? A. Yes, sir.

1826

Q. But they pay you a commission of five cents per keg? A. Yes, sir.

Q. Now, where do you keep the powder which you purchase from the du Pont Powder Company, and distribute to your customers? A. In the magazines out here, on what is known as the Plank Road.

Q. Who owns that magazine? A. The du Pont Powder Company.

Q. Who has been the owner of that magazine from July, 1903, to the present time? A. It was not built in 1903.

1827

Q. When was it built? A. I don't recall, but later than that.

Q. How much later? A. Probably two or three years.

Q. Who has been the owner of the magazine from the time it was built to the present time? (Objection overruled.) A. The du Pont Powder Company.

Q. Where did you store your powder previous to that time? A. We had a magazine where the Barrett Manufacturing Company is now. We used those magazines.

Q. Where were they? (Objection overruled.) A. One belonged to the Phoenix Powder Company.

Q. Did all the magazines you have used previous to that time, belong to the Phoenix Powder Company? A. There were several of them there, but we used one of them.

Q. From the time in 1903, when you became agent of the du Pont Powder Company, until the time you began using the magazine of the du Pont Powder Company, what magazines did you use? (Objection overruled.) A. It belongs to the Phoe-
1829 nix Powder Company, as I remember.

Q. With whom were your arrangements for the use of the Phoenix Powder Company's magazine made. Were they in writing? (Objection overruled.) A. No, they were not in writing. Mr. Patterson at that time was the superintendent, I think in Chicago—D. R. W. Patterson.

Q. Was that on a lease basis? (Objection overruled.) A. We did not pay any rent for it.

Q. After you ceased to be the agent for the Phoenix Powder Company, and became the agent of the du Pont Powder Company, did the Phoenix Pow-
1830 der Company ask you to pay anything for the use of the magazine? (Objection overruled.) A. I do not remember whether they ever asked us or not.

Q. Do you remember whether you ever paid anything? A. I do not think we did.

Q. Have you paid anything in the way of rental, or compensation to the du Pont Company, for the usea of their magazine? (Objection overruled.) A. No.

Q. Have they ever demanded any? (Objection overruled.) A. No.

Q. Now, were there any other agents, if you know, of the du Pont Powder Company operating in this Peoria mining district, during the period 1903 to 1908, inclusive, other than the Dooley

Brothers? (Objection overruled.) A. Mr. C. J. Off, as I understand it, was the agent.

Q. Do you know anything about the terms of his arrangement or contract with the du Pont Powder Company? A. No, I know nothing about the arrangement.

Q. Did Mr. Off have the use of the magazines which you have had the use of during that period? (Objection overruled.) A. No, he did not use our magazine.

1832

Cross examination by Mr. Button:

Q. I do not quite understand from your testimony, Mr. Dooley, whether or not you get five cents a keg from the du Pont Company on powder which is sold directly by that company without your intervention; do you get any pay for that? A. We never had but one case, and we got five cents for that; that is, they had a contract with us, and at the unexpired end of that contract, we got five cents of it, but not where they sell direct and they contract 1833 directly in this district.

Q. If they sell powder in this district themselves, you don't get five cents a keg on that? A. Not unless we have a contract with that party. They have several direct customers here that they had before we handled their powder.

Q. Under this contract of 1912 which has been introduced here, you order this powder, and you and your employees sell it to your various customers hereabouts; that is the arrangement, is it not? A. Yes, sir.

Q. Has the du Pont Company anything to do with the question of whom you shall employ as salesman, or the payment of your salesman? A. They have not.

1834 Q. You do that, and control them absolutely, do you not? A. Yes, sir.

Q. And furthermore, under this arrangement, you sell this powder to these various customers and have to pay the du Pont Company for the powder, regardless of whether you succeed in getting it from your customers? A. Oh, yes; we pay the du Pont Powder Company.

Q. That is, the du Pont Powder Company has
1835 nothing to do with your collections; they do not help you in your collections? A. No, they have nothing to do with it; we make our own collections, and we pay the du Pont Powder Company for all powder we buy of them.

Q. You were not subpoenaed in this case? A. No.

Q. And you produced these contracts at Mr. Abbott's request and submitted them? A. Yes, sir.

Re-direct examination by Mr. Abbott:

1836 Q. In answer to a question propounded by Mr. Button, you said there was only one case in which that occurred; what did you have in mind? A. The contract we had with the Wolschlag Coal Company. Ditewig & McElwee purchased the Wolschlag mine.

Q. What happened then? A. They stated their preference to buy direct from the Powder Company rather than from us; they had a contract with them for their requirements, so that at their reques we gave up our rights under our contract.

Q. And upon that business you received five cents per keg? A. Yes, up to the expiration of their contract, which was a few months, probably.

Q. You further stated to Mr. Button, that you made no claim for 5 cents per keg unless the du

Pont Company sold to some person with whom you had a contract? A. That's right.

Q. I will ask you to indicate in the contract, which is marked Plaintiff's "Exhibit 162," where that restriction occurs. A. I don't know that it occurs; I know it is the practice.

Q. That is the practice? A. Yes, sir.

Mr. Button: Now, wait a moment.

Mr. Abbott: There is nothing in that.

1838

Mr. Button: That is part of the answer.

A. There is nothing in that; that is the practice. This is "Carload shipments," and it reads, "made by the party of the first part direct to customers of the party of the second part in Peoria Coal Mining district." It is specified there we get 5 cents a keg on all powder we sell, but if they sold direct—it refers only to contract customers of our own, and not to anything they may take up.

Q. You spoke in your cross examination something about employes, your employes not being in the pay of any one except yourself, did you not? A. Yes.

1839

Q. Do you know Mr. P. H. Donnelly? A. Yes, sir.

Q. How long have you known him? A. Probably 20 years.

Q. Do you know whom he represents? A. Yes.

Q. What business is he in? A. Salesman for the du Pont Powder Company.

Q. He has a right to make sales of du Pont powder in this district? A. Yes, direct carload sales.

Q. What relation, if any, does Mr. Donnelly sustain to you? A. None; he is only salesman for the du Pont Powder Company; he visits us; representing the du Pont Powder Company.

Q. He has a right to make sales of du Pont powder in this district? A. Yes; direct carload sales.

Q. In the sale of du Pont powder? A. We try to sell du Pont powder and make our own business; if he can assist us, being in the employ of the du Pont Powder Company, we would expect him to.

Q. Does he not use his best endeavor to make sales? A. We expect him to.

Q. Has that been your experience? A. I don't
1841 know that he did, and I don't know that he did otherwise either, but we would expect him to.

Q. Hasn't he been responsible for bringing you certain large customers? A. I don't know of any.

Q. Didn't he have anything to do with bringing you Horace Clark? A. No; we brought him over to the du Pont from the Phoenix; Horace Clark was an old customer ever since he has been in the mining business.

Q. He is still a customer of yours? A. Yes, sir.

Q. The Clark Coal and Coke Company? A. Yes, sir.

1842 Q. Does he purchase from you exclusively? A. I don't know.

Q. You don't know that he has a contract with the Western Powder Company? A. I don't know.

Q. Mr. Dooley, you are not interested in this litigation in which you are now giving your testimony? A. Not at all.

Q. You know Mr. Moffatt? A. Yes.

Q. What relation does he sustain to you? A. He is our salesman.

Q. Is he in your employ in any other way in connection with your business? A. He is salesman and vice-president of our company.

Q. Is he a stockholder in your company? A. Yes.

Q. Has Mr. Moffatt, if you know, given any particular time of his services within the past year in

connection with matters relating to this litigation? A. I don't know.

Q. You don't know whether he has been assisting in producing testimony on behalf of the defendants in this case? A. Yes, I think that he brought in a witness or something of that kind; I don't know that he did, but he might have brought one in.

Q. You don't know of anything particular that he has done in connection with the matter? A. No. 1844

Re-cross examination by Mr. Button:

Q. Mr. Donnelly is not in your employ, and is not paid by you? A. No, sir.

Q. And never has been? A. No, never has been.

Deposition of FERDINAND LUTHY, duly sworn as a witness for the plaintiff read as follows: 1845

Direct examination by Mr. Abbott:

Q. State your name, age, occupation and place of residence? A. Ferdinand Luthy; 59; am President of the Merchants National Bank of Peoria, Illinois; am interested in the firm of Luthy & Co. of Peoria, and in various other businesses; I reside in Peoria, Ill.

Q. How long have you resided in Peoria, Illinois? A. Practically all my life.

Q. Did you know anything about the Buckeye Powder Company during its existence? A. I first met Mr. Waddell about the time he came to Peoria to locate a plant, and I had several interviews with

1846 him in which he went into the powder manufacturing business quite extensively in explaining it to me. He said he had been with the du Pont people for many years, that he had held an important position there and received a good salary, but he wanted to start a powder plant of his own so he could leave a business to his sons when he died; that he thought his knowledge of the business was such it would enable him to make a success of it;
1847 he said that powder at that time was selling for, I think it was, about $1.35 a keg, and that powder could be produced in the neighborhood of 80 cents or 85 cents a keg, and that there was a good margin in the business. That the du Pont people were large makers of powder and practically controlled the situation, and it would not be likely that they would reduce prices so it would take off the margins, and the prospect looked good to me, and I took some stock in his company.

Q. How long did you remain a stockholder? A. I continued to be a stockholder, and am still a
1848 stockholder.

Q. State whether or not at any time you ever had any negotiations, or conferences with any person or persons in connection of the du Pont Powder Company, with reference to the sale of the Buckeye Powder plant to that company, or some of its associates? A. About the spring of 1907, I think it was, I went to New York, and while there I thought I would run down to Wilmington and see the du Pont people, and ascertain whether I could get from them an offer for the Buckeye plant.

Mr. Katzenbach: Defendants object to this answer on the ground it is giving the conclusion of the witness, and giving facts not within his knowledge.

The Court: The last part must be struck out.

Q. State if you can how you obtained the knowledge you have just referred to? A. From conversations had from time to time with Mr. Waddell. I did not finish my last answer—shall I go on?

Q. Yes, go right on. A. I think I arrived in New York on the night of April 22, 1907, and the next morning I telephoned down to Wilmington to T. C. du Pont to see whether I could have an interview 1850
with him. I was going to be in New York several days, and I learned over the telephone that T. C. du Pont was going to the Jamestown Exposition that night, that his train would leave about 7 o'clock, and I arranged to run down to Wilmington to see him late that afternoon. I arrived there and met Mr. T. C. du Pont about 4.30, possibly 5 o'clock P. M., and we had a conversation until, I think, about 6.30. In the conversation I said to Mr. du Pont, that I was not authorized to offer the Buckeye Powder Co. for sale, but that I was a stockholder and to that extent was interested, and 1851
I believed if I could get a reasonable offer for the plant I might induce the stockholders to sell it; he also said he was not authorized by his company to make any negotiations, so we talked informally about the matter. In talking about the matter, Mr. du Pont said that there had been a suit brought against the du Pont Company, and that even if they were so inclined, they could not at this time purchase the Buckeye plant, because it would be apt to prejudice their suit—that it would seem it might be done to stop the suit, then pending against them, and it might hurt them, but he said he would be very glad to have me look up the matter further with Pierre du Pont and Mr. Moxham. I stated

to him I would like to take the matter up further on his return from Jamestown, that I understood he would be there only two or three days, and I would return to New York and take up the interview later if I could, with all of them. My interview with Mr. T. C. du Pont was very pleasant; I found him a very agreeable gentleman, and in his diplomatic way he rather left some hope in my mind I might be able to do something towards gettitng a price. I returned to New York, and I think
1853 Mr. Moxham was to telephone me when I could meet him, but I waited over several days and did not get such a telephone, so I called up the du Pont people, and I think I had a telephone conversation with Mr. Moxham and I went back there; they expected Pierre du Pont back the next day. I went down to Wilmington the next day, I think it was about April 27, 1907, and when I got there I learned that T. C. du Pont would not be there, and had sent a message to cancel his engagements for several days, as he would not return; so I had an interview
1854 with Pierre du Pont and Mr. Moxham, and found them of a different mind and temperament than I did Mr. T. C. du Pont; they talked vindictively towards Mr. Waddell; they said Mr. Waddell had started this plant for the purpose of selling out, and they had got tired of those things and did not propose to buy Mr. Waddell out; we talked about prices; I mentioned how low they were, and Mr. Pierre du Pont told me they could make a good profit at 80 cents, and were satisfied with it, and he did not think powder would be any higher than that in the future. I tried to state that the purchase of one or two competitors might enable them to advance the price, so it might be well for them to consider a move of that kind. I had also previously stated to them I was not there with author-

ity, but was simply there myself because I was interested and if I could get a suitable offer on the Buckeye plant, I might get stockholders to consider such offer. That was the start of that inter view. I should have said Mr. Moxham was more vindictive than Pierre du Pont towards Mr. Waddell. We had quite a long conversation off and on, and in that conversation he said Mr. Waddell was crazy, that his mind was unbalanced. I said to Mr. Moxham I thought on the contrary that Mr. Waddell's mind was exceptionally clear for a man 1856
of his age, and if he had any other opinion he certainly was wrong in the matter. We talked at length on those lines, but there was nothing done towards arriving at any offer they would be willing to make on the Buckeye plant, and I left that evening, returning to New York. (Objection overruled.)

Q. Can you recall any special remark, or the substance of any special remark, made by Mr. Moxham or by Pierre du Pont to you giving their reasons why they would not deal with Mr. Waddell 1857
other than as you have stated? (Objection overruled.)

(Motion to strike out answer sustained.)

Q. As nearly as you can, give the remarks that were made by either of the gentlemen, that gave you the impression you have just now indicated? A. In our conversation the price of powder had been discussed and I called their attention to the big drop in powder in the last few years; that when the Buckeye Co. started in business, powder was selling at about $1.35 a keg, the larger contractors probably getting 5 or 10 cents lower than that and at the present time powder had declined to about 80 cents per keg and the ordinary manufacturer

could have no margin at that rate. Mr. Pierre du Pont said they could produce powder at 80 cents and were well satisfied with their profit on that basis and he did not believe powder in the future would be any higher than 80 cents. I don't recall anything further at this moment.

Q. Did you have any correspondence with T. C. du Pont? A. We exchanged a few letters, I think.

Q. Did you address a letter to T. C. du Pont on or about December 12, 1906? A. Yes, sir.

1859 Q. Have you the original letter which you addressed to Mr. du Pont at that time? A. No, sir.

Q. Have you a copy of the letter you addressed on that date? A. Yes, sir.

Q. Where did you obtain the copy? A. From my copy book this afternoon.

Q. Look at the copy of the letter now shown you, marked Exhibit 11, and state if that is a copy of the letter you have just testified about? A. Yes, sir.

Letter offered and received in evidence and

1860 read to the jury as follows:

"Dec. 12, 1906.

Mr. T. C. du Pont,
President, du Pont Powder Company,
Wilmington, Delaware.

Dear Sir:

I have tried to communicate with you by telephone the past two days, but the lines were not working satisfactorily. I wanted to talk with you in relation to the Buckeye Powder Company, of this city.

I have been informed that Mr. Waddell, the president of the Buckeye Powder Co., is negotiating with

a syndicate representing some seventy mines, who desire to acquire this plant, and indirectly I learned that they would expect to increase the capacity to about three thousand kegs daily. Mr. Waddell would be then retained as the General Manager.

I am a stockholder in this company, and have been asked for a price on my stock, but have not yet named the same, but may do so in the near future. My holdings are not large, and do not prejudice me, and any dealings that we might have, 1862
you can rely upon being straight and business-like, and should you become interested in this territory, I should hope to secure for our bank your business in this city.

It has occurred to me that before this deal is consummated it might be to your interest to investigate conditions here, and that possibly you might desire to acquire this plant, while it could be had, in preference to having a large co-operative mill here. I think other matters could also be satisfactorily adjusted.

If you deem it advisable to visit Peoria, and in- 1863
spect the plant, and inform yourself of conditions here, I can arrange a meeting, with Mr. Waddell, so that you would not lose a great deal of time; or, if I can be of service to you in any other way, I await your pleasure.

Very truly yours,

Ferd. Luthy."

Q. Did you receive an answer to that letter? A. I think I did.

Q. Look at the letter now shown you marked "Exhibit 12" and state whether or not that is the answer which you received to the letter marked Exhibit 11? A. Yes, sir.

1864 *Ferdinand Luthy—Direct*

Letter offered and received in evidence and read to the jury as follows:

"Mr. Ferd Luthy, President,
The Merchants National Bank,
Peoria, Illinois.

Dear Sir:

I am in receipt of your letter of the 12th, and
1865 with you, regret that we did not get into touch with each other over the phone.

We have understood for some time that Mr. Waddell has been trying to dispose of his powder plant to operators. Our experience in other directions has taught us that we can usually make much better terms for the purchase of such a plant after the operators have tried the experiment of making their own powder rather than before, and if, therefore, we were to seriously consider the purchase of this plant we would prefer making the effort after the
1866 operators had gathered the experience that is probably before them. We have good reason to believe, however, that the powder business is on the eve of such radical changes and improvements in its method of manufacture that our people would not care to negotiate for any of the existing mills even on apparently favorable terms. I am very much obliged to you indeed for writing to me because I think you have written honestly and frankly and feel sure from the tone of your letter that any dealings between us would be entirely straight.

Adding that if I can be of any service to you at any time I will consider it a favor if you will advise me of it, I beg to remain

Yours very truly,
T. C. du Pont,
President."

Q. Look at the paper now shown you, marked Exhibit 13, and state whether or not you ever saw that paper before, and if so, state what it is? A. Yes, sir; it is a letter from Mr. T. C. du Pont to myself.

Letter offered and received in evidence and read to the jury as follows:

"October 17th, 1907.

1868

Mr. Ferd Luthy, President,
Merchants Nat. Bank,
Peoria, Illinois.

Dear Sir:

I am in receipt of your letter of the 15th. We quite agree with you in the general proposition of the advisability of removing needless friction when the same can be done amicably and properly done, and highly appreciate the friendly position taken by you, but in view of the attitude of Mr. Waddell, 1869
as stated by you and shown by his action in the past, we do not see how anything can be accomplished to eliminate bitter feeling. You say his position is that we are vindictive enemies of his company and are using every endeavor to wreck it. There is absolutely no foundation for this position and we think he must know it, so we do not see how anything can be gained by asserting or proving the fact that his assumption is unfounded. We greatly appreciate your kind and friendly interest but under the circumstances we sss no way in which your wise suggestion could be made effective.

Yours very truly,

T. C. du Pont,
President.

1870 *Ferdinand Luthy—Direct*

Q. Look at the papers now shown you, marked Exhibits 14 to 15, and state whether or not you have seen those documents before, and, if so, state what they are? A. They are letters intended for me, though my name is spelled wrong; I received them from Mr. T. C. du Pont.

Letter offered and received in evidence as exhibit 14 read to the jury as follows:

1871 Mr. Ferd Luthy, President,
Merchants National Bank,
Peoria, Ills.

Dear Sir:

I am very sorry that the phone connection at Peoria was so indistinct. I heard your voice, but caught four or five words only. Unless the lines are very clear I find it is very difficult to understand as far as Peoria. It is too bad we could not get a better connection.

1872

Yours truly,

T. C. du Pont.

Exhibit 15 read to the jury as follows:

Dec. 11, 1906.

Mr. Ferd Luthy, President,
Merchants National Bank,
Peoria, Illinois.

Dear Sir:

I was sorry that the telephone connection was so poor yesterday afternoon. I could hear the exchange girl in Chicago quite distinctly and once I

think I heard a voice that did not belong to the exchange girl, but it was very indistinct.

Being sorry we did not make connection, I beg to remain,

Yours truly,

T. C. du Pont.

Q. Look at the paper now shown you, marked Exhibit 16, and state what that paper is, if you know? A. This is a copy of a letter I wrote to Mr. T. C. du Pont on January 3, 1907, that is I 1874
think it was in 1907.

Letter offered and received in evidence and read to the jury as follows:

Mr. T. C. du Pont, President,
Wilmington, Delaware.

Dear Sir:

I wish to acknowledge receipt of your letter December 2d; I should have done so before, but have 1875
been very busy during the holidays.

I want to thank you for your courteous and frank answer to my letter.

Although I have had much experience in manufacturing and merchandising in other lines, I know nothing of the powder business, and, if I did, I would not presume to offer suggestions.

Conditions here I thought would have been greatly to your interest to have personally investigated, and after that you could of course act as you thought best. I might say that soon after my letter of the 12th ulto., numerous inquiries, which evidently started in the East, were being made here, on the Buckeye Powder Company, by unfriendly or prejudiced parties. A portion of these reached

me, but I declined to give them any information, preferring to deal with principals.

I would, of course, have been glad to have given you any such information as I could.

I still would not be surprised if before the year is over, you may have occasion to recall a lost opportunity.

If at any time in the future I can be of any service to you, do not hesitate to command me.

Very truly yours,

Ferd Luthy.

Q. Look at the paper now shown you, marked Exhibit 17, and state if you know what it is? A. Yes, sir; it is a letter I received from T. C. du Pont.

Q. Was that letter in answer to your letter of January 3, 1907? A. Yes, sir.

Letter offered and received in evidence as Exhibit 17 and read to the jury as follows:

"Wilmington, Del., Jany. 5th, 1907

Mr. Ferd Luthy, Pres.,
The Merchants Nat. Bank,
Peoria, Ill.

Dear Sir:

First after wishing you a happy and prosperous New Year, I beg to acknowledge receipt of your letter of Jan. 3rd. I think it was entirely proper that you should decline to give any information to those who in the language of today "butt in." If we want anybody to talk to you we will give them a personal letter, and will send somebody big enough to talk. I cannot at this time unfortunately make

a trip West, but I am importantly interested in several places in the West and hope some day to have the pleasure of making your acquaintance in person.

In the meantime, please feel that you will be welcome should you be passing this way and care to drop in.

Yours very truly,

T. C. du Pont,
President.

Q. Do you know what relation Mr. du Pont sustained to the E. I. du Pont de Nemours Powder Company at the time you were negotiating with him? A. He was president of that company, was my understanding.

Q. Do you know what relation Pierre du Pont sustained to that company? A. It was my understanding he was a director, and I think also secretary, but of that I am not sure.

Q. Do you know what relation Mr. Moxham sustained to that company? A. It was my understanding he was a director of the company, and also an official, but I don't know what official position he occupied.

Deposition of R. E. Lewis, called as a witness on behalf of plaintiff, and having been duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. State your name, occupation and place of residence? A. R. E. Lewis, coal operator, Peoria, Illinois.

1882 *R. E. Lewis—Direct*

Q. Under what name did you operate in coal? A. The Appelgate & Lewis Coal Company.

Q. How long have you been operating under that name? A. About 12 or 13 years.

Q. Where are your mines located? A. The only one we have is at Hanna City, Illinois.

Q. Did you have other mines at any time prior to this date that you do not now have? A. Yes, sir, we had one at Cuba, Illinois; we ceased to operate that mine sometime in the summer of 1908, I
1883 believe.

Q. In other words, from 1903 to 1908, you were operating a mine at Cuba, Ill.? A. Yes, sir.

Q. Were you also operating a mine at Hanna City during that time? A. Part of the time; I think from 1906 on.

Q. I will ask you if you had had any business relations with the Buckeye Powder Company, the plaintiff here? A. Yes, sir.

Q. Did you use any of the powder of the Buckeye Powder Company? A. Yes, sir.

1884 Q. About how many kegs of powder per annum did you consume at both your properties from 1903 to 1908 inclusive? A. I should judge the number of kegs used at the Cuba plant would be about three carloads,—about 2400 kegs per annum; and at the Hanna City mine during that period we would probably use 1800 to 2000 kegs.

Q. Making a total of 3800 or 4000 kegs? A. Yes, sir.

Q. During the time you have just mentioned, between 1903 and 1908, about how many kegs of Buckeye powder did you make use of, if you can recollect? A. I could not tell you.

Q. Was it any great amount? A. No.

Q. Did you purchase powder of any other concern during that period? A. We were buying the du Pont powder at the time.

Q. Did you buy on special order, or did you have a contract with them? A. The greater part of the time we had contracts.

Q. Do you know at this time what those contracts provided? A. What they contained, do you mean.

Q. Do you know what they provided as to price or quantity you should buy, or as to rebates, or any other condition? A. I could not be specific in that.

Q. Have you the original contracts now in your possession? A. No, I have not. 1886

Q. Do you know where they are? A. I think they have been destroyed.

Q. Have you made a search for them? A. Why, no, I have not really searched for them but I have looked through my files.

Q. And did not find them in the usual place? A. No, sir.

Q. You were, however, under contract with the du Pont Powder Company, during the period you have just stated from 1903 to 1908, during the greater portion of that time? A. Yes; that is my recollection. 1887

Q. Did you make any effort during that time to secure the use of the Buckeye powder? A Yes, sir.

Q. State what was the results of such efforts as you made? A. We made an attempt to use it at our Cuba plant first and we failed to get it in use.

Q. Why did you fail? A. Well, that is a pretty had question to answer. It seemed to be a prejudice against the powder.

Q. What was the nature of that prejudice so far as you could discover? A. Well, I don't know what I could state the exact prejudices. The fact of the matter was this. We attempted to get it started and did use it in some places with good re-

sults and at other places the results were reported adverse, and, so far as I could see, there was no good reason for the adverse opinion.

Q. Did you make some tests yourself for your own satisfaction regarding this powder? A. I am not in a position to say that we made tests ourselves, these things are usually done in this way; we give a practical man a keg of powder and then get his report on it; the number of tons of coal he produced from a given amount of powder, but
1889 so far as supervisiong the tests ourselves there was only one test made and that was at the Hanna City plant; at the Cuba plant I do not think we entered into a test; my recollection is the powder was just handed out to the men and they were asked to report on the result.

Q. What was the result of that kind of a test which you made? A. As I said previously some of the men reported favorably on it and some reported adversely.

Q. As I understand you, these tests you are now
1890 testifying to, were made at your request? A. Yes, we asked the men to use the powder and report on it.

Q. And the reports which came to you were reports made by these men acting under your instructions? A. Yes, sir.

Q. Did you have any special desire or special reason why you desired to use Buckeye powder? A. Yes, sir. At the Cuba plant we were getting a great many screenings and the desire to secure a powder that would reduce the percentage of screenings in our coal was the reason for our using the Buckeye powder at that plant; and at the Hanna plant our reasons for using it—well, it was twofold. In the first place the du Pont powder had to come to us in car loads lots while we could get

1891

the Buckeye powder in 100 keg lots and getting 800 kegs, or car load, from the du Pont people necessitated our holding about $1000 worth of explosives on the premises, while the other amounted to very much less than that and we could get deliveries by the wagon load from the Buckeye people at any time we needed it and it was always fresh. Also, at the Hanna plant, another reason for our wnting to use Buckeye powder was because we thought the du Pont powder was shattering our roof more than was necessary.

1892

Q. In your experience in testing of the powders yourself did you find that the Buckeye powder produced better results for you in the respects you have just mentioned or worse?

By Mr. Katzenbach:

Q. Did you make any of those tests yourself? A. No, sir.

Mr. Abbott: I did not mean a personal test but tests made under his direction—under the direction of the company he represents.

1893

Q. Did you personally see the tests? A. No, sir.

By Mr. Abbott:

Q. These tests were made under your direction, were they not? A. Yes, sir.

Q. What were the results from such tests as were made under your direction, so far as the use of Buckeye powder was concerned, in overcoming the difficulties which you have just mentioned? (Objection overruled.) A. They reduced the amount of screenings at the Cuba plant—I could not state how much, but it made a better grade of coal; there was

more lump coal and less screenings, and there was less destruction to our roof at the Hanna plant.

Q. As I understand it then you became desirous of using Buckeye powder because you thought it was advantageous to do so? A. We thought it was to our advantage to use it.

Q. You have stated that you were under contract with the du Pont Powder Company for your powder during most of the period between 1903 and 1908.
1895 Do you know from what mill or mills that powder was shipped to you—the powder you bought of the du Pont Powder Company? A. So far as I know it all came from Mooar, Iowa.

Q. I will ask you if the contracts you have reference to were executed by you direct with the du Pont Powder Company or through some agent? A. Through Dooley Brothers.

Q. Where are they located? A. In Peoria, Illinois.

Q. When did you cease to buy powder of the du Pont Powder Co.? A. I do not know whether I can
1896 give the exact date or not. I believe our last contract with Dooley Bros. and the du Pont people was in September, 1911—somewhere near that time; I think that was about the time the contract expired.

Q. During all that time was the powder shipped to you from Mooar, Iowa? A. So far as I know it was; I would not state that was the case because we did not usually pay much attention to that, but my understanding was that was where it came from.

Q. Have you any of your shipping receipts or bills of lading? A. No, we have not that I know of.

Q. After your contract expired with the du Pont Company, of whom did you buy powder? (Objection overruled.) A. Of the Western Powder Manufacturing Company.

Q. Where is its plant located? A. Its office is in

Peoria, Ill. Its plant is at Edwards or near Edwards, Ill.

Q. Do you know whether or not that was the plant formerly known as the Buckeye powder plant? A. That is my understanding.

Cross examination by Mr. Katzenbach:

Q. You have been in the coal mining business some 13 years? A. Yes, sir; 12 or 13.

Q. But you have been in it as a capitalist and not 1898
as an experienced miner who has himself mined coal? A. That is true.

Q. Which of you plants was located at such a distance from the mill of the Buckeye Powder Company that it was possible to transport powder in wagons from the mill to your mines? A. The Hanna City plant.

Q. About what distance was the Hanna City mine from the plant of the Buckeye Powder Company? A. I suppose about 4 miles.

Q. That permitted you to buy powder of the 1899
Buckeye Powder Company in smaller quantities than you were able to purchase the du Pont powder at Dooley Bros.? A. Yes, sir.

Q. Therefore one of the reasons why you were desirous of purchasing the Buckeye powder was because you could buy it in smaller quantities and thus save a considerable outlay of money for the time being? A. Yes, sir.

Q. During the years from 1903 up to 1908, were you under a continuous contract with Dooley Bros. for supplying you with your annual consumption of powder? A. Pretty much all that time, as I recollect it, now.

Q. Then if you did buy any powder of the Buckeye Powder Co. it was a violation of those con-

tracts? A. Well, no; it is my understanding that the contracts we were under allowed us at any time to try other powders—to test other powders.

Q. Do you say they contained such a stipulation as that? A. I could not say because I don't know.

Q. Didn't they call for the purchase exclusively for your operations of the du Pont powder? A. I do not remember about that.

Q. You say you had certain tests made of the
1901 Buckeye powder in your mine at Cuba and also at Hanna City. Did you personally enter the mine and see any of these tests made? A. No, sir.

Q. You have had no experience personally, I understand, with the shooting of powder in mines? A. No.

Q. You spoke of tests made at Hanna City. Do you recall in what year they were made? A. I could not state that, no.

Q. Do you know by whom that test was made? A. Yes, I think I can tell you. I think it was the representatives of the miners and the representa-
1902 tives of our company combined, that is, it was agreed to try the powder out and each side had their representatives.

Q. You refer to each side—who were the two sides? A. I mean the miners in the plant and our company.

Q. Were there more than two kinds of powder, or two kinds of powder tested? A. Just the du Pont and the Buckeye powders.

Q. What was the result of that test? A. The test was never finished.

Q. Well, it must have reached some conclusion. Did you continue to buy du Pont powder as a result of that test? A. Yes, sir.

Q. Were there any officials, according to your recollection, of the United Mine Workers of Amer-

ica, or any other organization present at that test? A. I don't recall that any of the officials were there at the test; I think the test was carried on by miners appointed by the Pit Committee in charge of the mine.

Q. The Pit Committee selected miners to try out both brands of powder? A. No. They selected one or two men—I don't remember how many—to use the du Pont powder, and we selected one of the number, which was agreeable to them, to use the Buckeye powder; that was the way the test was carried on so far as it went. 1904

Q. Do you recall in what year that test was made? A. I do not.

Q. Prior to the year 1903, how long had you been engaged in mining coal? A. It seems to me since 1900; I think we opened the shaft at Cuba in 1900; that was the first mine we opened, then the Hanna.

Q. Prior to the year 1903, what explosive had you used in your mining operations? A. The du Pont powder.

Q. And the miners were familiar with the use of the du Pont powder? A. They seemed to be. 1905

Q. You summed up the advantages of the Buckeye powder to your company as being because you could get it in smaller quantities and also that it did not shatter the supports of the Hanna mine in the use of it? A. Not the supports—the roof of it.

Q. Also that it made less screenings. Was there any other consideration such as a cheaper price for the Buckeye powder that entered into it? A. No, it is my recollection that the powders were the same price; there was no monetary difference.

Q. Except the monetary difference that resulted from being able to purchase in less quantities? A. Yes, sir, and the other point mentioned in regard to screenings and the destructions of the roof.

1906

Q. Are you a stockholder in the Buckeye Powder Company? A. Never.

Re-direct examination by Mr. Abbott:

Q. You have just testified regarding the result of a certain test and said after that test you continued to buy du Pont powder? A. Yes, sir.

Q. You state the test was not completed as I understood you? A. That was at the Hanna plant.

1907

Q. And you stated you went on and continued the use of du Pont powder? A. Yes, sir.

Q. Can you give any reason why you continued to use the du Pont powder? A. The test was stopped before it was completed; the agreement between the miners and the pit committee and ourselves was that we should use one keg of powder and see the number of tons it produced per keg and some of the results in the production of coal as to its grade and the effect on the roof in connection with it; the test did not proceed to the consumption of the entire keg and we concluded that the test—that is, the

1908

manner in which the miners were producing their coal from the du Pont powder was unfair in that they were undercutting their coal and giving the shots a chance to work better than the shots that were being fired by the Buckeye powder, so the test was called off before it was completed.

Re-cross examination by Mr. Katzenbach:

Q. Were you present at this test and did you see it made? A. No.

Q. Do you know that the men handling the du Pont powder were undercutting the coal from anything you personally saw? A. Not from anything I personally saw.

Q. The reason you called the test off was because you were in favor of the Buckeye powder person-

ally, was it not? A. The reason we called the test off was because the Buckeye powder was not getting a fair test with the du Pont powder.

Q. You selected the men you state that went to make the test? A. Yes, sir.

Q. Now, when you say the test was not fair, is that from your own knowledge, or something that somebody reported to you? A. Our superintendent reported it to us.

Q. Where does he live? A. In Peoria, Illinois. 1910

Q. Do you know his address in Peoria? A. I do not but he is standing right back of you.

Deposition of ROBERT MORTON, a witness for the plaintiff, was read as follows:

Direct interrogatories by Mr. Abbott:

Q. State your name and residence? A. Robert Morton, Peoria, Illinois. 1911

Q. How long have you lived in Peoria, Illinois? A. About a year this last time; I have lived in and around Peoria almost all my life.

Q. For the benefit of the jury, they not being present here, state how old you are? A. 46 years of age.

Q. What is your business? A. Coal mining.

Q. How long have you been engaged in that business? A. About 36 or 37 years.

Q. You are a practical miner, that is you yourself have mined coal with your own hands, using all the processes, which are commonly used in mining coal? A. Yes, sir.

Q. Are you familiar with the use of powder in coal operations? A. Yes, sir.

P912 Q. Do you know the mine known as the Applegate & Lewis Coal Mine at Hanna City? A. Yes, sir.

Q. Did you sustain any official relation to that property? A. Yes, sir, I was superintendent.

Q. What were your duties as superintendent? A. I had full charge of all operations above ground and under ground also.

Q. And full charge of the miners in their work?
P913 A. Yes, sir.

Q. You heard the testimony of Mr. Lewis yesterday, did you? A. Yes, sir.

Q. You heard him testify regarding a certain test that was made at the mines during the fall of 1907? A. Yes, sir.

Q. Do you know anything personally about that test? A. Yes, sir.

Q. Did you have anything to do with conducting it? A. Yes, sir.

Q. State in your own way all the facts concerning that matter, just how the test came to be inaug-
P914 urated and what was done? A. For various reasons the company desired to use the Buckeye powder.

Q. At that point let me ask you what those reasons were, if you know? A. I think there were several reasons as nearly as I remember. In the first place, we were getting a large percentage of screenings compared with our lump coal and particularly at the time we tried to introduce the Buckeye powder we were dumping a lot of coal on the ground, that is, we were dumping it out in the open, you understand, and we were very desirous of getting as much lump coal as possible as we knew it would naturally slack up to a certain extent if exposed to the weather. Another reason was we were having considerable trouble with our roof, the miners had considerable difficulty in keeping up the

roof, that is the overhanging strata over the coal and we thought by changing the powder we might overcome some of that. Then, as I understand from Mr. Lewis at the time, another reason why we wished to use Buckeye powder was that we were operating at that time in a small way perhaps about 200 tons a day, or a little more, and we did not require a great amount of powder at that particular time. So he thought by using the Buckeye powder there would be another advantage accruing 1916
from the fact we could get the Buckeye powder in small lots 50, 75 or 100 kegs at a time. We had found that by buying carload lots of du Pont powder we had considerable trouble with the last part of the car, as it would cake in the kegs, get hard from sitting in the powder-house.

Q. Is that a difficulty that often occurs in powders? A. Yes, if it is not used pretty promptly; of course, a keg of powder if the house is reasonably dry will stay all right in the house for three or four months, perhaps, and if it is changed, turned around, turned over once in a while, I suppose it 1917
would stay a long while; I don't know how long, but our house was not any too good to tell the truth and they did not want to go to the trouble of building a new one. Those were the various reasons as I understood why we wished to change powders.

Q. Have you had any previous experience with the Buckeye powder which lead you to believe it would overcome some of these difficulties you have mentioned? A. Not at the time we began to introduce it; it was only an experiment on our part.

Q. Had you any experience previous to the time when this test was undertaken I have spoken of? A. Yes; it was perhaps a year or more after we first began to try the powder before we conducted

Q. And your experience in trying the powder had led you to believe it would meet these difficulties that you have enumerated and overcome them? A. Yes, sir.

Q. Now, you may proceed with your statement regarding the test, which I interrupted you in. A. Previous to the test, five months perhaps before the test occurred, we had used nothing but the Buckeye powder, but gradually there seemed to be a dissatisfaction growing up among the men with
1919 the Buckeye powder and it finally culminated in a demand for a test by the officials of the United Miners.

Q. That is a right which the miners have under their contract with the operators, I believe? A. Yes; I believe so. They did, at that time, have a perfect right to demand a test to be made at that time, anyway. So we finally agreed to make a test, between Mr. Lewis and myself on the part of the company and the officials of the United Miners. We agreed to make a test of a keg of Buckeye pow-
1920 der and a keg of du Pont powder, and it was understood if that test was not conclusive we would go on with several other kegs until we did reach a conclusion. So I selected two men from among the miners and the Pit Committee, representing the miners, selected two others, and together with the Pit Committee we entered the mine and selected two places adjoining one another—what is called rooms, where we would try the powders—they were to try the du Pont powder in one room and we were to try the Buckeye powder in the other and to start that I took personal charge of the placing of the shots of the Buckeye powder because I was representing the company's side and naturally I wanted to see the powder given a fair test; so for two or three days I made it my business to go in

these every day, probably two or three times a day, and instruct the two men—Parry was the man who was really in charge of the work and was doing the work, while another man, named Kepper, was helping him. I instructed them in the placing of the shots, the angle the holes should be drilled at, and the depth of the holes and the amount of powder that should be given to each shot. We proceeded along very nicely for, I think, about four or five days, when one day I went in there, as usual, and having a natural inclination to know what the other 1922
boys were doing in the adjoining room, I had been in the habit of going in there every day where they were using the du Pont powder, and this day, when I went into their place, I discovered they were undermining the coal; they had two shots undermined from 18 inches to 2 feet deep, clear along the length of the shots; I said, "Now, if you boys are so anxious to show that du Pont powder can produce more coal than the Buckeye that you are going to mine and wedge this coal, we will quit right now," and I stopped the test right there.

1923

Q. Describe in such detail as you think necessary to make it clear just what that undermining process is so when this deposition is read to the jury they will understand what you have in mind? A. I don't know just how I would go about it to make it clear to any one who never saw a mine, but, however, I will state that the coal vein at Hanna runs something over four feet in thickness, above the coal there is a slate roof and underneath the coal is what is called a seam of fire-clay. What I mean by undermining the coal is, the men took their picks and dug the clay out from underneath the seam proper of the coal, to a depth of from 18 inches to 2 feet, thus relieving the shot the same as though it had been entirely under the cut.

In machine mining we call it undercutting the coal when we have machines that under-cut the full depth of the coal we are going to blast down; they were simply undercutting part of the shot while the coal would be back on the solid; they would have about four feet of thickness of coal in front of their shot when it was really undercut fully one-half the distance.

Q. The result of the undercutting is that the coal has a tendency to fall of its own weight when
1925 loosened? (Objection overruled.) A. It requires less powder.

Q. You have spoken of undercutting as being a method which is used when you are mining with machines? A. Yes, sir.

Q. State what the advantages are of undercutting by machines as against the method of shooting the powder without the use of machines? A. The advantages are several in nature. In the first place, in shooting coal off the solid, or without being undercut, it makes a certain percentage of screen-
1926 ings where, if it is undercut it don't make such a large percentage of screenings. The percentage of screenings is considerably less where coal is undercut than where it is shot from the solid; also it requires less powder from the fact that when it is undercut all that is necessary is to break the strata while, when shooting it off the solid you not only have to break the strata, but squeeze it out between the bottom and roof.

Q. Then the method by which the committee representing the du Pont powder was conducting the test had the same advantage as if a machine was being used in connection with the powder? (Objection overruled.) A. So far as undercutting went.

Q. If you had been using a machine to undercut,

about how many tons of coal would a keg of powder have produced? A. We find in this same mine by undercutting with machines that we produce an average of about 125 tons per keg.

Q. About how many tons of coal would you get out of a keg of powder where you did not undermine? A. We estimate our records show that we would produce an average of about 18 tons per keg of the du Pont powder. I am speaking of shooting on the solid. While we were shooting on the solid, we found we could produce an average of about 18 1928
tons per keg with the du Pont powder and an average of about 22 or 23 tons per keg with the Buckeye powder.

Q. Have you any knowledge or information in regard to the reasons why the men who were representing the du Pont powder proceeded to undercut and use the method of conducting the test? Objection sustained.)

Q. Referring once more to the manner of the use of the Buckeye powder in your mine, and your desire to use it—you spoke of its benefit so far as to preserving your roof was concerned—what effect 1929
has the destruction of the roof upon the cost of producing coal? (Objection overruled.) A. The effect is felt in many different ways. In the first place, if the roof is broken and mixed with the coal, which it invariably does, when broken, and the miner, if not particularly careful in loading, will get his roof mixed with the coal and destroy the marketable quality of the coal. In the second place, if the roof is broken, it is always a bill of expense to the company because the miner does not feel he is under any obligation to pick up that roof material unless he is paid for it, and it requires more labor in timbering and very frequently the place has to be turned over, that is, narrowed down to 7 or 8 feet wide, for instance, and turned over and paid for at

the usual rate of room turning, which entails considerable expense.

Q. Did you have at any time any comparative statement of the results of your use of Buckeye powder in connection with du Pont powder as to the difference in quantity of screenings produced? A. The company kept tab on that, they kept a record of the amount of coal produced at different periods and the percentage of screenings, as compared with the percentage of lump, and we found that the per-
1931 centage of screenings was considerable less in the use of Buckeye powder than the du Pont powder at that mine.

Q. Can you state at this time about how much less? A. I think about 10 per cent.

Q. What is the advantage, if any, in the price of coal which is free from screenings over coal that is not free from screenings? (Objection overruled.) A. I think throughout the year there would be a difference of about $1.00 a ton.

Q. State whether or not there is any conflict of
1932 interest between the miner and the coal operator as a rule concerning the method by which the coal is blown down. That is to say, whether the coal is large or small? A. I believe I understand your question. Under our present agreement, which same agreement has existed for a number of years, it makes but very little, if any, difference to the miner what the condition of the coal is so far as his earning capacity is concerned, after it is shot, whether it is in small coal or lumps from the fact he is paid on what is known as the mine run basis, so there is very few miners that care very much what quality of coal they produce.

Q. While it matters very materially to the coal operator? A. Yes, sir.

Q. Would that difference in interest influence the

miner in desiring a powder which would produce the best results in blowing the coal out, rather than one that would produce the best results to the coal operator? (Objection sustained.)

Q. Who succeeded you as superintendent at the Appelgate & Lewis mine? A. Andrew Morton.

Q. Is he the Superintendent at the present time? A. Yes, sir.

Q. When did he take the position? A. In April, 1909.

1934

Q. Was he employed at the mine before that in any other capacity? A. No, sir.

Q. Where was he employed before that? A. At the Maplewood Coal Company at Farmington, Illinois.

Cross examination by Mr. Katzenbach:

Q. When did you become Superintendent of the Hanna City mine of Applegate & Lewis? A. In fact, I bought the property for them in the first place; I was Superintendent for them at Cuba before I went to the Hanna mines; I don't remember just the exact date when we bought that property, or when they bought it, but I had charge of it from the time they bought it, which was, I think, about 1904 or 1905.

1935

Q. Prior to the purchase of the Hanna Mine by Applegate & Lewis, had it been operated as a mine? A. Yes, sir.

Q. Was it substaintially the same miners engaged to work in it after the title had been acquired by Applegate & Lewis as worked before? A. Yes, sir.

Q. When you took charge as Superintendent, what powder was in use at the mine? A. I think the du Pont powder.

Q. Do you know how long that mine had been

operated prior to the purchase by Applegate & Lewis? A. I think about 25 years.

Q. Have you any knowledge as to what powder was in use in the mine, prior to the purchase of it by Applegate & Lewis? A. I think they used several different brands of powder there during the life of the mine.

Q. Do you know of your own knowledge what powder was used? A. I know I was in charge of this mine some years previous to the purchase of
1937 the mine by the Applegate & Lewis Company while the Newsam Brothers operated it under lease and we used Laffin & Rand powder part of the time and du Pont powder part of the time.

Q. Your employers were desirous of introducing the powder of the Buckeye Company into this mine of Applegate & Lewis on account of being able to get it in smaller quantities, were they not? A. That was one reason.

Q. Was this a large vein of coal in this mine, or a comparatively narrow and small vein? A. It
1938 averaged about four feet, four inches in thickness.

Q. Now a mine using machines for the purpose of undercutting the coal, that is, the taking of the coal away from the vein of coal—interrupted—A. They used machines in this mine at the present time.

Q. In the fall of 1907, were they using machines in the mine? A. No, sir.

Q. Then when the coal was undercut it would have to be done with a pick or shovel, would it not? A. With a miners pick. It could not be done with a shovel.

Q. With a miners pick and then shoveled out? A. Well, they pick it out with a pick as they undermine it.

Q. By the undermining process, the coal would be removed by a blast of powder in larger lumps,

would it not, than if no undercutting had been done? A. Yes, if the right amount of powder was given to the shot.

Q. So, then, by undercutting the coal would come out in large lumps, would it not? A. If the shot was properly powdered, yes, sir.

Q. In the fall of 1907, you were storing considerable coal above ground before transporting it, was you not? A. Not in the fall; during the summer months we were, beginning along about May and extending up until the latter part of August—perhaps the middle of August.

Q. In the fall of 1907, which you will recall was the panic year, was not there a good deal of coal stored above ground that fall? A. I could not say as to that except at our own mine we stored approximately 3,000 tons for local use.

Q. The purpose of introducing machines in mining operations for the undercutting is to get out better lump coal, is it not? A. That is one of the purposes.

Q. A big run, or undercutting with a pick, would also produce larger lump coal, would it not? A. If it was undercut to the same extent made with a machine.

Q. So, then, substantially you would get the same result from undercutting with a pick you would get undercutting with a machine? A. If the same amount of undercutting was done, and the blasting done in the same way.

Q. Are the miners examined as to their ability for doing the work and are they licensed in this district? A. They are throughout the state of Illinois at the present time.

Q. In the fall of 1907, how were the miners paid —were they paid for the number of tons mined, or were they paid by the day? A. They were paid by the ton.

1942 Q. For the number of tons mined? A. Yes, of mine run coal.

Q. The powder—was that supplied by the operators of the mine? A. It was sold to the miners by the operators; yes, sir.

Q. But the miners had to pay the operators a certain price per keg for the powder? A. Yes, sir.

Q. And therefore it would be an advantage to the miner to get a powder that would produce as many tons of coal as possible from a given quantity
1943 of powder? A. Yes, it would seem so.

Q. In the fall of 1907, did the miners operating in the mine have a right to demand a test of powder? A. I am not sure whether there was anything in the agreement between the United Mine Workers and the Operators at that time, covering that point, but they assumed the right, whether it was in the agreement or not, and it was clearly within their rights to demand a test if they felt dissatisfied with the powder at any time.

Q. That is to say, the powder that was being
1944 supplied by the operators, if they were dissatisfied with that, they had a right to demand a test? A. Yes, sir.

Q. Were the miners employed in the Hanna City mine experienced men? A. The majority of them were.

Q. And were what you would call good expert miners? A. Yes, sir.

Q. And fully as good as the average miners in other mines located in this district? A. Yes, sir.

Q. It was considered to be skillful work on the part of a miner to undercut his work, was it not? A. I never knew it to be done except in the one instance I have related in the Hanna mine.

Q. Would you say that a miner who undercuts his work was not an experienced miner? A. No, sir; I would not.

Q. It was not anything that deserved censure by the operator, was it? A. No, indeed.

Q. In fact, they were very glad to have it done? A. If they could have induced the miners to undercut the coal they certainly would have done it.

Q. You were familiar with the desire of your employers to introduce the Buckeye powder in the Hanna mine, were you not? A. Yes, sir.

Q. And had various talks with Lewis with regard to the introduction of the powder? A. Yes, sir. 1946

Q. This test you speak of in the fall of 1907, was a test conducted by you as Superintendent of the mines for the owners having charge of the Buckeye powder, was it not? A. I represented the company in that respect so far as the selection of those two men was concerned, who actually used the powder under my directions, though I am free to say now, so far as I was personally concerned, I desired to see a fair test made; it was a matter of personal interest to me alone; I wanted to see whether or not my judgmnt was good as between the two powders. 1947

Q. You were interested in carrying out the wishes of your employers as to the Buckeye powder, were you not? A. Really, I had no feeling on the subject, except to see the best powder used in that mine that could possibly be procured.

Q. You went into the room from time to time where the Buckeye powder was being used, and you, with your experience, directed where the blasts of powder were to be located and the angle of the blast, did you not, for the Buckeye powder? A. Yes, sir.

Q. Did you enter the room where the Du Pont powder was being used in this test and likewise direct where the blasts were to be put and the angle

of the blasts? A. Yes, sir; I did; I went in and advised them a number of times as to where to put the blasts and chided them when I saw they were making a mistake; several times I saw they could have used better judgment.

Q. Who selected the miners that were to make the test with the Du Pont powder? A. The Pit Committee of the mine.

Q. There was not any representatives of the Du
1949 Pont Powder Company directing the test at all, was there? A. No, sir.

Q. Now, then, after this test had gone on for some time, it was stopped by your orders, was it not? A. Yes, sir.

Q. After it was stopped by your orders, what was the result in the mine among the miners as to the powder to be used? A. We continued to use both powders; we carried both powders in stock in the house and any miner who desired to use that powder we sent him Du Pont powder.

Q. What did the majority of the miners desire
1950 in the mine? A. They seemed to be about evenly divided; I should say they were evenly divided.

Q. How many miners did you have in that mine? A. I think at that time we had 40 or 45 miners.

Q. And you say they were evenly divided? A. Yes, the records of the mine show who were using the Du Pont, and who was using the Buckeye.

Q. Who has those records? A. The company.

Q. Did you as Superintendent direct at anything during your superintendency any other tests than the one you have referred to? A. No, that was the only test that we had that could be called a test in any sense of the word.

Q. The miners you selected to use the Buckeye Company powder in this test were miners that had

used the same powder before? A. One of them had.

Q. Were they especially selected by you as experienced and competent men—the best you had? A. I felt satisfied Mr. Parry would follow instructions in the use of the powder and do what was fair with both powders.

Q. Was he using both powders? A. He had used both powders.

Q. But he was selected especially by you to use the Buckeye powder in this test? A. Yes, because I knew he was fair minded, at least I felt he was. 1952

Q. You also knew he was an experienced miner, I presume? A. Yes, he was an experienced miner.

Q. What was the name of the other miner you selected? A. George Kepper; he was just a boy; I would not call him a practical miner at that time, for he just did the loading and he was very much opposed to the Buckeye powder—I will say that too. In fact, all the boys were opposed to it for some reason.

Q. At the time the test was called off, there had been more coal mined by the du Pont powder than by the Buckeye powder, had there not? A. No, I don't think so; I think the daily bulletin showed that the men using Buckeye powder up to that date had produced the greater amount of coal, while both had considerable coal loose in their places and it was hard to determine at that time which powder had produced the most coal. 1953

Q. Was there any official action taken by the United Mine Workers of America with reference to this test, either through the parent body or local body? A. Yes, sir.

Q. What action was that? A. This test was agreed on before the test was inaugurated by the officials representing the United Mine Workers.

Q. What action did they take after the test had been commenced and stopped? A. The thing went along, as I have stated, we continuing to use both the Buckeye and du Pont powders, for I think a month or two, but a great deal of agitation kept up against the Buckeye powder until it resulted in the calling of the officials there; by that I mean they called John Walker and Mr. Spenney and I think, Mr. Edwards, who was at that time Board Member from this District, and after a discussion of the
1955 case the whole affair, they demanded that we discontinue the use of the Buckeye powder on behalf of the miners, and Mr. Lewis had gotten so sick and tired of the while controversy, one way and the other, and I had myself become fully disgusted with the whole business, and I advised Mr. Lewis to drop the whole thing, and let them use any kind of powder they pleased, that if they did not want any more Buckeye powder to go down in the mine to let it go by the Board; there was such an agitation and uproar every time a man had a bad shot who was using
1956 Buckeye powder, and if the shot did not work exactly as it ought to, it was the fault of the Buckeye powder; if it blew the coal all out the damned powder was too strong; if it left it stand the damned powder was not strong enough and if it happened to break the slate the damned powder went into the roof.

Q. The fact is, the powder did break the roof? A. Certainly, if you drill a hole up against the roof with any powder it will break it.

Q. Who demanded this test in the beginning? A. The officials of the United Mine Workers.

Q. Did the operators have what is known as a commissioner? A. I don't think they did at that time; if they did he was not interested in this case, as I remember.

Q. Did you know a Mr. Justice? A. Yes.

Q. Was he the operator's commissioner at this time? A. He may have been, but he was not connected with this test in any way to my knowledge.

Redirect examination by Mr. Abbott:

Qo Speaking of the complaints which were made against the Buckeye powder, which you have just related, you said that once in a while a miner complained it destroyed the roof—was that due to the placing of the shot, the manner of placing the shot, or was it due to the powder? A. The breaks in the roof were almost invariably caused by the placing of the shot. 1958

Q. You say that the mine officials demanded that the use of the Buckeye powder be discontinued—what reason did they give for making that demand? (Objection overruled.) A. The ground they took was that the powder was not as satisfactory to the miners there; Mr. Walker made the statement that the men might as well fill a hole full of lime as attempt to blow a hole with it, as to attempt to blow it with Buckeye powder. 1959

Q. Do you know whether or not Mr. Walker had ever used Buckeye powder himself? A. I do not.

Q. Did any of the other officials to your knowledge that co-operated in making the demand ever use Buckeye powder? A. I believe Mr. Spinney had used it at Farmington.

Q. Did Spinney make any comments as to the quality of the powder? A. Yes, he did not think it was as good as the du Pont powder; he did not think it could be used in this coal.

Q. What would have been the result of a disobedience of that order in the natural course of things? (Objection overruled.) A. If the company had in-

sisted upon the use of Buckeye powder, the mines would have been thrown idle, because the miners would have refused to work in it.

Q. Do you mean by a strike? A. Yes, sir.

Q. Do you know of your own knowledge of any influence or any agitation by anybody representing the du Pont powder to produce that demand—bring it about? (Objection overruled). A. Yes, sir.

Q. State what it was? (Objection overruled.) A.

1961 A. I know that there was a constant agitation against the use of Buckeye powder from the very start.

Q. I am speaking now more particularly of the agitation with reference to this particular demand? A. What particular demand?

Q. I mean this demand that was made upon you to cease the use of Buckeye powder by the officials of the union? A. When I declared the test off and gave my reasons for doing so, to the Pit Committee, there was nothing more said; they admitted I was justified in declaring the test off. (Objection over-

1962 ruled.)

By Mr. Abbott:

Q. You may proceed. A. As there was no more said about it we continued to use both brands of powder until perhaps two months after the test, when the State Officials arrived on the scene; during that two months, there had been a constant agitation in the mine against the use of the Buckeye powder, which culminated as I stated.

Q. Do you know Mr. Moffatt? A. Yes.

Q. Do you know what relation of any he sustained at that time with the du Pont Powder Company? A. I believe he was interested as an agent in the distribution of the du Pont powder.

Q. Did you have any knowledge at that time of any activities by him with the men employed in your mine concerning the use of Buckeye powder? (Objection overruled.)

Q. Did you have any knowledge at that time of any activities by him with the men employed in your mine concerning the use of Buckeye powder? A. I know that Mr. Moffatt was very good friends with most of the miners throughout the district. 1964

Re-cross examination by Mr. Katzenbach:

Q. There was agitation for the use of Buckeye powder in that mine by some of the miners, was there not? A. Some of the miners were favorable to the Buckeye powder, yes, sir.

EDWARD ALVA MOFFATT, a witness produced on behalf of the plaintiff, being duly sworn, testified as follows: 1965

Direct examination by Mr. Abbott:

Q. Mr. Moffatt, where do you live? A. In Peoria.

Q. How long have you resided in Peoria? A. I think about seven years.

Q. Seven years? A. Yes, sir; I am not sure of the time.

Q. Where did you reside previous to going to Peoria? A. In Bernardsville.

Q. Bernardsville, Illinois? A. Yes, sir, about five miles from Peoria.

Q. What is your business? A. Now?

Q. Yes. A. I am employed by the Dooley Brothers at Peoria.

1966 Q. How long have you been employed by Dooley Brothers? A. I started to work for them on April 1st, 1898.

Q. What business are Dooley Brothers engaged in? A. They are engaged in the retail coal business and the miners' supply houses.

Q. Do they handle black blasting powder? A. Yes, sir.

Q. How long have they handled it? A. They were handling black blasting powder when I went
1967 to work for them.

Q. Is it an incorporation? A. Yes, sir.

Q. How long has it been an incorporation? A. I can tell you what I think; that is, as near to it as—

Q. That is what we want? A. Three or four or five years, along there.

Q. The corporation is recently organized, so far as your experience with them goes? A. Yes, I think it was just the brothers then, a partnership.

Q. Are you a stockholder in the corporation? A. Yes, sir.

1968 Q. Were you employed by Dooley Brothers during the years 1903 to 1908? A. Yes, sir.

Q. In what capacity? A. Well, as a salesman, to sell whatever they had to sell, black powder, dynamite, and fuse, and caps, and miners' supplies, lamps,—oh, they have a big line, too numerous to mention.

Q. What was your business before you entered the employ of Dooley Brothers? A. Well, right previous to that time, I was mining coal.

Q. You were a practical coal miner? A. Yes, sir.

Q. Were you a member of the Miners' Union? A. Yes, sir.

Q. Are you a member of the Miners' Union now? A. No, sir.

Q. When did you cease your membership in the

Miners' Union? A. Well, I don't remember as to when, but I wasn't in the organization very long after I started to work for them.

Q. What local did you belong to? A. I joined first, Local No. 1007.

Q. What was that known as, other than by number; where is it located? A. It was located at that time—it was a little old house alongside of the railroad track on the Mill Road.

Q. What particular district or territory did that local take in? A. The Team Mines, at that time. 1970

Q. By Team Mines, you mean what are sometimes called country banks? A. Yes, sir.

Q. Then, after your membership in that local, what local did you join? A. I think the number is 744, as I remember it; that was just a transfer card; that was at Bernardsville.

Q. What is known as the Bernardsville Local? A. Yes, sir.

Q. What territory does that comprise, or did that comprise during your membership? A. I never attended any meetings, so I don't hardly know; but 1971
I know one mine that it covered, and that was the Shoal Mine at that time.

Q. Do you know how numerous the membership was? A. No, I don't know.

Q. Don't you know how many members? A. No, I don't know.

Q. When you entered the employ of Dooley Brothers, were there other persons engaged in handling black blasting powder in Peoria? A. Yes, sir.

Q. What other persons were there at that time? A. C. J. Off, Oakford and Fahnnestock; I think Walker Hardware Company, and the Peoria Fuel Company, as I remember it; there may have been more.

Q. Now, what kind of black blasting powder did C. J. Off handle, what make or brand? A. du Pont blasting powder.

Q. And Oakford and Fahnnestock, what kind did they handle? A. Hazard.

Q. And the Peoria Fuel Company? A. Laflin and Rand.

Q. And Dooley Brothers? A. Phoenix and Equitable.

1973 Q. And that condition continued until how long after you began selling black blasting powder? A. I am not positive as to how many years, but it was until they started to handle du Pont; they didn't handle any other powder until they handled du Pont.

Q. When did Dooley Brothers begin handling du Pont powder? A. I think in 1903, some time.

Q. At that time did the Peoria Fuel Company continue to handle the brand of powder that it had been handling? A. I think so.

1974 Q. You think they did continue? A. I am not positive as to whether they did or not; they only had one customer that I know of before that, in this vicinity.

Q. Who was that? A. That was the Standard Coal Company.

Q. The Oakford and Fahnnestock people; did they continue to handle black blasting powder? A. Yes, certainly.

Q. What kind did they continue to handle? A. I presume the Hazard.

Q. And C. J. Off & Company, did they continue? A. They handled du Pont.

Q. So that you did not have the exclusive handling of du Pont powder? A. No; I should say not.

Q. During the time that you have been in the employ of Dooley Brothers, from whom have you

received your compensation? A. Dooley Brothers.

Q. Always, down to date? A. Yes, sir.

Q. Do you know where the mines of the Clark Coke & Coal Company are located? A. Yes, sir.

Q. What local includes those mines, if you know? A. I don't know.

Q. What local included them during the years 1903 and 1909? A. I don't know.

Q. Where do Dooley Brothers keep their stock of powder? A. They keep it at what is known as Barnewalt Farm. 1976

Q. How far is that from Peoria? A. About four miles from Union Station.

Q. Is that magazine owned by the Dooley Brothers Company? A. Not now, I don't think.

Q. Who does own it? A. Well, I think the du Pont Powder Company owns the magazine.

Q. How long have they owned it? A. I don't know; they built it.

Q. When was it built? A. After Dooley Brothers started handling du Pont powder.

Q. And that was about 1903, you say? A. Yes; 1977
but it was some time after that before it was built; Dooley Brothers leased until they got a magazine; they had been having Barnewalt's magazine, and they continued to lease it until other arrangements were made.

Q. Since that time, it has been owned by the du Pont Powder Company? A. That is my understanding of it.

Q. Now, you have been giving some attention, have you not, to the pending suit, the action which is now on trial? A. Yes, sir.

Q. Are you interested in the result of the suit? A. No, sir.

Q. Not at all? A. Not one bit.

Q. Whom have you been representing in the at-

1978 *Pierre S. du Pont—Recalled—Direct*

tention which you have given to this suit? A. Dooley Brothers.

Q. They still continue to pay your salary, just the same? A. Yes, sir.

PIERRE S. DU PONT, recalled as a witness for plaintiff, testified as follows:

1979 *Direct examination by Mr. Abbott:*

Q. Mr. du Pont I show you Plaintiffs' Identifications 1093 and 1094, which you produced here some time ago. Are you familiar with the contents? A. Yes, sir.

Q. This is headed "Companies owned by the Eastern Dynamite Company, August 1, 1903." Were there any of these companies acquired or controlled by the Eastern Dynamite Company itself? A. I will have to refer to the list. I have a copy of it here.

1980 Q. I will put that question in another way. You set forth here after the name of the company, the number of shares of stock that are held by these various companies. Will you state generally, whether or not the shares of stock which are set forth were, any of them, controlling interests in the particular companies? A. May I see the list? I have not got a copy.

Q. Yes. Not knowing what the total capital stock was, it is difficult to determine whether the shares there are controlling? A. I believe that these shares are all the stock of these companies, excepting possibly the Hecla Powder Company, the James MacBeth Company. I believe in the latter case that was all the stock.

Q. But as to those two companies, was the stock

that you have noted there a controlling interest? A. I believe so, yes; in every case, with possibly the exception of the Hecla.

(Documents received and marked Plaintiff's Exhibits 1093 and 1094 respectively.)

Q. Now, I call your attention to Plaintiff's Identification 1095, 1096 and 1097. Will you look at those? (Handing to witness.) A. I think I have the copies of those. I am not sure. I have that 1982
(indicating) one.

Q. They are all named as one here? A. Yes, I have a copy of that here.

Q. This is headed "Plants March 1st, 1902, to September 18, 1908." Then you give a separate statement as to plants that were owned by certain companies, taking for instance, E. I. du Pont de Nemours Company's plant, owned directly or stock ownership, March 1st, 1902. Now, were those plants which had been previously owned and held by the du Pont interests, or were they plants which 1983
had been acquired through some of the other companies, like the Laflin & Rand Company, or the Delaware Securities Company? A. These plants owned directly—some were constructed by E. I. du Pont de Nemours & Company in previous years, and others were acquired through purchase.

Q. What I am trying to get at is to find out what portion of these plants, if any, were owned by the E. I. du Pont partnership, before your company acquired those interests? A. Well, all of them were.

Q. All of them were? A. They were either owned directly or through stock ownership. I have included in the stock ownership those plants which were controlled before, though all the stock was not owned.

Q. Now, then, take the plants owned by Laflin & Rand Powder Company March 1st, 1902, and acquired later by E. I. du Pont de Nemours Powder Company, can you state when those particular plants were acquired by the Powder Company? A. When the stock of the Laflin & Rand Powder Company was acquired.

Q. And that was what date? A. The Delaware Securities Company purchased that stock originally in the year 1902 or 1903—1902, I believe, and
1985 the Delaware Securities stock was in turn owned by E. I. du Pont de Nemours & Company.

Q. Now, when did the Powder Company acquire that? A. The Powder Company acquired the stock of the Laflin & Rand Powder Company, I should think, as late as 1908.

Q. They had at that time—you mean to say that up until 1908, the Laflin & Rand Powder Company remained the nominal owner of these plants? A. I believe so, yes, and the title was transferred about that date.

1986 Q. But the stock of the Laflin & Rand Powder Company through the Delaware Securities Company, was already owned by the Powder Company, was it not, from the time of its organization? A. Yes, that was acquired originally by E. I. du Pont de Nemours & Company in the year 1902.

Q. And then by the Powder Company at its organization? A. Yes.

Q. So that it had control of those plants, through stock ownership of the Laflin & Rand Powder Company? A. Yes, sir.

Q. Now, take the plant owned and controlled jointly by du Pont and Laflin & Rand Powder Company, does or does not the same condition as to ownership apply to those plants as you have just testified to with reference to the Laflin & Rand

plant? A. Yes; the control through the Laflin & Rand Company was acquired when the Laflin & Rand stock was acquired through the Delaware Securities Company in 1902.

Q. And all of these plants that are named under that particular subdivision, were plants which were acquired by the Powder Company subsequently—the actual title to them, but in the first place by its control of the stock ownership of Laflin & Rand, together with the du Pont Companies? A. Yes; a great many of these plants were owned through the Eastern Dynamite Company, which was a partnership corporation of Laflin & Rand and du Pont. 1988

Q. Take the plants acquired by E. I. du Pont de Nemours & Company, or E. I. du Pont de Nemours Powder Company, by purchase after March 1st, 1902. Now, how soon after March 1st, 1902, were these plants acquired? Of course, they could not have been acquired by the Powder Company previous to 1903? A. I am not quite sure as to the date, but they were all acquired in the years 1902 and 1903. I am almost certain, either by E. I. du Pont de Nemours & Company or E. I. du Pont de Nemours Powder Company. 1989

Q. Plants constructed by E. I. du Pont de Nemours & Company, and E. I. du Pont Powder Company, after March 1st, 1902—can you tell about the date that those plants were constructed? A. Well, with the exception of the plant at Louviers, Colorado, I think they were all constructed prior to 1908.

Q. Were any of them constructed in 1903? A. I believe Connable was started and the Nemours plants followed very closely, I think. That was about 1903 or 1904.

Q. How about 1904. Were any of those constructed at that time? A. I am not certain about

those dates. If it is material I would have to refer to the record to find them. I think they were all constructed prior to 1908, excepting Louviers.

Q. Perhaps this general question will cover it: These plants were constructed during the period from 1903 to 1908? A. I believe so.

Q. Covering at various times? A. Yes, sir.

(Documents received and marked Plaintiff's Exhibits 1095, 1096 and 1097, respectively.)

1991

Q. You filed an answer in the case of the United States Government against E. I. du Pont de Nemours & Company and others, did you not? A. Our company did, yes.

Q. Well, you yourself were a defendant in that case? A. Yes.

Q. And you signed the joint answer with E. I. du Pont de Nemours & Company and others? A. Yes, sir.

1992 Q. When you first purchased these interests (you and Mr. T. C. du Pont and Mr. Alexis I. du Pont—organized your company)—will you state whether or not at that time it was in part your purpose or policy to acquire the title to the various corporations, not only through stock ownership, but through purchase of their physical assets—of the various corporations which you had acquired and which you subsequently acquired? Do you understand my question? A. Not exactly, no.

Q. The idea is to ascertain what your plan and purpose was at the time when you acquired—when you organized E. I. du Pont de Nemours & Company and took over the interests of the partnership, with reference to the other interests which you had in mind, like the Delaware Securities Com-

pany and the Laflin & Rand interests, and other interests which you subsequently acquired, as to whether or not your purpose and policy was to take them over, not only so far as stock ownership was concerned, but also to acquire their physical assets? A. No, I should say not. We had no information upon which to base a plan of that kind.

Q. You at some time, about that time, did enter upon such a policy as that, did you not? A. Yes, sir; it was after its acquisition.

1994

Q. After the acquisition of what? A. The property of E. I. du Pont de Nemours & Company.

Q. Was it after the acquisition or the organization of the Delaware Securities Company, and the Delaware Investment Company, and the California Investment Company? A. Well, the purchase of those properties was not under a general plan, that I remember. Each transaction was unto itself.

Q. Well, you found at the time when you acquired these various interests, that you had a number of separate organizations; each of them maintained separate offices and separate selling agents

1995

and elaborate systems of accounting, and this you found to be an expensive and inconvenient method of conducting the business of those companies, did you not? (Objection overruled.) A. Yes, sir.

Q. Then, did you not shortly afterwards determine to adopt the policy of vesting the entire ownership, management, and control in each of the said manufacturing plants and all of the properties thus owned, into one corporation which should alone perform such functions? (Objection overruled.) A. Yes, if you refer to the property that we then owned.

Q. Well, did that apply to such properties as you afterwards acquired, before the organization of the defendant, the du Pont Powder Company?

1996 *Pierre S. du Pont—Recalled—Direct*

A. I think we had no general plan for the acquisition of property.

Q. Well, now, did you then reach any conclusion as to whether it was possible to bring about this consolidation immediately, or whether it would take a considerable period of time to do it? A. I cannot remember what we thought at that time.

Q. Well, then, I will say, did you not, early in 1903, determine to bring about such a condition of affairs as soon as it could properly be done and
1997 with this end in view, did you not determine to organize one corporation which should be large enough and have capitalization sufficient to attain that object? (Objection sustained.)

Q. When you organized the E. I. du Pont de Nemours Powder Company, was or was it not your plan and policy to take over all of the physical, as well as the stock assets of the various corporations which you had at that time acquired some interest in? A. The original plan was to take over the stocks of the corporation owning the assets only.

1998 Q. You had no thought at that time of taking over the physical assets? A. I think not at the time of the organization.

Q. Did you ever read this answer that I called your attention to in the Government case? A. Well, not very recently. I have within the last month or two, I think.

Q. You authorized the answer to be put in, did you? You authorized such a nanswer to be made in your behalf? A. Yes, surely.

Q. If this answer states to the contrary, then it would not be in accordance with the fact, as you understand it? (Objection sustained.)

Q. And when was it that you concluded it was desirable to take over the physical assets of the various corporations which you had theretofore ac-

quired an interest in, and place them in the possession of the E. I. du Pont de Nemours Powder Company? A. I think about the year 1904.

Q. Up to that time, had a portion of these various interests been transferred to and held by what is known as the E. I. du Pont Company? A. The E. I. du Pont Company was formed prior to the organization, or about the time of the organization of the E. I. du Pont de Nemours Powder Company, and that corporation, E. I. du Pont Company received the physical assets owned directly by the 2000
former E. I. du Pont de Nemours & Company, so when the property of the E. I. du Pont de Nemours Company was transferred to the Powder Company, there were stocks of corporations only transferred. No physical property was transferred direct.

Q. Subsequently, however, were or were not all of the assets of the E. I. du Pont Company transferred to the Powder Company? A. Subsequently they were, yes.

Q. Do you know about what date that was? A. My recollection is about 1908.

2001

Q. Now, I show you a paper writing and ask you to examine it and state whether you know what that is (handing to witness)? A. That seems to be a circular in regard to the issue of 4½ thirty year gold bonds of the E. I. du Pont Powder Company.

Q. Do you know anything about that having been authorized? A. Yes; I think I remember it.

Q. There appears to be some writing in there, with your name attached to it. Is that authorized by you? A. I should say yes.

Q. That was a statement made up by your authority, or by you? A. Yes, sir.

(The entire paper was offered in evidence. Objected to. After argument, the Court admitted the following portions thereof, which were read to the jury):

"ORGANIZATION AND HISTORY.

The E. I. du Pont de Nemours Company was organized under the laws of the State of New Jersey on May 19, 1903, for the purpose of consolidating
2003 into one corporation the numerous interests of the E. I. du Pont de Nemours & Company, which corporation and its predecessor, a partnership of like name, had been engaged in the manufacture and sale of explosives for over one hundred years, having started business in the year 1802. The record of the company has been one of steady and conservative progress as measured both by financial returns to its owners and by the growth of the business. The company is constantly perfecting improvements in its products and methods of manu-
2004 facture, and its experimental departments in these lines are especially well equipped. The duration of the corporation is perpetual."

"COMPARATIVE INCOME ACCOUNT

December 31	1904	1905	1906	1907	1908
Gross Receipts	$26,103,869	$27,655,381	$30,751,726	$31,661,939	$28,027,094
Net earnings	4,438,701	5,063,612	5,332,802	3,929,509	4,929,251
Extraordinary adjustments and profit and loss on sale of real estate, securities, etc.	*109,939	*97,259	66,110	387,816	129,312
Interest on Outstanding Bonds	307,245	266,670	535,819	676,427	729,266
Preferred Stock Dividends	988,716	1,136,801	989,236	735,637	771,078
Common Stock Dividends	112,081	821,390	1,533,826	1,741,392	1,786,738
Interest and adjustments and dividends on subsidiary companies' stocks	194,958	42,287	240,145	*68,006	74,971
Total deductions from net earnings	$1,493,061	$2,169,889	$3,365,136	$3,473,266	$3,491,365
Undivided profits for year	2,945,640	2,893,723	1,967,666	456,243	1,437,886
Accumulated surplus to date	5,068,225	7,961,947	9,929,613	10,385,855	11,823,740

*Indicates credits to profit and loss.

2007 2005 2005

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THIS PAGE BOUND

Q. I think there is only one question or two more. In your former testimony, Mr. du Pont, you were asked a question which I want to read to you for the purpose of clearing up what seems to be some uncertainty in regard to it. You will find this on page 286 of the record: "The shares of the Powder Company were distributed to the owners"—is your answer to the question—"The shares of the Powder Company were distributed to the owners of the property for which those shares were paid. The E.
2009 I. du Pont de Nemours & Company received its share of the stock in payment for its assets, and remained possessed of that stock until the dissolution took place, the dissolution of the E. I. du Pont de Nemours & Company, and that which went to the E. I. du Pont de Nemours Powder Company was distributed among the stockholders of the E. I. du Pont de Nemours Powder Company." What dissolution did you refer to there? A. The dissolution of E. I. du Pont de Nemours & Company. That corporation has been dissolved and their charter
2010 surrendered.

Q. When did that dissolution take place? A. I think it was the early part of this year.

Q. Nineteen hundred and—— A. 1913 or the latter part of 1912.

Q. How did that dissolution occur? (Objected to and objection sustained.)

Q. Do you know who Mr. Maddox is or was during 1903 to 1908? A. He is employed by E. I. du Pont de Nemours & Company.

Q. Where was he located? A. In Wilmington.

Q. What were his particular duties? A. He was in the black powder operating department.

Q. Did he have anything to do with the operation of various plants throughout the country? A. The black powder plants, yes.

Q. I show you an exhibit here (handing to witness) and ask you whether you know anything about this, Mr. du Pont, Plaintiff's Identification 1151? A. No; I have no recollection.

Mr. Abbott: That is all, Mr. du Pont.

Cross examination by Mr. Button:

Q. Mr. du Pont, will you look at the first companies on Plaintiff's Exhibit 1095, being a list of 2012
plants owned directly or through stock ownership by the E. I. du Pont de Nemours & Company, on March 1, 1902, and state whether or not all except two were entirely owned? I believe you stated that you owned only a part of some of those plants? A. Fairchance and Newhall plants we owned or controlled, through the Hazard Powder Company; a majority of the stock of the Meadowbrook. We owned directly 60 per cent of the stock.

Q. In the other instances did you own all? A. The Tamaqua plant we had 60 per cent. The others 2013
we owned either all of the stock, or owned the property directly.

Q. Are there any dynamite plants in that first list? A. No.

Q. Now, in regard to the next part of this same page, plants owned by Laflin & Rand—first, are there any dynamite plants in that list? A. No; there are not.

Q. And can you state whether the Laflin & Rand owned all of those plants, or only an interest in some of them, and if so, in which one? A. I think they owned them all directly, except the Moosic, the Rushdale, and the Schaghticoke, of which they owned the majority of the stock.

Q Now, on the next exhibit which is Plaintiff's Exhibit 1096, being plants owned or controlled

jointly by the du Pont and Laflin & Rand Powder Companies, concerning which I believe you testified that those two companies together owned and controlled the stock, could you point which are black powder plants and which are dynamite plants? A. The black powder, Belleville, Birmingham, Chattanooga, Consumers, Dorner, Enterprise, Farmingdale, Fontanet, Kellogg, Oliver, Riker, Shenandoah, Youngstown; those are the black powder.

2015 Q. Are the balance dynamite plants? A. The balance are either dynamite plants or manufacturing nitro glycerine, which we classify as a dynamite plant.

Q. Now, on page 3 of this same exhibit, "plants acquired by E. I. du Pont de Nemours & Company" or by the powder company by purchase after March 1, 1902, can you state which are black powder plants, if any? A. Conemaugh, Santa Cruz. Those are the only black powder plants.

2016 Q. Now, in the last list on the same exhibit, being a list of the plants constructed by either E. I. du Pont de Nemours Company, or by the Powder Company, after March 1, 1902, will you state which were black powder plants? A. The Connable Nemours, Patterson.

Q. And the rest are dynamite or nitro-glycerine plants? A. Yes.

Q. How much did this Casey plant at Casey, Ill., amount to? A. That was a very small plant, for the manufacture of nitro glycerine.

Q. And the Hartford City, at Hartford City, Ind.? A. That is also a small plant.

Q. And the Joplin plant at Joplin, Mo.? A. That is a fair sized dynamite plant.

Q. And the Sterling at Lewisburg, Ala.? A. That is rather a small dynamite manufacture.

Q. Now, these nitro-glycerine plants are plants

that manufacture straight nitro-glycerine used largely for the purpose of shooting oil wells? A. That is right, yes.

Q. And their business is extremely local, on account of the impossibility of transporting it? A. Must be within wagon haul; cannot transport it in any other way.

Q. In regard to the plants that were constructed by your companies from time to time in some instances, do they take the places of plants which 2018
have been subject to explosion, or which had worn out? A. Not directly, no.

Q. Now, when you were on the stand before, Mr. du Pont, referring to page 359 of the record, the record indicates that you stated as follows, in reference to the original entry of the du Pont Company into the dynamite business, the question was "And the entry of the du Pont Company into that business was in the nature of an original cash investment in several different companies at the time those companies were formed, was it not? A. They actually formed the Repauno Chemical Com- 2019
pany. They did not buy into it. They organized it themselves, and the Smokeless Powder Company I understood had purchased stock and also the Eastern Dynamite Company." Now, is that statement just correct, Mr. du Pont? A. No; it is not accurate. Do you mind reading the latter part; it is correct so far as the Repauno Company is concerned.

Q. (Reading): "Q. They organized it themselves, and the Smokeless Powder Company I understood had purchased stock and also the Eastern Dynamite Company." But not Smokeless Company, they had nothing to do with the dynamite? A. The Hercules Company, I believe.

Q. Then they organized the Hercules Company

2020 in the same way as the Rapauno, is that correct? A. Yes, sir.

Q. Then in reference to the Eastern Dynamite Company, that was not organized until some 13 or 15 years later, or thereabouts? A. 13 years later.

Q. In 1895? A. 1895.

Q. And on the next page, 360 of the record, near the bottom of the page there is this statement: "I would like to state in regard to the Eastern Dyna-
2021 mite Company when that was formed there were minority stockholders in that corporation; that the entire capital stock was not in the Laflin & Rand Company. Q. But they controlled it, did they not." Your answer is "Yes." Is that right? A. It should have been "No."

Q. Now, which two companies did control the Eastern Dynamite at that time—or which companies, I do not know if there were two? A. No company or individual controlled. The Hazard Powder Company and the du Pont, and the Laflin & Rand together controlled, but neither one con-
2022 trolled alone.

Q. Each being a minority stockholder? A. Each was a minority stockholder, yes, sir.

Q. And do you recollect whether the joint interests of the du Pont Company and the Hazard Company were less than a majority at that time? A. They were less than a majority.

Mr. Button: That is all.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]

No. [redacted]

THE BUCKEYE POWDER COMPANY, PLAINTIFF IN ERROR,

vs.

E. I. DU PONT DE NEMOURS POWDER COMPANY, EASTERN DYNAMITE COMPANY, AND INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FILED SEPTEMBER 26, 1914.

(24,926)

ARTHUR J. MOXHAM was recalled, and further testified:

By Mr. Abbott:

Q. Mr. Moxham, you testified before, I believe? A. Yes.

Q. I want to ask you just a few questions. Do you know Mr. R. S. Waddell? A. Yes, sir.

Q. How long have you known him? A. Since 1902, the fall of 1902.

Q. Do you know what he was doing, what his occupation was at that time? A. He was a leading officer in connection with the sales of the du Pont Companies.

Q. Do you know anything about the time when he decided to stop his relations with the interests which you have just indicated? A. I do.

Q. Did you yourself have any conferences with him regarding that matter? A. Yes.

Q. Will you state what they were? A. Had so many it is a little difficult to give you the beginning. I think his first discussions were with the president, Mr. Coleman du Pont, and I was called upon by him to advise in the matter. I was aware that he had thought of leaving for some time before this occurrence that I now mention in a general way, but at this time he had determined to take the step, and had elaborated some plans to that end. We thought—we valued Mr. Waddell's ability as a salesman—that he had better remain with us, if it were possible for us to do so, and Mr. du Pont made him some offers to that end. I think, if my memory is right, he offered to subscribe. First of all, I think he tried to persuade him not to go into business by himself—to remain with the company.

Q. What, if anything, did you say to Mr. Wad-

dell with regard to that phase of the matter? A. About staying with the company?

Q. Yes. A. I don't today remember. I don't know that I had much to do with that. I think that when I came into it, matters had gone along a bit.

Q. Very well then. What was the rest of your conversation—conference? A. As I remember, at the beginning Mr. Waddell apparently entertained
2027 the thoughts of getting the balance of the money he needed from us. I believe that we made it a condition that we should have a controlling interest at the beginning.

Q. As to that, you say you believe that? Do you know that to be a fact? A. Yes, I know that was a fact. Am I to go on?

Q. I would like to have you confine yourself as near as you can to any conferences that you had with Mr. Waddell, rather than matters that occurred with some others? A. It is a little hard for me to repeat exactly what was said. I do not re-
2028 member it now. I can hardly do more than give you a broad digest of it all. I do not think I can even give you a date.

Q. Did you or did you not succeed in making any arrangement with Mr. Waddell, which was satisfactory? A. We failed to make an arrangement with him.

Q. After that condition of things, what did Mr. Waddell do, if you know. Did he leave your employ? A. Left us, yes.

Q. Now, when he came to leave your employ, do you know anything about any detectives that were put on his track? A. Nothing beyond the fact that one day I found a communication, in the shape of some letters from detectives on my desk. Who they came from, I don't know, and my only interest in

the matter was to stop the detectives—discharge them.

Q. Who was in your—who was immediately under you at that time? By the way, let me ask what department were you at the head of? A. The development department.

Q. And who was your immediate assistant? A. William S. Dwinnell.

Q. Is Mr. Dwinnell living or dead? A. Dead.

Q. What, if any, steps did you take, as soon as you heard that these detectives had been employed? 2030
To discontinue that, what did you do? A. I knew they were of no earthly use for the purpose I had in view.

Q. Now, state what steps you took? A. I instructed Mr. Dwinnell to discharge them, that is all.

Q. Now, do you remember how long this was when you had this information regarding these detectives after Mr. Waddell had left your employ? A. Well, it must have been a very few weeks.

Q. Well, how many? A. I do not know. 2031

Mr. Abbott: That is all.

Cross examination by Mr. Button:

Q. In reference to this proposition which was made with Mr. Waddell, to go into business with him, you have stated that your recollection is that the du Pont Company insisted upon having control. Now, was not that arrangement about as follows—that Mr. Waddell was to have 51 per cent. of the stock of his proposed company, but that 2 per cent. of it was to be put up as collateral security by Mr. Waddell, to assure the carrying out by Mr. Waddell of certain undertakings he had made?

Mr. Abbott: Now, if your Honor please, we object to that. That is a statement of matters which have not in anyway been brought out in the direct examination, and furthermore——

The Court: I think it is within the scope of cross examination.

Mr. Abbott: Well, the writings which are already in evidence state fully the conditions which were made by these parties, or
2033 which were attempted to be made.

The Court: That would not make any difference. It is within the scope of cross-examination. You touched upon that condition. It is within the limits of a proper cross-examination.

To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

A. I can only answer that as a matter of hear-
say. That part of the matter was, I think, in the
2034 negotiations between——

Mr. Abbott: Just a moment. The witness says he can only answer it as a matter of hearsay. I think that that is sufficient to make his answer inadmissable. We object to it upon that ground.

The Court: Of course, if it is heresay——

The Witness: It was hearsay from Mr. du Pont. I do not know legally.

Q. Your knowledge in that regard is of the same character as your knowledge in reference to the statement you did make? A. Yes.

Mr. Button: Then I think it should all go in.

The Court: It is already in evidence anyhow, from Mr. du Pont. I will allow it if it it is from Mr. du Pont. Is it?

The Witness: It is from Mr. du Pont.

The Court: Yes, I will allow it.

The Witness: May I finish?

The Court: Yes.

A. I want to say that I did not pay very much attention to those details, because the question of control or not control, I did not consider, and I do not think really Mr. du Pont did, as a matter of final decision. It was merely an effort on our part to negotiate for what we estimated to be the best for the company. I do not think that alone was a matter of very grave importance to the company. 2036

Q. You were aware at that time that Mr. Waddell was possessed of a great deal of information in regard to the du Pont Company, gathered through twenty years, were you not? A. Oh, surely. 2037

Q. That he knew all about your customers and prices and trade? A. Knew more than anybody. He had almost all of the knowledge that the company had about that, at that time.

The Witness: He had almost all of the knowledge that the company had about that, at that time.

Q. And to your knowledge he had been under a salary for twenty odd years, under circumstances in which his duty was to get in contact with the customers themselves, was not that the situation? A. I do not know how many years, because that antedated my coming, but I knew it had been for a long time, and that the facts you state are so.

2038 *Arthur J. Moxham—Recalled Re-Direct.*
William J. Thrush—Direct

Q. That is all. Just one moment. About these reports from detectives that you saw, would you be able to identify them now, if you saw them? A. No.

By Mr. Abbott:

Q. Did you consider it anything improper on Mr. Waddell's part for him to go out and establish
2039 a business for himself, and take advantage of his ability and experience in the powder business? (Objection overruled.) A. No, we, all of us, thought he had a perfect right to do that if he wished to.

By Mr. Button:

Q. Did you think he had a perfect right to take a lot of private documents, belonging to the company, when he went away? A. We certainly did
2040 not.

By Mr. Abbott:

Q. All right. Do you know whether he did do it? A. I do not.

Mr. Abbott: That is all.

Deposition of WILLIAM J. THRUSH, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Thrush, you have given your full name to the commissioner? A. Yes, sir.

Q. Where do you reside? A. Hanna City.

Q. Illinois? A. Yes, sir.

Q. How long have you resided there? A. 25 years.

Q. What is your business? A. Coal mining.

Q. How long have you been a coal miner? A. 43 years.

Q. Whereabouts has your experience as a coal miner been had? A. Well, altogether in this state, in different places.

2042

Q. Describe the places where you have worked as a coal miner? A. I have worked out in Danville, Ill., and I have worked at the Kingston Mines, Star Mines and in the Kickapoo Creek.

Q. It is not necessary to tell all the places? A. No; all right.

Q. Did you ever work at the mines at Hanna City? A. Yes, sir.

Q. That is where you are engaged now? A. That is where I am at the present.

Q. Who is the owner of the mine where you are now employed? A. Applegate & Lewis.

2043

Q. Were you employed there in 1907? A. Yes.

Q. In your work as a miner—are you a member of the United Mine Workers' Association of the state? A. Yes, sir.

Q. How long have you been a member of that association? A. Ever since the organization.

Q. Now, what Local are you a member of? A. 661.

Q. Were you at any time ever a member of any Pit Committee or Mine Committee? A. Yes, sir.

Q. State when that was? A. That was in 1906, '07, '08 and '09.

Q. Continuously? A. Yes.

Q. Have you any relatives living at Hanna City? A. Yes, sir.

2044 Q. Have you any relatives living at Hanna City who are employed in the mines at Hanna City? A. Yes, sir.

Q. State about how many relatives you have who are engaged in a similar business to yours at Hanna City? A. Well, as near as I can tell, about 18.

Q. What are the total number of miners employed in the mine at Hanna City? A. All?

Q. Yes. A. I don't know the exact number, but
2045 something near 100 miners.

Q. Have you handled black blasting powder in your operations as a miner? A. Yes, sir.

Q. What kind of black blasting powder have you handled? A. Different kinds. Buckeye powder, du Pont powder, what they call the Pacific powder, and the Laflin & Rand brand and the King's.

Q. State what experience you have had in handling the Buckeye powder. When and where did you use it? A. I used that out at the Hanna City mine.

Q. When did you use it? A. I used it in 1907
2046 and 1908.

Q. Do you have any knowledge of a test that was undertaken between the Buckeye powder and the du Pont powder at the Hanna City mines in 1907? A. Yes.

Q. What, if any relation, did you sustain to that test; did you participate in it in any way? A. Yes, sir.

Q. State what you did—just how you participated in that test? A. One of the judges.

Q. By whom were you selected? A. I was selected by our sub-district president, Samuel Edwards.

Q. And which side in the contest were you selected to represent? A. The du Pont side.

Q. After you were selected to act in that test,

what did you do, what was your first step? A. My first step was to beat the test, if I could.

Q. Did you yourself do any of the work in connection with the handling of the powder? A. I did all the handling of the powder.

Q. State what you did, just how you handled that powder, in order to demonstrate the qualities of your powder? A. Well, there were two men working under me, and I would show them where to drill the holes, and when they drilled the hole I would charge it and put the blast in, and use my 2048
own judgment with the powder, what I thought was all right to put the coal cut. I put the charge in, and I would take some out if they had too much powder in the cartridge, and maybe I would put in a little more.

Q. Were you on the mine committee at this time you speak of? A. Yes, sir.

Q. You were a member of that committee? A. Yes.

Q. What powers did the mine committee have with reference to the inauguration of a test of that 2049
character? A. The mine committee is supposed to have a little more power to settle the disputes and grievances that arise. They come to a mine committee if they have a dispute any say, "I want you to come and adjust this for us."

Q. You were acting both as a member of the mine committee and as a judge at this test? A. Yes, but the mine committee had nothing to do with that test whatever.

Q. They had nothing at all to do with it? A. No.

Q. Do you know who furnishes the du Pont powder that was furnishes to you at that time for use in that test? A. Yes.

Q. Who was it? A. It was an agent of the Dooleys.

Q. And where are the Dooleys located? A. In Peoria.

Q. Do you have any personal acquaintance with members of that firm? A. Yes, sir.

Q. Do you know both of the members? A. Yes.

Q. How long have you known them? A. About 30 years.

Q. Do you know any person who was acting for or representing the Dooley Brothers at that time?

2051 Mr. Katzenbach: That was objected to as irrelevant and immaterial. (Objection overruled.)

Q. (Continuing) Who was such a person? A. I was representing them for one.

Q. You say you were representing Dooley Brothers; in what capacity were you representing them? (Objected to as irrelevant and immaterial. Objection overruled.) A. As a sub-agent.

2052 Q. At what point? At Hanna City.

Q. What were your duties as sub-agent at Hanna City for the Dooleys? (Objection overruled.) A. It was to sell their powder as much as possible.

Q. By whom were you employed to represent the Dooley Brothers? (Objection overruled.) A. I was employed by Mr. Moffatt.

Q. What are his initials, if you know? A. Edward.

Q. Do you know where Mr. Moffatt resides at this time? A. No, sir; I don't know.

Q. Do you know where Mr. Moffatt resides at this time? A. No, sir, I don't. He give me his number, but I couldn't——

Q. I mean as to the place? A. In Peoria.

Q. Do you know whether he still represents Dooley Brothers or not? (Objection sustained.)

Q. State how it came about that you came to be employed by Mr. Moffatt to represent the Dooley Brothers at Hanna City? (Objection sustained.)

Objection was interposed by counsel for defendants to the further reading of the deposition, and request was made of the Court to examine the same; after argument, the Court examined the deposition, and sustained the objection that certain questions and answers of said deposition were incompetent, irrelevant and immaterial, and excluded the same and directed that the same be not read, to which ruling the plaintiff then and there excepted, which exception was allowed. 2054

That part of said deposition which was included within said ruling and exception, reads as follows:

"Q. State how it came about that you came to be employed by Mr. Moffatt to represent the Dooley Brothers at Hanna City. A. He wrote me a letter; he was personally acquainted with me, and he wrote me a letter and told me to come to town; and I accepted the letter and came down to see him. I met him here at the Smith Hotel. He said, 'Get in the buggy and we will go down home.' We went down on Western Avenue—that is where he lived at that time. He said, 'I got a proposition to make to you'; he said, 'If you will get this powder installed out there in place of the Buckeye powder, I will pay you a commission on it.' 2055

"Q. Now what did you say in response to his proposition? A. I told Mr. Moffatt, I said, 'All right, I will go out there and do the best I can for you.'

"Q. Was there any agreement made between you at that time as to what compensation you were to receive for your services? A. Yes, sir.

"Q. What was that? A. 5 cents a keg."

"Q. For how long was that agreement to continue? A. As long as they used—now, when we made that agreement, it was as long as they used that powder, but it didn't continue that long.

"Q. How long did it continue? A. I believe it continued about a year and a half or two years.

"Q. During this time, did you receive any compensation for your services, in pursuance of the arrangement which you have just testified you made
2057 with Mr. Moffatt? A. Yes.

"Q. State, as near as you can recall, how much compensation you did receive from that source. A. I wouldn't state positively how much, but something like $100.

"Q. From whom did you receive that money as it came due? A. From Mr. Moffatt.

"Q. Where was the money paid to you? A. At different places.

"Q. State the places, as near as you can recall. A. Generally at Dooley Brothers' office, where I
2058 could see him; he was most always there.

"Q. Was the money paid to you over the counter?

"A. No, sir.

"Q. From whose hand did you receive it? A. Mr. Moffatt's.

"Q. Describe the circumstances under which you received the money from Mr. Moffatt; where and just how it was paid to you? A. It was paid to me in different shapes, sometimes.

"Q. You have testified you received some money from him at the office of Dooley Brothers; describe the circumstances and the manner in which that was paid to you.

"A. I always went in the back room, and Moffatt would come in the front room in the office part, and he would come to me this way, walking over

to me and touching my arm, and he would drop the money in my hand, and I would put it in my pocket and get out.

"Q. Describe any other locations or places where you received money from him. You stated you received it from him from different places. A. At one time I come in there, and he said, 'I want to see you;' 'All right; come down and have a drink;' I told him I wasn't drinking, and he said 'come down and have a cigar;' and we went down to that middle saloon right around the corner from his building.

"Q. Around the corner from the Dooley Brothers? A. Yes; and when we got there, we sat at a table, and he gave me the money over the table.

"Q. Now, did you state how long this arrangement with Mr. Moffatt and Dooley Brothers continued? A. Dooley Brothers had nothing to do with it.

"Q. You made your arrangement with Mr. Moffatt? A. Yes, sir.

"Q. How long did this arrangement continue? You have answered that question already, but I want to refresh my mind. A. It continued very near two years.

"Q. It began in 1907—what part of the year?

"A. I couldn't just recall it."

Thereupon the reading of the deposition was continued as follows:

Q. What powder is being used at the Hanna City mines at the present time? A. Western powder.

Q. Western powder—where is that manufactured? A. It is manufactured over at Edwards Station, Illinois.

Q. The powder plant known as the Western Powder Manufacturing Company's plant? A. Yes, sir.

Q. When did they begin using Western powder at the Hanna City Mines? (Objection overruled.) A. They were using just as quick as Mr. Waddell, I believe, went out of business.

Q. Was there any complaint made at any time after you began using Western powder, by the miners, on account of Western powder? (Objection overruled.) A. None whatever.

Q. Were you familiar with the kind of powder used in the mines at the time Mr. Waddell sold his
2063 property you speak of? A. Yes, sir.

Q. What powder was being used just before he sold out? A. Du Pont powder.

Q. And what powder was used shortly after he sold out? A. Just as quick as we got rid of the du Pont powder, they used Western.

Q. And have they used du Pont powder since that? (Objection overruled.) A. Not to my knowledge.

Q. And have you been working in the mines continuously since that time? (Objection overruled.)
2064 A. That is right.

Q. Did you ever hear any more complaints regarding the quality of the Western powder after Mr. Waddell disposed of his property? (Objection overruled.) A. No, sir.

Q. Have you ever heard any complaints regarding the quality of that powder from that time down to the present day? (Objection overruled.) A. No, sir.

Q. After the Western Powder Company became installed in the mines, did you continue to receive any further payments from Mr. Moffatt?

Mr. Katzenbach: That is objected to as leading and irrelevant and immaterial. Also, the next several questions.

The Court (after examination of the de-

position): The questions down to page 1524 are excluded.

To which ruling of the Court the plaintiff excepted and such exception was allowed.

That portion of the deposition included within said ruling reads as follows:

"Q. After the Western powder became installed in the mines, did you continue to receive any further payments from Mr. Moffatt? A. No, sir. 2066

"Q. I wish you would state in a general way, in your own way, just how you went about performing your duties under your arrangement with Mr. Moffatt, for the purpose of keeping Buckeye powder out of the mine and securing the use of du Pont powder. A. The grounds that I worked on was the commission I was getting out of it, and I used my influence the best I could to get that powder in. 2067

"Q. Tell some of the things you did; some of the ways you used your influence. A. I was an expert miner in that coal, and worked in it so long, and I used to get out considerable coal, as much as any of them, and more than most of them there; and I said, "Why don't you use the same kind of powder, why don't you use some good powder"; I said, "Look at my bulletins; I don't use as much powder as you do, and I am getting out more coal" They said, "What are you going to do: They send in this keg to me?" and I said, "Exchange it; they will take it back.

"Q. State whether or not, in your experience as a miner, and also as a member of the Miners' Union and a member of the Miners' Committees, how the members of the Pit Committee are regarded by the miners as a body.

2068 A. They are regarded as a refuge, for to go to them for to get advice and to get difficulties adjusted.

"Q. State whether or not, as a rule, and in your experience, the men who are selected upon the Pit Committee are men with experience and who have the confidence and respect of their associates? A. They are picked as men with ability to know."

2069 Thereupon the reading of the deposition continued as follows:

Q. You stated that you knew the Dooley Brothers; where did you know them? A. When I first got acquainted with them was down at Bartonville.

Q. And how did you come to get acquainted with them? A. Working in the same mines.

Q. And they were practical miners? A. Yes, sir.

Q. And you worked together? A. We worked in the same mine.

2070 Q. Did you ever know a man by the name of William Kingbush? A. Yes, sir.

Q. Where did he reside? A. Edwards Station.

Q. What was his business? A. A coal miner.

Q. He was a coal miner, too? A. Yes.

Q. In what mine was he employed, if you know? A. Edwards Station; I don't know which one of the mines he worked in.

Q. Do you know what position, if any, he occupied in the mine as to the Miners' Union? A. No, sir.

Q. Or as to the miners who were engaged in the mine? A. No, sir; I don't know.

The reading of the cross-examination was waived by the defendant's counsel, and the same was read by plaintiff's counsel, as follows: (Objection overruled.)

2071

Cross examination by Mr. Katzenbach:

Q. Mr. Thrush, in what mine were you working in the year 1903? A. 1903, Hanna City.

Q. And who was the owner of the mine? A. I believe I had a part interest in it at that time; I am not sure.

Q. You don't remember, then, anything about that in 1903? A. Yes, I recollect it; I can't place it.

2072

Q. You can't place it? A. No, sir.

Q. What mine were you working in in the year 1904, Mr. Thrush? A. Hanna City.

Q. You were living in Hanna City? A. Yes, sir; I was living in Hanna City.

Q. But what mine were you working in? A. At the Star Mine.

Q. Do you know the mine you were working in in 1905? A. I wasn't working in no mine at that time.

Q. You were not in a mine during that year? A. No, sir.

2073

Q. What were you doing in 1905? A. I was just staying at home.

Q. During the year 1906, where did you work? A. I worked at Farmington.

Q. In whose mine did you work there? A. For the Maplewood Coal Company.

Q. And you were also there during 1907, with the Maplewood Coal Company? A. Part of that time.

Q. When did you leave the Maplewood Coal Company? A. I couldn't just tell the date I left.

Q. Do you remember what month it was? A. I left there and then went to work for Newsam.

Q. For Mr. Newsam? A. Yes, sir.

Q. That is, in the year 1907? A. No, sir; not in 1907.

Q. But after you worked with the Maplewood Coal Company, did you go to work with Newsam? A. I worked there a month afterwards.

Q. And what date did you leave Newsam? A. I couldn't tell you; I didn't keep track of the dates.

Q. And then, after you left Newsam, where did you go? A. I went back home.

Q. Then, you didn't work for some time? A. I believe it was about five or six months I didn't do anything.

Q. That you didn't work? A. Yes.

Q. And that was after you went back to your home; after five or six months, you didn't work? A. Yes, sir.

Q. Now, then, what mine were you working at during the year 1908, if you worked? A. I worked in the Hanna City Mine.

Q. And what time of the year 1908 did you go to work at the Hanna City mines? A. What time of the year?

Q. Yes? A. I am not positive; I believe it was in September or August.

Q. August or September, 1908, you went to work in the Hanna City mine? A. Yes, sir.

Q. Who owned the Hanna City mine? A. Applegate & Lewis.

Q. And when you went to work in that mine in September, 1908, what powder was being used there? A. Both kinds, Buckeye Powder and du Pont Powder.

Q. And what powder did you use and request yourself, in your mining operations? A. Used both kinds.

Q. Was there anybody that was working in the mines for the Buckeye Powder Company? A. I never investigated.

Q. You say you never investigated that; you

never even heard that anybody worked there for the Buckeye Powder Company in the handling of the Buckeye powder? A. Well, I heard rumors that people did work for them, but I never investigated to see what it was.

Q. You couldn't even tell from being about the mines, who it was that was working for the Buckeye Powder Company? A. No, sir; I had my own business to attend to.

Q. You didn't even know anything about that? A. No, sir. 2078

Q. Now, then, you had been working in the mines of Applegate and Lewis how long when you received this letter which you say you received, five or six months? A. I should judge about a year.

Q. So that you then received this letter about in the month of August or September, 1909, didn't you? A. Yes, sir.

Q. That was about a year after you went to work there, and that is the best of your recollection, after you went to work there? A. That was 1908—no, 1907. 2079

Q. Well, now, what time in the year 1908 did you receive the letter? You say it was in 1907? A. I couldn't state exactly what month it was in.

Q. After receiving this letter, you came down to Peoria, did you? A. Yes, sir.

Q. And where did you go? A. I went to Mr. Moffatt's house.

Q. Who opened the door for you at Mr. Moffatt's house? A. Mr. Moffatt himself.

Q. Mr. Moffatt has a family, hasn't he? A. Yes, sir.

Q. What members of Mr. Moffatt's family did you see on that occasion? A. I seen his wife.

Q. Who else? A. I believe that's all.

Q. So that then, you saw Mr. Moffatt's wife, Mr.

Moffatt and Mrs. Moffatt on that occasion? A. Yes, sir.

Q. You say you frequently went into the office of Dooley Brothers after this. You have known the Dooley Brothers for some time, haven't you? A. Yes, sir.

Q. And you had known them for some time? A. Yes.

Q. What were the names of the Dooley Brothers? A. The oldest one is named Jim.

2081 Q. What was the younger named? A. The second one is named Dick.

Q. And then you went in there, you used to see them, didn't you? A. Not very often.

Q. You did on several occasions see them in there? A. Yes, sir.

Q. And talked with them? A. I never met a friend in my life but what I speak a word or two with him.

Q. Yes; but when you went into the Dooley's place on these occasions you referred to, you chat-

2082 ted with the Dooleys, didn't you? A. No, sir.

Q. What did you say to them? A. Nodded my head.

Q. And they would be in the store; they were in the store? A. In the office part.

Q. And how many times did you go in there? A. Well, I couldn't state how many times. If you would tell me how many times I come to town, I might tell you.

Q. You went in there every time you came to town? A. Pretty near.

Q. Will you say it was a half a dozen or a dozen times? A. I could say it was a dozen times.

Q. And you always went there, without exception, didn't you, to the store, every time you came in town? A. I used to go in and buy supplies for a coal mine.

Q. And now you say that money was paid you in the store of Dooley Brothers, or did you have a sir. I didn't have a charge account. I always paid charge account there for your supplies? A. No, cash when I got anything.

Q. Now, this conversation that you said you had with Mr. Moffatt, the first conversation—just tell me everything that you told him? A. I don't know that I could tell you everything I told him.

Q. To the best of your recollection? A. I don't believe I can recall what you have asked me. 2084

Q. Tell everything you said. A. At what time?

Q. At this time you had this first talk with Mr. Moffatt. A. He said, "I got a proposition for you," and he said, "There will be something in it for you"; and I said, "All right, if there's anything in it, I am one of them fellows that wants to grab onto it." He said, "I will give you a commission on this of 5 cents a keg on all powder that is delivered out there at that shaft"; and I said, "All right, I will do the best I can; if I can get it installed, I will do it; it's something for me and something for you"; that was about the length of the conversation over that. 2085

Q. Now, then, I suppose that at these times you went into Dooley Brothers, there was a statement rendered you of the number of kegs that had been sold? A. No, sir.

Q. There was not? A. No, sir.

Q. Or did you keep that account? A. No, sir; we kept a running account; he was honest, so was I.

Q. Did you keep that in a book? A. No, sir.

Q. The Dooley Brothers had it on their books, didn't they? A. I couldn't say.

Q. In this conversation that you had at the house, will you state whether or not you have told all of it? A. All that I can recollect.

Q. Do you consider that your memory is pretty good or not? A. Yes, first rate.

Q. And you never make mistakes on anything? A. The best of us make mistakes.

Q. But you have a very good memory, haven't you? A. Yes, sir.

Q. You spoke about having 18 relatives out at Hanna City; were any of those relatives working in the mine at the same time with you? A. Yes, sir.

Q. Which ones? A. The two boys that are working in there; a brother and four nephews.

2087 Q. What was your brother's name? A. Aleck, and two cousins.

Q. What was your brother's name? A. Aleck, Alexander.

Q. Was he advocating any powder at that time? A. He always used the Buckeye powder.

Q. He never had any talk with you about it? A. No, sir.

Re-direct examination by Mr. Abbott:

Q. What agents of Buckeye powder did you ever see around the mines around Hanna City mines, if
2088 you ever saw any agents? A. I never saw any.

Q. Do you know of any person who was acting for the Buckeye Powder Company at the Hanna City Mines during the time you were there? A. No, sir; not directly.

Q. Do you know of any one that was acting indirectly? A. Well, I have heard talk.

Q. Well, tell who it was that you had heard some talk about? A. I heard people say that Bob Morton and my brother Aleck and others was doing it.

Q. Do you know anything about the facts in that matter? A. No, sir; I never investigated a thing.

Q. Did you ever have any conversation with your brother Aleck concerning the use of Buckeye powder in the mine? A. All the conversation I ever had with him, he was always telling me that was the best powder.

Q. State what the conversations, or what experience you had with Robert Morton at any time concerning the use of Buckeye powder? A. Well, we have had quite a few harsh words together.

Q. You may relate such circumstances and such conversations as you had with him. A. I had a boy working in the mine; of course, they wanted to install that Buckeye powder in there, and he said to me, he said, "Say, you got to use that Buckeye powder to drive that entry with"; and my boy said, "I don't know that I've got to do that." He said, "If you don't, somebody else will take your place." 2090

Q. What was the result of that conversation, if you know? A. The result was, somebody took his place; he quit.

Q. Can you recall any other conversation you had with Mr. Morton about the use of the Buckeye powder? A. None, except the one over that test they had in there.

Q. What position did Mr. Morton occupy at the mine at this time? A. Mine boss.

Q. He was representing the operators of the mine, was he? A. Yes, sir. 2091

Q. The operators wanted one kind of powder and you wanted another kind? (Objection overruled.)

Q. Counsel for the defendants asked you whether or not you had an account with Dooley Brothers. Do you know anything about the manner in which they have kept their books with reference to these payments made to you? A. No, sir.

Q. Do you remember or do you know, whether or not any entries have been made on their books concerning those payments? A. No, sir.

Q. If there are any such entries there, they have been made without your knowledge? (Objection overruled.)

Q. Now, you said that you worked for awhile for a man by the name of Newsam? A. Yes, sir.

Q. Where were his mines? A. Farmington.

Q. Were they the mines known as the Newsam Brothers' mines? A. Yes, sir.

Q. Do you know what kind of powder he used there? A. Yes.

Q. What kind was it? A. Du Pont.

2093 The deposition of DOUGAL HUNTER, a witness produced on behalf of the plaintiff, being duly sworn, was read, as follows:

Direct examination by Mr. Abbott:

Q. Mr. Hunter, where do you live? A. Hanna City.

Q. What is your occupation? A. Coal miner.

Q. How long have you been a coal miner? A. Twelve years.

Q. Where have you worked as a coal miner? A. Why, I have worked at Hanna City, Ellisville, Wan-

2094 lock, Foster, Iowa.

Q. In what mines at Hanna City did you work? A. For Applegate and Lewis.

Q. Have you handled black blasting powder in your work as a miner? A. Yes, sir.

Q. What kinds? A. The du Pont and the Western.

Q. Any others? A. No, sir.

Q. In your work at Hanna City Mines, what special work did you do, if any, what were your duties, in other words, at the Hanna City Mines? A. At Hanna City, when I first started, I started driving mules.

Q. What were the duties of a person engaged as you were at that time? A. My duties?

Q. What do you mean by driving mules? A. To haul the coal from the face.

Q. Do you haul anything else but coal? A. Not necessarily; that is, a fellow isn't hired to haul anything else but coal.

Q. Did you ever haul anything else, then? A. Why, on different occasions, if there was anything else on a car that wants to go outside, I would haul it out, or anything coming in, I would haul it in.

Q. Can you recall hauling in anything or hauling out anything besides coal? A. Yes.

Q. What was it? A. Generally it is props.

Q. What are props? A. They are posts used to 2096
protect themselves in the mine.

Q. Do you know Mr. W. J. Thrush? A. Yes, sir.

Q. Who lives in Hanna City? A. Yes.

Q. How long have you known him? A. I don't know exactly.

Q. About how long? A. I have known him for about eight years.

Q. What relation, if any, do you sustain to him? A. He is my father-in-law.

Q. And how long have you been his son-in-law? A. Six years.

Q. During the period that you have been his 2097
son-in-law, have you ever been with him on any visit to the City of Peoria? A. Yes, several of them.

Q. State when and under what circumstances you have visited him on such visits? A. Why, I accompanied him down here, and chased into Peoria several times, not coming down here on any business with Mr. Thrush. I just come down for a "time" mostly.

Q. When was it that you came down with him for the purpose indicated? A. I couldn't give the exact dates of any time I have been in with Mr. Thrush.

Q. When you came to town with him, where did

you go? A. Why, we generally showed up pretty near all over time when we came in, just chased around.

Q. Where did you first go? A. We most always stayed longest, probably, at Patty Elgin's.

Q. Then where did you go next? A. We just chased around town and took in the sights, mostly.

Q. Have you ever had any financial transactions with Mr. Thrush? A. Yes, sir, I have.

2099 Q. State the nature of the transactions that you have had with Mr. Thrush? A. I have been with Mr. Thrush in town here and I have gone broke several times, and borrowed money off him.

Q. Were you ever with Mr. Thrush when he received money from anybody? A. Yes; I have not been with him when he received money from anybody there.

Q. State the circumstances that you had in mind when you said "Yes"? (Objection sustained.)

Q. You did not see the money pass; that is what you mean? A. Yes.

2100 Q. Describe what you did mean by the answer which you gave to the former question when you said "Yes"? (Objection sustained.)

Q. Where is Dooley Brothers' office located? A. It is, I believe—it is the 500 block on Adams street.

Q. Peoria? A. Yes, sir.

Q. Did you see Mr. Thrush go to Dooley Brothers yourself? (Objection overruled.)

Q. Did you see Mr. Thrush go to Dooley Brothers yourself? A. Yes, sir.

Q. And did you see him come from Dooley Brothers? A. Yes, sir.

Q. Do you know how many relatives Mr. Thrush had at Hanna City? A. I am pretty well acquainted with them, all right, but it will take a good while to figure it up.

2101

Q. Have you ever made a list of the number of his relatives in Hanna City, which question I put to you by consent of counsel? A. Well, I am pretty sure there is fifty per cent of the population of Hanna City related to the Thrush family.

Q. What is the population of Hanna City? A. Between three and four hundred.

Q. Mr. Hunter, do you know how the powder which is distributed to the miners is gotten into the mine? A. Yes, sir.

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Q. Describe how, will you? A. During that time—the way it is delivered now, it is delivered at night and powder is sent down about seven o'clock in the evening while the power is off, the electric power; it is delivered all at night now, hauled in by the mules.

Q. Was that the way it was hauled in at that time? A. Not at the time I drove the mules, no; they delivered it in the daytime then.

Q. But how was it delivered in the daytime? A. In the same way. It was sent down with mules; the driver would take it to the place where it was ordered.

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Q. Was or was not that a part of your duty? A. Yes, sir.

Q. When you got the powder into your mines, what did you do with it? A. Take it to the place it was ordered; if a miner ordered a keg, it was my duty to deliver it to the place where it was ordered.

Q. If the powder was returned, how was it brought out? A. They put it on a loaded car; they set the keg on the load.

2104 *Edward L. Suffern—Direct*

EDWARD L. SUFFERN, called and sworn as a witness for plaintiff:

Direct examination by Mr. Abbott:

Q. Mr. Suffern, where do you live? A. In Plainfield, N. J.

Q. Where do you carry on business? A. In New York City.

Q. Any other place? A. Yes, in Pittsburgh, Cleveland, Chicago, Baltimore, Birmingham, London, Paris and Brussels.

2105 Q. What is your business? A. We are public accountants and engineers.

Q. How long have you been engaged in that business? A. Approximately 25 years.

Q. Under what name? A. Originally under my own name, solely. And for the last seven or eight years under the name of Suffern & Sons.

Q. Have you any affiliations, any connections in any way, in carrying on your business outside of the offices which you conduct yourself? A. You mean association with other accountants in busi-

2106 ness?

Q. Yes. A. Or socially?

Q. Well, I mean in the same business, in the same line? A. There are associations of accountants, societies of accountants, various societies with which I am identified.

Q. Have you any relationship with any of those societies? A. Yes. I am a member of the Society of Certified Public Accountants in New Jersey, and the Society of Certified Public Accountants in New York, and the National organization, the American Association of Public Accountants.

Q. Do you sustain any official relation to any of those associations? A. I am recently retired from the presidency of the National organization, American Association, and I am now President of the

New York State Society of Certified Public Accountants.

Q. In your experience, in your conduct of your business, in the business which you have indicated, has it ever been any part of your duties to make valuations of industrial plants? A. Yes. If I understand just what you mean. We make appraisals of various plants, railways, other public utilities, appraising the physical features, and also we have from almost the beginning, made up, made investigations for the purpose of determining the earning values, or the sale values of enterprises of all descriptions. Those two features I have found do not always do both of those at the same time. 2108

Q. Can you state the general character of such industrial businesses as you have placed valuations upon, from the standpoint of their capacity, or otherwise, outside of railways and plants of a similar character? A. Well, yes, and electric lighting —did you exclude those?

Q. No. That is all right. A. And industrials of quite a variety, I think. Machine corporations, companies making different kinds of machines. Iron and steel companies, coal companies, breweries, distilleries, cotton goods, cotton compresses, quarries. There are some others, I think, a number of different kinds that I cannot just at the moment remember. And automobile accessories, car wheels, car works. I don't remember any more just now. 2109

Q. Now, I submit to you the following question, which is quite lengthy, if you will give your attention to it: Assuming a manufacturing plant—

The Court: Do you want to ask him any questions as to his qualifications first?

Mr. Katzenbach: I don't know what the proposed question is.

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The Court: He is going to start his hypothetical question, I suppose.

Mr. Abbott: A question as to the valuation of this plant.

The Court: Do you want to hear the question first? It may save time.

Mr. Abbott: It is a hypothetical question relating to the valuation of the plant, business and good will of the Buckeye Powder Company.

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Mr. McCarter: I object to the question. He may never have seen the plant.

The Court: I think he may be examined further.

By Mr. Katzenbach:

Q. Mr. Sufferin, did you ever see the plant of the Buckeye Powder Company? A. No, sir.

Q. In your investigations, have you personally ever made an estimate of the value of the powder plant? A. No, sir.

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The Court: Do you expect him to establish the value of the plant, good will, etc., of the Buckeye Powder Company?

Mr. Abbott: The question, if your Honor please, is founded on his knowledge and on the valuation of business enterprises of a similar character. He has testified——

The Court: Similar character?

Mr. Abbott: Well, business enterprises that have a revenue producing ability, and the hypothetical question covers all of the details that have so far been produced in the evidence here, for his consideration, and for an answer.

The Court: I will hear your question.

Q. Assuming a manufacturing plant, constructed for the purpose of manufacturing black blasting powder, located near Edwards Station, about fourteen miles distant from Peoria, Illinois, said plant being located on the Chicago, Burlington and Quincy Railroad, the City of Peoria being served by twelve railroad companies, and said plant having secured from the railroad companies, equal commodity rates with other manufacturers of black blasting powder, said plant being so located that 2114
shipments could be made to the Iowa, Missouri and Montana coal fields on an equal transportation basis with the Iowa mills and assuming that the said plant was located in the center of the district where such powder was being consumed in increasing quantities from year to year and in a district where there was a constant and increasing demand and assuming that said plant was constructed entirely new in the year 1903 and was kept in good repair and operation from the time of its construction up to September 19, 1908, and

Assuming that said plant was located on a tract 2115
of approximately 110 acres, which cost $5,450, and there had been expended in the construction of the buildings and machinery, including the cost of the real estate, $117,000, and

Assuming that there had been added betterments which brought up the cost of said plant, land and buildings to $129,000, and

Assuming that the machinery was of first class construction and properly installed and in good order and condition, and

Assuming that said mills had a capacity of from 250,000 to 300,000 kegs per annum of black blasting powder and that the Buckeye Powder Co., which operated said mills, had ample capacity, machinery and facilities to manufacture conservatively

250,000 kegs of powder per year and that a fair and reasonable profit upon said powder, so manufactured, when sold, was the sum of thirty cents per keg.

What, in your opinion, would you consider the reasonable and fair value of such a plant, business and good will on September 19, 1908, operating under the conditions and in the manner above set forth?

2117 Mr. Katzenbach: Now, we object to that question being asked of this witness, on the ground, first, that he is not qualified as an expert to pass upon the value of this plant, and upon the further ground that this question assumes facts that are not in evidence.

The Court: What are they?

Mr. Katzenbach: Do you want me to point them out?

The Court: Yes.

2118 Mr. Katzenbach: Well, in the first place, that it assumes that there were equal freight rates with powder plants located elsewhere in the States of Iowa, of Missouri, and Montana, which I do not recall has been proven. In the second place, it also states that there was an increasing consumption of powder in the district. The question did not show in what district.

In the next place, that this property was in good repair.

In the next place, that it had a capacity of 250,000 to 300,000 kegs per annum. There might be some evidence as to that.

And also that it had ample capacity for caring for all of the increased demands in that locality.

And also it assumes as a fact that which has only been expressed as an opinion, if

anything, and that is that a fair and reasonable profit on powder is thirty cents a keg. That, to my mind, is a ridiculous proposition. And, therefore, upon those statements of fact, I do not believe that this question can be answered, because the witness has had no experience whatsoever, and has had no inspection of this property; and I do not suppose he knows where the Chicago, Burlington & Quincy Railroad begins or ends, or anything of that kind. 2120

The Court: What do you say?

Mr. Abbott: I think, if your Honor please, this witness has shown his competency to answer questions concerning the valuations of plants of this character. By that I mean an industrial business. It is not necessary that this witness should know all about how a powder plant is operated, any more than it is that he should know all about how a distillery plant should be operated. As an expert, he passes his opinion upon information, and this hypothetical question assumes 2121 that facts exist, just the same as if he had reports from his agents or clients, whatever they might be, as to certain conditions surrounding certain industrial plants. He takes that information, takes his experience over a long period of years with a large number of industries, and he gives his opinion as to what that plant is worth. As I stated, the other day, with reference to this question of loss of profit, it is merely getting the opinion here of an expert who has had experience in dealing financially and otherwise with large enterprises, industrial enterprises, as to what such a business ought to be worth in the open market under certain conditions,

for the purpose of advising the Jury so that it may form its own estimate as to what the plant is worth. It is a much better, much safer way to arrive at a valuation of the plant than it is to take the statement of an interested party, who might have some reasons for putting a valuation high up, or who, on the other hand, might have some interest in putting a valuation low. This witness comes as a disinterested party with certain
2123 facts submitted to him, and upon those facts he forms his opinion.

So far as the statements of counsel are concerned, as to what the question covered, this question has been carefully drawn from the evidence which has been submitted to the Court, and we believe that every statement here is fully covered by such evidence.

The Court: Competency of the question depends upon whether it includes all of the facts alleged. But I am not prepared to ad-
2124 mit this kind of evidence on the valuation of a going concern, a manufacturing concern. It is not easy, of course, to fix the limit where expert testimony stops; but if expert testimony is to be received as to the value of the manufacturing concern at a certain time, it seems to me it is essential that it should be testified to by one who has other knowledge in support of his opinion than that merely contained in a hypothetical question. There are too many elements that go into the question of a manufacturing plant. Some manufacturing plants are never worth what it costs to build them. Others are worth a sum greatly in excess of what it would cost to reproduce them, a physical reproduction. Whether a going

concern is valuable or not depends on so many considerations that any one testifying to the value of such a plant ought to be familiar with the exact physical facts; he should be familiar with what the particular trade demands, the peculiar conditions that affect a certain trade. This witness, of course, has not, does not claim to possess. To my mind, it is incompetent for an expert to testify simply from his general knowledge, from being expert in the appraising 2126
and valuation of different properties. The question is, therefore, overruled.

Mr. Abbott: Will your Honor allow me to ask the witness a question or two more? With this idea in view, to show that he often passes an expert opinion?

The Court: No. I have to settle the question upon the pronouncement of my own. It is not what some other Court may have done. I may be wrong, but that is my ruling. 2127

To which ruling of the Court the plaintiff's counsel then and there excepted and said exception was allowed.

R. S. WADDELL, called as a witness for Plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Waddell, where do you reside at the present time? A. Peoria, Illinois.

2128 *R. S. Waddell—Direct*

Q. Where did you reside before you went to Peoria? A. For about nine months at Wilmington, Delaware.

Q. How long have you resided at Peoria? A. From March, 1903, up to date.

Q. Previous to your residence in Wilmington where did you reside? A. Cincinnati, Ohio.

Q. And how long did you reside in Cincinnati? A. I moved there about May, 1883.

2129 Q. What business were you engaged in while you were residing in Cincinnati? A. I was general agent for the central states for the Hazard Powder Company of New York, from 1882 up to 1902, and of the du Pont Company—E. I. du Pont de Nemours & Company—from 1890 to 1902.

Q. And were you general agent of the latter company while you resided in Cincinnati? A. I was for about ten years or twelve years.

Q. What was the general nature of the work which was assigned to you to do as the representative of the Hazard Powder Company? A. On entering the employ of the company I was made general traveling agent of the United States. My duties were to check up agencies and to establish new agencies, buy land, build magazines, and look after the outside interests of the Hazard Powder Company throughout the country.

2130 The witness thereupon gave evidence tending to show that as an employee of the Hazard Powder Company, and of E. I. du Pont de Nemours & Company, he had knowledge that said companies were members of the Gunpowder Trade Association, that Mr. W. S. Colvin, then treasurer of the Hazard Powder Company, and W. S. Weightman, its secretary, and R. S. Wheeler, its vice-president, placed in his hands certain correspondence rules and other information relating to the affairs of said associa-

tion, and that he made a study of the same to ascertain the relations of his employers to that association, and what his own duties were in that connection; that among other documents thus received by him was a certain price list of explosives designated as "Established Price List of the Gunpowder Trade, January 1, 1882" (Plaintiff's Exhibit 1115); the "Compendium of Rules" (Plaintiff's Exhibit 1129); the "Fundamental Agreement" (Plaintiff's Exhibit 1116), minutes of meetings of the members of said association and of certain committees thereof; that in the fall of 1902 he received a copy of an amended Compendium of Rules from Mr. T. C. du Pont, president of the E. I. du Pont de Nemours & Company, and also, about the same time, he received another copy of the same document from Mr. A. J. Moxham, president of the Hazard Powder Company.

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Q. Now, will you state how it happened to come about that you received this copy of the compendium of rules from Mr. T. C. du Pont? A. I was acting for Mr. du Pont in his official capacity as a member of this special committee and the compendium of rules was necessary for the direction of my work.

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Q. Had you at any time any conversation with Mr. du Pont previous to the receipt of this compendium of rules concerning your acting for him in that matter? A. Yes.

Q. Relate what that conversation was. A. Along in May, 1902, shortly after I had come from Cincinnati to Wilmington, Mr. du Pont stated to me that he had been elected a member of the Advisory Committee to succeed Eugene du Pont, deceased, and he had been—and he had been appointed a member of the Special Committee with Mr. Haskell, president of the Laflin & Rand Company, and he said

to me, "I don't know anything about the details of this powder business, and I don't want to learn; I can make more money promoting companies and carrying out the plans that we have than I could by attending to the legitimate work of manufacturing powder, and I want you to take up those duties for me and help me in the work with Mr. Haskell of the Special Committee." I did so, and I acted for Mr. du Pont, under his instructions, and wrote
2135 numerous letters on the subject and apportioned a great deal of trade on contracts, and special prices during the entire summer of 1902 and well into the fall. The secretary of the committee, Mr. Higgins, addressed the letters to me, and I replied to them. I dictated the letters for Mr. du Pont to his stenographer, Miss Smith, and she attached his signature with the rubber stamp.

Q. Now, after you discontinued your relations with the Hazard Powder Company in New York, what became of the office of the Hazard Powder Company that had been continued previously, if
2136 you know? A. The officers—the president of the company was succeeded by Mr. Moxham, I think about July, 1902, and soon after that he came into the office at Wilmington; he had the offices in New York closed and a part of the office force were tendered positions at Wilmington and others were released, and the books and effects of the Hazard Powder Company were removed over to Wilmington, Delaware.

Q. Now, when the books arrived in Wilmington, Delaware, where were they deposited; where was the business of the Hazard Powder Company continued?

tinued? A. The books were brought into the auditing department of the du Pont Company, in one section of the room—one room—under the care of

the bookkeepers of the Hazard Powder Company.

Q. Where were the offices of the Hazard Powder Company maintained, what building? A. They came over while the offices of the du Pont company were about four and a half miles from Wilmington, out in the country, and they were later removed into a building in the City of Wilmington and in connection with the other offices.

Q. Can you give the names of some of the employees who were transferred from the Hazard Powder Company to the offices of the Hazard Pow- 2138
der Company in Wilmington? A. Mr. A. L. Miller —Albert L. Miller, the general bookkeeper of the Hazard Company, came over. There was another young man. I don't recollect his name, and after some months Mr. Lentillhon.

Q. How do you spell that? A. Assistant secretary of the company, came over to Wilmington.

Q. How do you spell that, Mr. Waddell? A.

Q. Now, after the Hazard Powder Company's offices were removed to Wilmington was the business conducted separately and distinctly for the Hazard Powder Company? A. Yes, so long as I 2139
remained there.

Q. Under whose management and direction was that business conducted at that time? A. Mr. A. J. Moxham, president, and I was general sales agent of the company.

Q. You were general sales agent for the Hazard Powder Company and the du Pont Company? A. Yes.

Q. All matters relating to sales were referred to you? A. Yes, and when Mr. Moxham would write a letter bearing on the work of the sales department, extra copies of that letter were given to me for my information.

Q. Now, down to what period did that condition

obtain, so far as you know? A. Up to the day I left, February 2, 1903.

Q. During the time you were representing the Hazard Powder Company and the du Pont Company at Wilmington as general sales agent, did you have anything to do with the making of any contracts for the sale of powder to various consumers? A. Yes.

Q. Can you recall the names of the consumers with whom you made contracts, of your own independent recollection? A. That I personally executed, the contracts?

2141

Q. Yes; I am only asking you now if you can do it; if you cannot, why—— A. I think I can name a few of them; there were a great many of them.

Q. Give the names of some of the persons with whom you can remember you made contracts. A. Well, Pocohantas Coal Field—Pocohantas Coal Company; Angle Colliery Company; Algoma Coal Company; Lick Branch Coal Company; there were several coal companies located at Ennis, West Virginia; I can't remember them; two or three located at Bramwell, West Virginia. There was a Thomas Coal Company, but I don't know that I have the name correct—the title of the company. There was all the coal companies of the—located in the Bramwell—Pocohantas Coal field—about thirty of them in number, made by the Hazard, du Pont & King companies, and I was present and saw all the contracts signed.

2142

Q. Do you know where those contracts are at the present time? A. I took them back to Wilmington with me and sent copies—one duplicate—or triplicate—of all of them to Edward Green, Secretary.

Q. You say you took them back to Wilmington with you, where were you at the time when these

contracts were entered into? A. I was in the Pocohantas coal field where these coal companies were located, in West Virginia.

Q. That is all you can recall from your own independent recollection? A. Yes; I have not refreshed my recollection for years on the question. I know them all. This was the second time that I had—this was a renewal of contracts that I had formerly made with the same people.

Q. Where, if you know, were those contracts that were formerly made by you, which you renewed? A. One copy of them was on file in the Cincinnati office. That was under my control—both for the Hazard and du Pont companies. Another duplicate was in the office of the Hazard Company at Wilmington, the Wilmington office of the du Ponts at Wilmington, and the other copies triplicates were in the hands of Edward Green, General Secretary of the Association. 2144

Q. When you made these contracts as you have testified to, some of the names of which you have given, did you have access to these other contracts which you were renewing, did you have the contracts themselves present or accessible? A. Yes, I had a list of them; I didn't have the papers; I knew all about them. 2145

Mr. Abbott: Well, we will take that matter up when the question is raised.

The Court: I now allow you to put it in for the limited purpose which I have stated.

Mr. McCarter: We pray an exception.

The Court: You may take it.

Mr. Abbott: Will you mark them in evidence, make each one of them separate.

Mr. Katzenbach: Your Honor, they are not being marked as exhibits, they are for identification as I understand it.

Mr. Abbott: These are offered as exhibits and as I understand it here your Honor.

The Court: They are admitted as exhibits and there cannot be any argument about that.

(The same received in evidence and marked Plaintiff's Exhibits 1130 to 1137.)

Q. Now I show you Plaintiff's Exhibit 1142 and ask you to state whether or not you can refresh your recollection from that document concerning
2147 the contracts which you assisted in making and about which you have already testified (handing witness book). A. Yes; I remember making most of the contracts named in this list, all of them for the Hazard and du Pont Company.

Q. All of them in that list for the Hazard and du Pont Company? A. I will see in a moment, excepting manufacturers C. & C. Company, Kansas City, Missouri; Morris C. & C. Company, Huntsville, Missouri.

2148 Mr. McCarter: May I interrupt you long enough to ascertain, Mr. Abbott, and find out what he is saying about these companies, the Morris Company and so forth, I did not hear you.

Mr. Abbott: Certainly. He is giving the names of the companies with whom he did not have anything to do.

Mr. McCarter: Did not?

Mr. Abbott: With making the contracts.

A. (Continuing) All of the other contracts in the name of the Hazard and du Pont Companies on the list I personally made and saw a great many of them made by the King Company at the same time.

Q. I wish that you would point out on this list those that you did not see that were made by the King Company? A. I now find that I saw all of them made by the King Company; and there is one, the last one named on the list of contracts, that I have not seen.

Q. Give the name. A. In the exceptions that I did not make and that is the Fairmont Coal Company, the last one on the list that I omitted from the other list I gave.

Q. How did it happen, Mr. Waddell, that you 2150
represented the du Pont Company and the Hazard Company, and happened to see the contracts that were made by the King Powder Company? What relation did you sustain to the King Powder Company that made it possible for you, to know of the execution of contracts made by that company? A. The first contracts made with these parties was made by myself and Mr. Joseph French representing the King Company and we travelled together and called personally on each one.

Q. When was it that you made those contracts?
A. That was three years prior to this—to the 14th 2151
of July, 1902. Then I went to Cincinnati leaving Wilmington on the 5th of July, 1902, and was there joined by Mr. French in behalf of the King Company and we personally travelled the entire district calling on each one of the parties named in that list and were both present when the contracts were signed for the du Pont, Hazard and King Companies.

Q. Was there at that time any relation between the interests represented by the King Powder Company and the interests which you represented to your knowledge? A. All members of the association—associated powder companies.

Q. The King Powder Company then was a mem-

ber of the Gunpowder Trade Association at the same time that the Hazard and du Pont Companies which you were representing as a member, is that correct? A. Yes.

Q. Now, I note that all of these contracts or nearly all of them that you have identified here are dated 7/14/'02. How did it happen that all of those contracts were made on or about such a similar date in the same period? (Objection overruled.)

A. The Pocohontas Coal field is very limited,
2153 about thirty miles in length on the Norfolk & Western Railroad. The coal companies operating in that field that are mentioned here in this list of contracts had an association known as the Pocohontas Coal Company with headquarters at Bramwell, West Virginia, and we met there the representatives of the coal company, and most of them were present in Bramwell and signed up with us on the contracts when we called there at this time, on the 14th of July, 1902.

Q. How did it happen, that you came—that you
2154 did not take or that you did not secure all of the contracts with these parties instead of some of them going to the King Powder Company? A. That was a division of trade agreed upon between the King Company, Hazard and du Pont Company and the Laflin and Rand which divided the entire trade of the coal field, about forty coal companies —divided under the rules of the association.

Q. Who was that division made by, this division of trade?

Mr. Katzenbach: If he knows.

Mr. Abbott: I assume that the question goes to that every time.

A. The rule of the association fixed and determined what company should have the contracts—

any contract. We would apply to the Powder Company, the principal that we represented—with a statement of the number of kegs that we had supplied a given customer during the previous two years, with the price that we had charged for it and made application for permission to contract with that customer. I applied at Cincinnati while agent there for the Hazard and du Pont Company for permission to contract with all of those companies in that list. The King Company did the same, and 2156
we conflicted. Under the rules, the King Company having secured part of the Hazard customers and a part of the du Pont customers would be entitled to an equity in their trade, so that we were mixed up with equities when we came to make the first contract, and by agreement between the Hazard—between myself representing the Hazard and du Pont Company, and Mr. O. E. Peters representing the King Company, we offset our equities in the trade of these coal companies. That is I would trade my equities in one of his customers with him for his equity in the trade of the others so that 2157
we separated the trade and made certain customers du Pont contracts and certain others Hazard contracts, and the others were King. And in the district we found one Laflin & Rand customer and they took over that contract.

Q. Now, I will ask you whether or not that system prevailed in your dealings with the Gunpowder Trade Association and its members previous to this date of July 14, 1902? A. Yes.

Q. As far back as what period? A. The time the system of contracting trade of the country was inaugurated, about the fall of 1897.

Q. Now, Mr. Waddell, have you related all of the conversation that you had with Mr. T. C. du Pont just previous to the time when you received

this compendium of rules regarding the duties which you were to assume for him in connection with the Gunpowder Trade Association? A. I think so. I was to represent him on the Special Committee.

Q. I will ask you if you know or ever heard of an agreement known as the foreign agreement? A. Yes.

Q. When did you first hear of that agreement? A. Shortly after it was made, in 1896—about the
2159 time it was made.

Q. When did you next hear of that agreement? A. Well, I had discussions in regard to it with officers and employees of the Hazard Company in New York along during 1896 and 1897, a matter of reference, I don't know how often I heard it.

Q. When did you next hear of the foreign agreement? A. I discussed the subject with Eugene du Pont.

Q. About what time was it when you discussed it with him? A. That was in the latter part of 1896 or early part of 1897 when the negotiations
2160 were going on in Europe and in London. He was over there and I discussed his trip with him.

Q. After your discussion with Eugene du Pont, did you have any further discussion with any one in connection with the foreign agreement? A. I don't recall any up to the time that I discussed the subject with Mr. T. C. du Pont.

Q. Now, when was it that you discussed the subject with Mr. T. C. du Pont? A. I should think about June, 1902.

Q. What was said at that time by Mr. T. C. du Pont, to you regarding the foreign agreement? A. It was in the same conversation that I held with him with reference to representing Eugene du Pont on the Special Committee, and on the Ad-

visory Committee. He also stated that he had taken the place of Eugene du Pont as the American Chairman under the foreign agreement and that that agreement was so secret that he could not even discuss the subject—its contents with Pierre du Pont.

Q. Did he undertake to discuss its contents with you? A. No.

Q. Did he ask you in any manner to represent him in connection with that agreement? A. No.

2162

Q. After you entered the employ of the Hazard Powder Company, did you ascertain or know whether other associations became members of that organization from time to time—or other companies? A. I did.

Q. How did you ascertain that information? A. In various ways.

Q. Well describe them—describe the ways? A. I know that the——

Q. In the first place do not say anything about what associations they were, but describe the ways first that you obtained this information. A. I know that there were certain companies that were not members of the Association, and that they were competitors of the associated companies, and that they afterwards became members of the Association.

2163

Q. Describe the ways in which you obtained the information as to the acquisition of new members to this association. A. I was sent to Cincinnati, to open a branch office of the Hazard Powder Company and was given instructions by R. L. Wheeler——

Q. (Interrupting) Who was R. L. Wheeler? A. Then vice president of the Hazard Company. (Continuing)—that my chief work there was to conduct a contest against the King Powder Company and

the Ohio Powder Company, and to protect the Hazard's trade in that district.

Q. The King Powder Company at this time was not a member of the association? (Objection overruled.) A. No.

Q. Did it afterwards become a member of the Association? A. It did.

Q. Do you know when and how it became a member of the Association? A. After——

Q. Answer that, yes or no, please, and then go on.

2165 A. Yes.

Q. Now proceed to tell what you know about that matter. A. I know that succeeding a very strong contest in prices, when they became very low, that on or about July 1, 1886, the King Powder Company and the Ohio Powder Company went into the association.

Q. About 1886, you say? A. After July 1, 1886.

Q. Now, was there at that time any further steps taken by the association in the absorbing of these companies, did they change their form or make any additions to their rules? A. Some of the associated

2166 powder companies, du Pont, Hazard, and Laflin & Rand, purchased nearly a one-half interest in the Ohio Powder Company.

Q. And with reference to the King Powder Company? A. The King Powder Company went into the organization which was changed somewhat from the old G. T. A.

Q. By "G. T. A." what do you mean? A. "Gunpowder Trade Association." (Continuing) The trade of the country was then pooled as between the old associates and the new ones that went in with them.

Q. Describe how the trade of the country was pooled at that time? A. The associated powder companies, including the King, and Ohio, met at

Long Branch, New Jersey, and I was called there to confer with Mr. Wheeler and Mr. Colvin of the Hazard Company in relation to the volume of trade or quota in the pool that should properly be given to the King and the Ohio companies. I knew more of their trade than the officers knew. And I learned there from these officers of the company, that a pool was being formed, giving a percentage to each of the associates of the entire trade, and after it was formed I received the percentages which each received. 2168

Q. From whom did you receive those percentages? A. From a clerk in the office of the Hazard Powder Company.

Q. What, if any, distinctive name was given to this pool? A. That was called "The Association," it was the general name; I never knew the formal name. It was just called "The Powder Association."

Q. That was in 1896? A. 1886.

Q. 1886? After that time were any new members added to the association to your knowledge? A. Yes. In and about July 1, 1896, there were 2169 others taken in.

Q. What companies became members of the association at that time? A. The Equitable Powder Manufacturing Company, the Phoenix Powder Company, the Southern Powder Company, the Chattanooga Powder Company, and the Globe was taken in at that time, giving the percentage.

Q. Under what circumstances, if you know, did those companies become members of the association, why and when? A. As I recall, the Phoenix built its mills in 1892; the Equitable in 1893; the Chattanooga in 1893, and they were in what we knew as disturbed districts; that is, districts where an outside competitor was selling his product and

2170 *R. S. Waddell—Direct*

the prices went down disastrously low, starting in 1892 and terminating at the purchase of the Phoenix Powder Company by the Associated Powder Companies in 1896, and finally culminated in the pool July 1, 1896, when all of the companies were taken in.

Q. Now, can you of your own recollection give a list of the companies that were in that pool of 1896? A. I think I can remember most of them.

Q. Will you kindly repeat them? A. The E. I.
2171 du Pont de Nemours & Company, the Hazard Powder Company, the Laflin & Rand Powder Company, the Oriental Powder Mills, the American Powder Mills, the Miami Powder Company, the Austin Powder Company, the Equitable Powder Company, the Phoenix Powder Company, the Chattanooga Powder Company, the Southern Powder Company, the Sycamore Powder Company, the Lake Superior Powder Company, the Marcellus Powder Company, the Globe Powder Company and I am not sure whether Schagticoke was one, but I am not sure
2172 whether at that time or a little later, it was included as a member of the Laflin & Rand. I think Schagticoke was entered as a separate company in that pool, making sixteen.

Q. At that time were there any other companies manufacturing powder in the United States that were not members of that association? A. Yes, there was the Rand Powder Company, having mills at Fairchance, Pennsylvania, near Pittsburgh. And it also had a small mill at Kingston, New York; there were some small companies in the anthracite region in Pennsylvania, the Shamokin and other small companies which never marketed any powder outside of the State of Pennsylvania, and most of their product was marketed by wagon; beyond that I do not know of any competition in the United States outside of the pool.

Q. You have stated that the Ohio River Company was acquired by part purchase. Do you remember how much of an interest was purchased by the associates at that time of the Ohio Powder Company? A. I don't know the exact amount, a little less than 50 per cent.

Q. Did the Equitable Powder Company come in after any interest had been acquired by the members of the association? A. No, du Pont and Laflin & Rand purchased 49 per cent at the time it came in. 2174

Q. How about the Phoenix Powder Company? A. The associated powder companies, du Pont, Hazard, Laflin & Rand, Miami, and Austin, purchased all of the Phoenix.

Q. Now the Chattanooga Powder Company, how about that? A. Du Pont and Laflin & Rand purchased 51 per cent of the Chattanooga.

Q. The Southern Powder Company, how about that? A. All of that was purchased by the du Ponts, Hazard and Laflin & Rand, and perhaps others, and the plant was demolished. 2175

The Court: Which one was that?

The Witness: The one at South Talapoosa, Georgia.

Q. Was it ever constructed again? A. No.

Q. How about the Phoenix Powder Plant, can you say whether that business was carried on? A. The Phoenix had three plants, three powder mills, one at Belleville, Illinois, and one at Kellogg, West Virginia, and one in New Jersey. Mr. F. W. Olin, President of the Equitable Powder Company, was elected president of the Phoenix and the business was carried on by the Phoenix Powder Company up to 1902, when it was absorbed after the purchase of

the Laflin & Rand and the du Ponts had control of it and it was taken over to Wilmington.

Q. After the purchase of the Laflin & Rand by whom? A. By the du Pont Company.

Q. Now, then, you have carried the organization of the association down to 1896. I will ask you to state whether there were any additional corporations or companies taken into that association after 1896, down to 1903? A. Yes.

Q. What companies were they? A. The Bir-
2177 mingham Powder Company, Birmingham, Alabama, started about 1897, and that was purchased by the du Pont, Hazard, Laflin & Rand, Austin, Miami, Equitable and other associates, and it was taken over into the association and given a quota. The Indiana Powder Company, Fontanette, Indiana, was purchased by du Pont, Hazard, Laflin & Rand, Austin, Equitable, Miami King and possibly the other companies—others of the associates in the pool about January 1, 1902, and that was operated by the du Pont Company through the Laflin & Rand
2178 Company after the purchase of the Laflin & Rand in the fall of 1902.

Q. Down to what time did they continue to be thus operated? A. Until it was totally destroyed by an explosion I think about 1905.

Q. Now any other companies? A. The Northwestern Powder Company of Dorner, Indiana, was purchased at the same time that the Indiana was purchased. It was operated a very short time and the mills were abolished and torn down and the machinery removed.

Q. By "very short time" what do you mean, can you give an estimate as to the number of months? A. Very few months, probably—certainly not over a year.

Q. Were there any other companies that were ac-

quired during that period? A. Well, during the former period, prior to 1896, the Fairmont Powder Company had been purchased by the du Pont and Austin Companies at Fairmont, West Virginia, and that mill was operated and its product sold to the Fairmont Coal Company up until during 1902 when the mills exploded and they never were rebuilt.

Q. Under what circumstances did the associates acquire the Birmingham Powder Company, if you know, under what circumstances did they acquire it? How did it come about that the Birmingham Powder Company came into the association? A. It followed a very severe contest in prices and one that practically shut the Birmingham mills out of the market, and they were compelled to sell. 2180

Q. How long did they continue, Mr. Waddell, how long did this contest continue? A. About two years.

Q. Now with reference to the Indiana Powder Company, under what circumstances did that company come into the association, if you know? A. 2181
The Indiana Powder Company was formed by a gentleman from my employ, who associated with him a large number of coal operators. These operators were members of the Indiana Coal Operators' Association. They employed miners who were members of the United Mine Workers of America, a rival association. The mine workers contracted with the coal operators to purchase all their powder from them at $1.75 a keg. These contracts were usually made for two years' periods. In order to contest with the trade for these coal companies, the Associated Powder Companies through a committee represented by Mr. Barksdale of the Eastern Dynamite Company and the Repauna Company, representing the dynamite interests and Mr. Eu-

gene du Pont and Mr. F. W. Olin, representing the black powder interests, organized the Great Northern Manufacturing Supply Company and capitalized it. The work of that—htey placed in charge of that company at Terre Haute, Indiana, Capt. Ramsey and Mr. Baccus, employees of the dynamite interests of the du Pont and Hazard and Laflin & Rand companies and Mr. Jones. This Great Northern Manufacturing Supply Company retailed powder to the miners of the operators who were stock-
2183 holders in the Indiana Powder Company and the Northwestern Powder Company as well. They built magazines for the storage of powder near the coal mines of all of these coal operators who were stockholders in the Indiana, and they sought to raise, and did raise dissension between the miners and the operators.

Mr. Katzenbach: We object to that.

The Court: That is generalization without any foundation.

2184 Mr. Abbott: I am inquiring, if your Honor please, about the methods that they used.

The Court: But here is a generalization, what did they do, what was done, what does this man know that they did?

Q. Do you know of your own knowledge the methods that were used in creating this dissension between the miners and operators? (Objection sustained.)

Q. You were proceeding to relate the methods that were used. Now, without making any further reference to these miners, to that matter, proceed with your recital of the methods that were used. (Objection sustained.)

Q. From whence did you acquire information

2185

concerning the methods which were used by the associates in this contest with the Indiana Powder Company? A. I received a telegram from the E. I. du Pont de Nemours & Company instructing me to meet Mr. Barksdale——

Mr. Katzenbach: We object to what the telegram contained.

A. (Continuing) And I went to Chicago.

2186

Mr. Abbott: Wait until the Court has ruled.

Mr. Katzenbach: I object to that; that is not the best evidence; the telegram itself is the best evidence.

The Court: Yes; that is the formal way of proving it. I will allow it.

A. (Continuing) I went to Chicago. There I met Mr. Barksdale at the Union League Club. He told me that "he had been added to the Committee to fight Indiana, that the black powder committee, Mr. Eugene du Pont and Mr. Olin had allowed that 2187 Indiana concern to grow up into a big one and it should have been killed off years before. And now they had built a dynamite plant close to their black powder mills and he had been added to the committee and he proposed that they organize the Great Manufacturing Supply Company." Mr. Barksdale wanted to get my ideas as to the methods of retailing powder, and he brought Mr. Ramsey to Cincinnati to see me. I took Mr. Ramsey up into Ohio to Logan, Ohio, and introduced him to Henry Spencer, an agent of mine up there, who had conducted a similar fight against Ohio Powder Company, and Spencer gave him instructions as to retailing powder to miners successfully.

2188 *R. S. Waddell—Direct*

Q. Proceed and state what you know within your own knowledge, was done by the associates with reference to the employing of miners in that contest with the Indiana Powder Company. A. Nothing of my own personal knowledge.

Q. Did you have any knowledge that was given to you by anyone whom you represented, concerning that matter—did you have any information given to you? A. I would not be able to testify on that.

2189 Q. What else was done in this contest with the Indiana Powder Company?

Mr. Katzenbach: If he knows of his own knowledge.

A. The Indiana Powder Company was started in the spring of 1897, and in the fall of 1897 the contract system of tieing up the trade of the entire country was adopted by the Associated Powder Companies, and all of the companies contracted their trade for one, two or three years.

2190

Mr. Katzenbach: Well, now, we object to this unless the witness has some knowledge. I want to get at the source of his knowledge.

The Court: Yes; you are entitled to that.

Mr. Katzenbach: This is all hearsay, and the witness has no personal knowledge I believe of it, and I want to get at the source of his information.

The Court (to the witness): Mr. Waddell, of course, you must confine yourself to that and say what you did and had personal knowledge of.

The Witness: I have.

Q. Now, Mr. Waddell, state what you know about the adoption of the contract system at the present time with specific reference to its use with the contest with the Indiana Powder Company. A. I was called to New York by the Hazard Powder Company and to Wilmington by the du Pont Company.

Q. When? A. During the early fall of 1897, and I was told by the officers of the company, Mr. Eugene du Pont and Mr. Colvin, that it was the purpose to contract the trade of the country as generally as it could be done, and they wished to con- 2192
sult me in regard to the form of contract that should be adopted by all and made uniform by all the associated powder companies. Mr. Colvin showed me one form of contract that had been submitted by the Laflin & Rand Powder Company, another that had been submitted by the Miami Powder Company, Mr. Fay and another submitted by the Hazard Powder Company and a form that had been submitted by the du Pont Company. We consulted over the various paragraphs in the contract, and I gave my opinion as to whether a short form or a
long form should be adopted and the difficulty of 2193
getting coal operators to sign a long and complicated contract and recommended that the form be as simplified as possible, and short as they could make it. And different forms, all of them very similar were adopted by the associated powder companies. One of them would be in what we knew as the soda powder——

Mr. McCarter: I object to that.

The Court: You cannot go into the contents of a particular document now.

A. (Continuing) Those forms were printed and sent out to me for execution with the trade. I was required to——

2194 *R. S. Waddell—Direct*

Q. Sent out to you by whom? A. By the Hazard Powder Company and the du Pont Powder Company. I was required to make application under the compendium of rules, and I knew the particular rule that was applicable to this contract system and applying to the Hazard or to the du Pont Company, whichever it might be, for permission to contract with a given coal company or a number of coal companies, stating the number of kegs of powder I had sold that company during the preceding two
2195 years and the price, rebate if any, discounts or whatever the powder would net. I waited a certain time until information came back to me, either authorizing the contract or stating that we are not permitted to make it.

Q. Whom did that information come back from? A. It came from the officers of the Hazard Powder Company and the du Pont Company.

Q. Will you describe how that system was used with reference to the Indiana Powder Company contest? A. I can answer that for the Hazard and
2196 du Pont Companies. The trade that was tributary to Cincinnati, which included Indiana, part of Illinois, Ohio, West Virginia and Kentucky, that was contracted with every customer that we had of any consequence, that is that would take a carload or over per year.

Q. About what was the territory then which the Indiana Powder Company operated in? A. The first two years of its existence in Eastern Illinois and the State of Indiana, Northern Kentucky and a small part of West Virginia.

Q. Now then, within the territory which you have just indicated, will you state what you did with reference to making contracts with consumers of black blasting powder? A. The Hazard Powder Companies—the trade that was under my care we contracted with all its customers.

Q. How did you make use of the system of contracting with consumers of blasting powder with special reference to that contest—to the contest that was carried on at that time with the Indiana Powder Company? A. We contracted all the trade that we were permitted to contract under the rules of the association during the entire term of the Indiana existence. (Motion to strike denied.)

Q. I would like to have you state whether or not there were any other methods that were used in that contest of which you have knowledge? 2198

By Mr. Katzenbach:

Q. If you have knowledge of any methods, where did you get your information from, Mr. Waddell? A. From officers of the Hazard and du Pont companies.

Q. What officers of the Hazard Company? A. Mr. Colvin, president of the Hazard; Mr. Eugene du Pont, president of the du Pont Company.

By Mr. Abbott: 2199

Q. Mr. Waddell, describe what those methods were? A. The making of special prices.

Q. Describe just what the making of special prices was, how it was done. A. In cases where we failed to make contracts, the coal operator would not enter into a contract for a long term, and it was desired to close his trade—keep his trade permanent, we applied to the powder companies for privilege of making him a special price of five, ten, fifteen or twenty cents less than the schedule price fixed for the territory, and that in many cases, in fact, most cases, that privilege was granted us, and we made the special prices.

Q. Have you any data at hand from which you could give a list of such special prices as were made at that time? A. Only a partial list.

Q. Have you any knowledge of any such prices appearing in any of the minutes of the Gunpowder Trade Association which you at any time saw? A. Yes, a great many of them while I was at Wilmington, Delaware, acting on the Special Committee, I made, in conjunction with Mr. Haskell, authorized a great many of these special prices.

2201 Q. Now, did those special prices which you have knowledge of that were made, do you know whether any of them were entered at any time in the minutes of any of these meetings? A. Yes.

Q. Can you tell at this time what particular minutes there were that contained any of those recitals? A. They were generally recited in the report of the Special Committee to the Advisory Committee reporting their action.

Q. And you saw some of those reports at any time after they were made, did you? A. Yes.

2202 Q. Can you recall, Mr. Waddell, any special prices that you authorized or that you assisted Mr. Haskell in authorizing at any time? A. I recall numerous cases of making special prices through the Wilmington High Explosives Company to various railroad contractors on the Wabash Railroad about Pittsburgh and through Ohio, where they built the Wabash. I can not recall the exact name, and the date, or anything of that kind, but I know of a great many special prices.

Q. Did you have any knowledge of any special prices that were made previous to the time when you were asked by Mr. T. C. du Pont to represent him on this special committee? A. Yes, special prices that I had asked for for my own trade at Cincinnati.

Q. Can you give the names of any customers for whom you made such requests to make special prices?

Mr. Katzenbach: And also the prices.

Mr. Abbott: I will find out about the names first.

A. I could not do that from memory. That is ten years ago, and I can not recall the exact names, although I had a great many of them. (Motion to strike denied.)

2204

Q. Do you know anything about the company known as the Washington Fuel Company? A. Yes, I know of a company of that name in Indiana.

Q. Did you know of anything in connection with that company with reference to making special prices? A. I knew as to prices——

Q. Say yes or no, please.

Q. What was it that you knew about special prices that were made to that company? A. I knew that a special price had been made of ninety cents a keg.

2205

Q. I mean under what circumstances was that special price made. A. When was it?

Q. Yes, when was it? A. That was about the latter part of 1900 or the first of 1901, as I recall the date, and was made with relation to the contest that was going on in that district with the Indiana Powder Company.

Q. Well now then, state the conditions under which those special prices were made. A. There was a condition that they should sell powder to their miners at a lower price than the State agreement fixed.

Q. What was the amount that the State agreement fixed? A. $1.75 a keg.

2206 *R. S. Waddell—Direct*

Q. And what was the price that was made a condition to this consumer that he should sell to his miners? A. He should sell that at $1.25 a keg.

Q. Now, do you know whether or not those conditions or terms with regard to special prices were imposed on any others of the customers with whom you made special prices? A. I don't recall any.

Q. That was the only instance you have in mind? A. Yes.

2207 Q. Now, Mr. Waddell, at the time when these special prices were prevailing or being made with reference to the contests against the Indiana Powder Company, do you know what the regular price for powder was in other districts—the same powder, the same grade of powder in other districts than that which was affected by the Indiana Powder Company? (Objected to and objection overruled.) A. In the districts that I was familiar with, that is, the central district and the southern district, No. 2 and No. 3, the price outside of the trade reached by the Indiana Powder Company—the prices were

2208 maintained at $1.25 schedule and the $1.35 schedule for the south—southern states, south of the Ohio River. In the contested territory that was reached by the Indiana the prices were lower——

Q. How much lower; in other words, to what——

The Court: Let him answer the question; that is one way the witness and court get confused, when we don't get an answer.

A. The price went down as low as ninety cents per keg, delivered.

Q. Do you have any knowledge of the prices that obtained in any other portion of the United States in which the du Pont Company or the Hazard Company did business at this time? A. Only the terri-

tory that I reached, Virginia, West Virginia and the Southern States.

Q. Was there any price list or system of prices which were adopted by either of those companies at that time having reference to the entire trade of the United States? A. There never was a price list issued by the companies, any of the companies, that I represented for a number of years—fifteen years. The only prices that we had were the prices fixed by the Associated Powder Companies.

Q. These prices that were fixed by the Associated 2210
Companies, how did they compare with the prices that you were making in the contest against the King people in the other portions of the country, if you know? A. They were the prices that we were making——

Q. I am speaking now of the other portions of the country, Mr. Waddell. You have testified as to two districts which you had knowledge of as representing the Hazard Company and the du Pont Company. Did you have any knowledge of any prices which were made by the Gunpowder Trade Association in any portion of the United States other than 2211
the two districts that you have mentioned?

Mr. Katzenbach: He has previously answered that by saying that he only had knowledge of the portions of the country that he reached.

The Court: The two districts that he mentioned.

A. I had a general knowledge of the prices elsewhere. I didn't make the sales in other districts.

Q. What did that general knowledge consist of; how did you get that general knowledge? A. From the advices that were given me by the du Pont and Hazard companies. They gave me the price fixed for the districts that I

Q. I will ask you to state whether during the time of this contest with the Indiana Powder Company there was any difference in prices prevailing in the other districts of the United States, other than the two districts which you represented for the Hazad and du Pont companies.

By the Court (after objection):

Q. Did you obtain any information from these
2213 different offices, the Hazard and the du Pont offices as to the prices of powder in the districts other than those in which you made sales? A. I did, in the districts in which my territory—that my districts came in contact with.

By Mr. Abbott:

Q. What were those districts? A. Well, there was a dividing line across the state of Michigan, near Saginaw. I have forgotten the parallel—and I sold below that line. I knew the price that was above it—
2214 had to know it. And the same way on the western border. I knew the prices that obtained for the St. Louis district, because my line was the Illinois Central Railroad. That was a dividing line between us. It was necessary to give me the prices all around the territory, touching the teritory that I occupied solely.

Q. In any of those districts of which you had knowledge of these prices in this manner, will you state what the prices for black blasting powder was at the time this Indiana contest was on? A. The prices were maintained in all of the cases that I knew of, except the disturbed district that was reached by Indiana and Northwestern, extending from the Kanawha River in West Virginia to the Mississippi River and fom Saginaw, Michigan, from

the Lake to the north line of Tennessee. A little district in—then there was a disturbed district about the same time or had been just prior to that in or about Birmingham, Alabama, but that was local.

Q. You have testified concerning a company that was organized about the beginning of this contest —Great Northern Manufacturing and Supply Company, was it? A. That is right.

Q. Will you describe the condition, so far as you know with reference to the organization of that company, why it was organized? A. Mr. Barksdale or- 2216
ganized it as a member of the committee to conduct the contest with Indiana.

Q. What if any powers did that company have during this contest with reference to the contest? A. Did nothing but conduct the fight against Indiana; did no other business.

Q. Do you know how long that Great Northern Manufacturing and Supply Company continued in business? A. I don't know exactly the time but I should think about two or three years.

Q. Do you know when the corporation was or- 2217
ganized—what year it was? A. I don't recall the date.

Q. Do you remember what year it was when it discontinued business? A. It discontinued business in 1902, just after the sale of the Indiana.

Q. Do you know under what circumstances it discontinued business? A. Well, it made an assignment for the benefit of its creditors just after the sale of the Indiana in 1902.

Q. I believe you stated that the Indiana Powder Company had sold out after this contest, did you? A. Yes.

Q. Do you know anything about the terms and conditions under which it sold; what it received for its plant? A. Only by hearsay.

Q. Do you know of anything that was done—do you know who purchased it? A. Yes.

Q. Who? A. du Pont, Hazard, the Laflin & Rand, Austin, Equitable, Miami, American, and I don't know whether King got any of its stock or not,—I don't think so.

Q. After it was purchased, what if anything transpired with reference to the prices prevailing for black blasting powder in that district? (Objection overruled). A. They were immediately raised
2219 to $1.25 per keg throughout that district.

Q. How long did they continue at that price, if you know? A. Up until December 20, 1902.

Q. What change if any took place at that time? A. They were advanced ten cents a keg throughout that section of the country.

Q. What was the occasion for that advance, if you know? A. That followed a meeting on the 19th of December, 1902, at which the association advanced the price.

Q. What occurred at that meeting which had
2220 any reference to the advancement of prices at that time?

Mr. Katzenbach: Well, was he at the meeting?

Q. I will ask you to state whether or not you were at the meeting. A. I was not at the meeting.

Q. Do you know anything that occurred at that meeting; did you get any information concerning anything that occurred at that meeting? A. Yes, I talked to the men who were there.

Mr. Katzenbach: I object.

The Court: Will you show how first?

Q. How did you obtain any information as to what occurred at that meeting? A. I talked with Mr. T. C. du Pont and Mr. Moxham who attended the meeting.

Q. What if anything, was said to you by either of these gentlemen, as to what occurred at that meeting? (Objection overruled).

By the Court:

Q. (To the witness) Mr. Moxham and who else? 2222
A. Mr. T. C. du Pont. Mr. T. C. du Pont told me that Mr. Moxham had made his speech and presented his report to the meeting. It was received with a good deal of favor and that the prices had been advanced and I would get notice on the following day of the advance, and I did so.

Q. In what way did you get notice? A. A letter from Edward Green, Secretary of the meeting of the Association.

Q. Now, I show you Plaintiff's Identification No. 22, and ask you to state whether or not you have any knowledge of what that document is? A. Yes. 2223

Q. What is it? A. It is a speech of Mr. Moxham —Mr. A. J. Moxham—report made at the meeting of December 19, 1902.

Q. Did you read the testimony that Mr. Moxham gave the other day? A. I did.

Q. Did you hear his testimony with reference to this document? A. I did.

Q. Is this the document he testified he gave you? A. Yes.

(Plaintiff's exhibit 22 for identification received in evidence as Exhibit 22 and read to the jury.)

2224 *R. S. Waddell—Direct*

Q. Mr. Waddell, in reference to the contests which were had between the members of the association and any of the companies which preceded the Indiana Powder Company, I would like to inquire what if any change in price there was after the contests ceased as compared to what the prices were while the contests were on? A. In 1886, the first of July, 1886, when the first pool was formed the price of rifle powder jumped on telegram from $2.25 a keg to $5.00.

2225 Q. That was after the close of what contest? A. Against the King and the Ohio and the price of blasting went up from 80 cents to $1.50 on blasting.

Q. After the next contest, how about the matter of prices? A. The 1st of July, 1896, the price advanced from 80 cents on blasting powder to $1.25 on telegram and on rifle powder from $3 to $5.

Mr. Button: What date was that?
The Witness: 1896.

Q. What contest did that follow? A. That was
2226 the contest against the Equitable, Phoenix and Chattanooga.

The Court: That was in 1896, you say?
The Witness: 1896.

Q. After the contest,—after the next contest, how about the prices before and after? A. Prices advanced immediately on telegram, from 90 cents the low limit to $1.25.

The Court: What date is that?
The Witness: That was January, 1902.

Q. You have stated that these prices were advanced on telegram. How were those telegrams sent out, who were they from? A. By all of the companies in the Powder Association.

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Q. To whom were the telegrams sent? A. They were sent to the general agents and through the general agents to the—they were given to the salesmen and to the trade of the country.

Q. Did you, as one of the general agents receive advices by telegram? A. Always.

Q. And from whom did you receive your advices? A. From the officers of the Hazard Powder Company and the du Pont Company while I served them.

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Q. I will ask you if you recall a conversation that you had with Mr. T. C. du Pont with reference to a man by the name of P. H. Donnelly while you were in the employ of the du Pont Company at Wilmington? A. Yes.

Q. Before asking you further as to what that conversation was, will you state who P. H. Donnelly was at that time? A. He was a salesman employed by the Chicago office of the du Ponts and Hazard companies.

Q. Do you know where Mr. Donnelly is at the present time? A. I believe he is still employed by 2229
the Chicago office.

Q. Now then, state what the conversation was that you had with Mr. du Pont with reference to Mr. Donnelly? A. Mr. du Pont came to my department——

The Court: Mr. T. C.?
The Witness: Mr. T. C. du Pont.

A. (Continuing)—and asked what I could suggest be done with reference to stopping Donnelly from hiring howlers in coal mines, and explained that he had howlers who were paid to raise trouble if any other than du Pont brand came in the mines at Springfield and in Northern Illinois and in Iowa. Mr. du Pont said that complaint had been

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made by our associates of this practice and wanted to know if we could not stop it. I told him that I had no control over the Chicago office, it was not under my care as general sales agent, and he would have to look after that matter himself.

Q. Now, then, what was the occasion of this conversation that you had with Mr. du Pont at that time? A. (After argument).

Q. Do you recall the circumstances under which that conversation came to be held between you and
2231 Mr. T. C. du Pont? A. Yes.

Q. Relate those circumstances? A. The Oriental Powder Mills had a contract that had been authorized and that had been made and enjoyed for a couple of years with the Smoky Hollow Coal Company of Avery, Iowa.

By Mr. Katzenbach:

Q. Is this something that was stated by Mr. du Pont in this conversation with Mr. Waddell? A. No.

2232 Q. Is this something, this contract, that you know of of your own knowledge? A. Yes, sir.

Q. Where did you get your information? A. I got it as a member, as acting for Mr. du Pont on the Special Committee and as General Sales Agent of the du Pont Company.

Q. Whom did you get it from? (Objection overruled). A. I got it from the Oriental Powder Mills, as agent of the du Pont Company.

By Mr. Abbott:

Q. Proceed. A. Complaint had been made by the Oriental Powder Mills that they were unable to supply powder to a customer with whom they had a contract, the Smoky Hollow Coal Company at

Avery, Iowa, because the du Pont Company through Mr. Donnelly had howlers in the mines in Smoky Hollow Coal Company and they would raise a disturbance when the Oriental powder went into the mines and they asked us—asked the du Pont Company to stop that method. That the Oriental was entitled to the trade, that was conceded and that was what Mr. du Pont was trying to stop.

Q. On page 1584 the witness stated as follows: "Then I went to Cincinnati, leaving Wilmington on the 5th of July, 1902, and was there joined by 2234
Mr. French in behalf of the King Company, and we personally traveled the entire district, calling on ecah one of the parties named in that list, and were both present when the contracts were signed for the du Pont, Hazard and King Companies." I will ask you Mr. Waddell, whether you desire to make any correction of that statement? A. Yes, in reading over the testimony I recollected that on the first trip I made to the Pocahontas Coal Field, Joseph French of the King Powder Company, went with me. On the second trip, on or about 2235
July 14, 1902, Mr. Pickard, representing the King Mercantile Company, went with him, and the contracts were made out in the name of the King Mercantile Company instead of the King Powder Company.

Q. What was the King Mercantile Company?

Mr. Button: Did he give the dates of those respective trips?

A. (Continuing) The first trip was about July 15, 1899, and three years after that on July 14, 1902, I made the second trip. (Question repeated by the reporter). That was a selling company that had a contract with the King Powder Company to sell its output.

Q. And what relation, if any, did that sustain to the interests which you were representing? A. The King Mercantile Company was composed of the du Pont Powder Company and the Laflin & Rand Powder Company.

Q. Did Mr. du Pont or any other person in connection with the offices of the du Pont Powder Company or the Hazard Powder Company which you were representing, come to you at any other time or discuss with you at any other time the mat-
2237 ter of employment of miners or the question of stopping the employment of miners or raise objection to the bringing of other powders than du Pont powder into the minds of customers? A. I don't recall any such conversation.

Q. Can you state of your own knowledge the relation that existed at this time between the Oriental Powder Mills and the interests which you represented? A. Yes.

Q. What was that relation? A. The Oriental Powder Mills were owned entirely by du Pont, Hazard, and the Laflin & Rand Powder companies. du
2238 Pont owning Hazard, owned two thirds of Oriental and after the purchase of Laflin & Rand they owned all of Oriental.

Q. I desire to call your attention to this part of the speech of Mr. Moxham, found on page 214, the same being sub-divided "C" under the head of "Conclusions": That the above advance in prices be doubled provided the committee on competition will provide machinery which in the judgment of the Advisory Committee will restrain internal competition and which will put the question of external competition into the hands of a properly organized working committee." Now, I will ask you to state whether or not you know anything about any such committee or such machinery having been provided after that speech was made? A. Yes.

Q. Now, what was that machinery which was provided? A. Mr. Moxham told me that he had been elected chairman of the Finance Committee which was to look after that outside competition.

Q. Now, Mr. Waddell, during your representation of the du Pont and Hazard interests, at Wilmington, did you at any time exercise any independent authority with reference to such matters as had been committed to your hands by Mr. T. C. du Pont with reference to the Trade Association? A. No.

Q. Will you explain where you obtained the authority that you exercised with reference to the 2240 duties which were committed into your hands, how did you proceed to perform those duties? A. I knew the compendium of rules governing the apportioning of trade under contract; I knew the working of the Powder Association, their method; that contracts were to be awarded according—and rebates allowed, according to a schedule of quantities that consumers would take, and when application was made to the Special Committee, it was a question of determining, according to the rules, that had been 2241 established by the Association, what the Committee should do and I was governed by those rules and followed them.

Q. Did you or did you not at any time fix any price or the terms of any contract independently of this authority which had been conferred upon you? A. No, I had no authority for anything of that kind.

Q. I will ask you whether at any time during the time which you represented the Hazard Powder Company at New York, Cincinnati or Wilmington, you ever, of your own independent authority made any prices or attempted to perform any duty independently? A. Never.

Q. Do you know anything about an organization

—do you know anything about what is known as the "High Explosives Companies"? A. Yes.

Q. Will you state what that concern was—or what the term means?

Mr. Katzenbach: I would like to have you ask the source of his information.

Q. Where did you obtain any information regarding that matter? A. I knew the ownership of
2243 the "High Explosives Companies" from the time they were—commenced doing business all the way through.

Q. How did you obtain that knowledge? A. Well, from the Hazard and du Pont officers and from contact with the High Explosives people, I represented them.

Q. Explain what the "High Explosives Companies" was?

By Mr. Katzenbach:

2244 Q. I desire to ask you from what officers of the Hazard Company you obtained any knowledge of the company known as the "High Explosives Company," when and where? A. R. L. Wheeler, vice-president; William Colvin who was vice president and later president of the company; from Mr. George Weightman, treasurer of the company; from Eugene du Pont, Alexis I. du Pont, and William du Pont who visited me at Cincinnati and various other sources, from various other sources I knew the ownership of the "Explosives Company."

By Mr. Abbott:

Q. Now state what the "High Explosives Companies" was, will you? (Objection overruled). A. Repauno Chemical Company, Hercules Powder Company, Atlantic Dynamite Company, Forcite

Dynamite Company, and the holding company, the Eastern Dynamite Company with which Mr. Alexis I. du Pont was connected.

Q. Now, then, what was the purpose of the High Explosives Company? (Objection sustained).

Q. I will ask you whether or not you had at any time any business relations in the performance of your duties on behalf of the Hazard Powder Company and the du Pont Company with the "High Explosives Companies"? A. Yes, I——

Q. Wait a minute. What were those relations? 2246
A. I was the agent of the Repauno Chemical Company at Cincinnati for a number of years.

Q. Yes. A. And sold dynamite through the Hazard Powder Company and accounted to the Hazard for it. I came in contact there with the dynamite company.

Q. Did you at any time have anything to do with any applications to the High Explosives Company concerning contracts? A. Yes.

Q. State what that was? A. While I was acting for Mr. du Pont on the Special Committee, the Spe- 2247
cial Committee awarded a number of contracts and special prices to the trade of the company though the Wilmington "High Explosives Companies."

Q. Now, can you give any reason why these contracts which you refer to were made through the Wilmington High Explosives Companies?

By Mr. Katzenbach:

Q. Were they dynamite contracts that you were referring to? A. What is that?

Q. Were they dynamite contracts? A. Black powder.

(Last question by Mr. Abbott, objected to and objection overruled).

2248 *R. S. Waddell—Direct*

A. I will have to get that question again please. (Question repeated by the reporter.) A. Yes. The Wilmington High Explosives Companies that I have named, were enormous manufacturers of dynamite; and in the sale of their dynamite they required some black powder for their customers, and they obtained that through the—from the black powder companies who were in the association, and they made application for special prices and for contracts to be used in connection with their dyna-
2249 mite contracts with railroad contractors and public contractors, and where the quantity of black powder was very small as compared with the dynamite, the sales were made through the High Explosives Companies, whichever one happened to have the contract with the trade.

Q. Did any of the black blasting powder companies or manufacturers of black blasting powder have any interest in any of those contracts? A. I don't understand that question.

2250 (Question repeated by the Reporter).

A. No, the contract would be awarded to the trade through the "High Explosives Companies."

Q. I understand that. But how did the "High Explosives Companies" obtain the black blasting powder which they required? A. They received that from the members of the Association who were authorized to sell or contract.

Q. Mr. Waddell, how long did you remain in the employ of the Hazard and du Pont interests at Wilmington, when did you leave their employ? A. February 2, 1903.

Q. Now, what was the occasion of your severing your relations with those interests? A. I resigned my position in November, 1902.

Q. What was the occasion of your resigning your connection with those interests? (Objection sustained).

Q. You heard the testimony of Mr. T. C. du Pont concerning your tendering of your resignation? A. I did.

Q. I will ask you to state the circumstances leading up to the fact of your resignation to the du Pont interests; as representative of the du Pont interests? A. There was some dissatisfaction arose between the sales department, purchasing department, auditing department, and the executive department, through Mr. du Pont, and it couldn't be arranged satisfactorily, and I withdrew from the service of the company. 2252

Q. When you tendered your resignation what if anything transpired, what if anything was said to you by any officer or representative of the interests which you had hitherto represented? A. Mr. T. C. du Pont asked me to come to his room when he received my resignation—and——

Q. Did you go? A. I did. 2253

Q. What was the result of your visit to Mr. T. C. du Pont? A. The conversation between us in which he said that——

Q. Then relate the conversation? A. He said he regretted that I was going to leave them and asked if I wouldn't consent to remain that he thought possibly the differences between the departments could be adjusted, and I told him I thought not. He then made me a proposition.

Q. What was that proposition? A. It was oral; he said if I would drop the matter, remain where I was, that he expected to have the organization of the company complete in a short while and he would give me $25,000 of the preferred stock which he expected to put on the market at seventy dollars dollars a share and twenty-five thousand dollars of

the common. I asked him what the common was worth. He said "nothing when it will be issued, but it is a good thing to lay in the drawer of your desk and when we put it on the market it will go to par, we hope." I declined the offer and told him that I would prefer to go into business for myself and establish a business for myself and my sons and I thought it was the proper time to do it.

Q. Now, what did he say in answer to that statement made by you? He asked me what kind of
2255 business I was going into. I told him I thought I would build a small mill. I thought I had been with the company long enough to earn that right to have a little business of my own. He agreed with me; said he thought I had. He then made me another proposition—whether it was at that interview or one held a day or two afterwards I don't recall, but there was another verbal offer made by him.

Q. What was that proposition? A. He recommended that I go to New York City and establish a
2256 firm—R. S. Waddell & Company, the "Company" would be the Powder Company, The du Ponts——

Mr. McCarter: Beg pardon. I didn't hear that Mr. Waddell.

The Court: The "Company" would be the du Pont Company.

A. We were to be brokers for the purchase of soda, importation of soda and all mill supplies, raw materials, not only for the du Pont interests but for others who were associated, and to whom we could probably sell.

Q. What did you say in answer to that proposition? A. I told Mr. du Pont that I knew nothing about the importation of soda, that I didn't want to learn a new business, at my time of life, and I

didn't want to go to New York City and engage in the brokerage business and declined the offer.

Q. What then, if anything did you say to him concerning your plans or did he say to you? A. He asked me about what size mill I expected to put up; I told him one with a capacity not to exceed 1200 kegs per day, that I didn't expect to produce that quantity at the start, probably 400 or 600 per day, but later I wanted the plant to grow to a capacity of probably 1200 kegs per day. He said, "Well, just let the matter rest for the present, continue on in your duties, you have suggested in your resignation that you would be willing to remain over thirty days until we could install your successor. Remain here a while and we will make you another proposition." I did so.

Q. Now, then, you remained then, did you? A. I did.

Q. Now, did he at any time make you another proposition? A. The matter was delayed until after the first of the year. My resignation took place I think on the 26th of November and these conversations occurred soon after that. Then there was a delay of about a month, possibly longer. Certainly up into January. And he made me a proposition in writing.

Q. Have you that proposition? A. I gave the original to the Government.

Q. I show you sundry Government exhibits on page 2105 and subsequent pages, beginning with No. 285 and continuing to 288 G, and ask you to look at those documents and state whether or not they have any relation to the negotiations which you had with Mr. T. C. du Pont at this time? A. I have read these before, and I can say that the letters on page 2105, beginning—the one addressed to Mr. du Pont and closing on page 2127, are correct copies.

2260 *R. S. Waddell—Direct*

Q. What did you do with these documents—how did they come to be in this Government's record, if you know? A. I offered them in evidence in the Government case in explanation of my testimony.

Q. I will ask you to take these documents which are marked as Plaintiff's identifications, beginning with 41 and subsequent numbers, and state whether or not those documents contain all the subject matter of the negotiations between yourself and Mr. du Pont at that time, or were there other matters
2261 outside? A. These contain all.

(Exhibits 41 to 51 for identification received in evidence as Exhibits 41 to 51 inclusive and read to the jury.)

Q. Mr. Waddell, I will ask you what these notations shown on the margin of this exhibit (44) which I have just read to the jury indicate? A. They were my marks on the side of the letter.

Q. I note Mr. Waddell, that there are some notations on the side of this document (Ex. 45). Do
2262 you know what those refer to? A. Those are my comments.

Q. Mr. Waddell, preliminary to further questioning, I notice in this correspondence some reference is made to various grades of powder called "C" and "CC" and "CCC"' and "FFF." Will you give the jury some idea about that matter? A. Not a grade of powder, but grains, sizes of grains. Powder is manufactured in six sizes. CCC means triple coarse, CC means double coarse and C means coarse. Then we have grains that are F, FF and FFF. The grain referred to in there FFF, means triple fine, those are the finer grains.

Q. Will you state what the relative principal uses of these various grains of powder are in black

blasting operations and coal operations—just generally? A. Powder is all made in one cake——

Q. Not how it is made, but how it is used? A. You have fine grained and larger grained, the smaller the grain the quicker it burns; the larger grains burn slowly. And in the blasting of coal the larger grains have a pushing effect and will follow a seam or crack, throwing down large bodies of coal, and it depends upon the strata of coal, the character of coal, what sized grain is best adapted to it for blasting. In West Virginia they use a 2264
finer grain than this (indicating). This is a double fine. They want a very quick powder there, because the coal is soft, and it would push it out without throwing down large masses.

Q. Then the use of the various grains of powder depend upon largely, upon the nature of the coal field? A. Nature of the coal, and the kind of mining.

The Court: Kind of what?

The Witness: Kind of mining.

A. (Continuing). Whether it be mined off the 2265
solid by hand-mining, or the coal is under cut for a depth of five feet or six feet by machinery; in that event they use a slower, larger grain.

Q. While on that matter, will you explain to the jury what "shooting off the solid" is, and what "under-cutting" is? A. Coal lies in veins usually from four to six feet, and then a strata of fire clay underneath, as a rule and rock or slate over the coal, and it is pressed in between that. That makes the face in a room, in a coal room, that is the room is about 25 feet wide and the face of the coal would be 6 feet high and 25 feet wide. Take shooting off the solid, they do not cut under it in any way at all, not even with a pick. They put a bore hole in usually at a

slant and the charge of powder is put at the rear end of the bore hole, well tamped or stemmed with clay and the powder must force the coal out, tearing it from the roof and from the bottom. In the machine mined coal, there is a channel of four or six inches cut in the coal to a depth say of six feet clear across the room. The coal is then hanging suspended, clinging to the roof and to the side walls. It requires less powder to drop that coal down and break it, than it would to blow it out of the solid
2267 where it clings both to the floor and the roof.

Q. Mr. Waddell, after this last letter which was received by you from Mr. T. C. du Pont did you then sever your relations with the company? A. I left the office that evening—the evening of the second of February, 1903.

Q. What steps if any, did you then take with reference to your future business operations? A. I remained in Wilmington for about three days; I went around and called on all the gentlemen that I had been associated with and left Wilmington I
2268 think the 5th of February, I stopped——

Q. 1903? A. 1903.

Q. Where did you go after leaving Wilmington? A. The first place I stopped was at York, Pennsylvania.

Q. In order to save time I will ask you to describe your movements after you left the du Pont Powder Company, left its employ, until such time as you located your powder mill at Peoria. That will take some time to explain, but I believe it will be the best way to reach the point. A. I will state it as briefly as possible. I visited York and got options on machinery good for sixty days—powder mill machinery. Visited Chicago with a view to calling on a number and soliciting stock for my company; finding some of the parties absent I went to Cincinnati. The day after arrival there

I visited Hamilton, Ohio, and secured options on engines; and visited Dayton, Ohio, and secured options on a press; and at Cincinnati secured options on an entire line of electrical apparatus, machinery, from the General Electric engineers; and while there I was handed a letter by a gentleman that I had known.

Q. What was that letter that you were handed? A. Signed J. H.——

Mr. Katzenbach: We object to that. If 2270
you have got the letter just produce it.

A. (Continuing) The letter is in the Government record.

Q. Just go on and I will produce it later, in a moment. What happened after the letter was handed to you? Don't state anything about the contents of the letter? A. I subscribed the stock of the company in Cincinnati, I had taken subscriptions in Chicago for $5,000 for Mr. Keeler and all the balance of the stock was subscribed in Cincinnati after I had made the original subscription of 2271
fifty-one per cent. of the stock. Leaving Cincinnati I visited several towns in Illinois under my middle name, Stewart.

Mr. Katzenbach: That is objected to.
The Court: I will allow it as a fact.

Q. Now Mr. Waddell I show you Government's Exhibit No. 44 on page 253 of Vol. 1 of Government Exhibits and ask you to look at that document and state whether or not that has any reference to the letter which you say you were handed? (Handing book to witness.) A. I gave the original letter to the Government.

Q. What relation does this letter sustain then to

the letter which you say was handed to you at Cincinnati? A. That is a copy of the letter.

Q. What did you do with the original of that letter that you saw? A. Gave it to the Government.

Q. Have you seen it since? A. No.

Q. Do you know who Mr. Shoemaker was at the time that letter was written? A. Yes.

By Mr. Katzenbach:

2273 Q. Do you know anybody personally by the name of Shoemaker? A. I made inquiry as to what his business was.

Q. Then your knowledge consisted of what you were told by some one else? A. Why yes, by his people that employed him.

Q. By his people? A. Yes.

Mr. Katzenbach: I object to that.

The Court: He said "by the people who employed him." Go on.

By Mr. Abbott:

2274

Q. Who were the people who employed him? A. Pinkerton Detective Agency.

Q. What did they say—what relation did he sustain to the Pinkerton Detective Agency, if any? (Objection overruled.) A. He is superintendent.

Q. Located where? A. He is now located in Chicago.

Q. Where was he located then? A. Philadelphia.

The letter referred to was offered in evidence and said offer was objected to on the ground that it was irrelevant and immaterial and said objection was sustained. To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

The letter so offered and refused reads as follows:

Chicago, Feb. 13, 1903.

H. A. Koach, Esq.,
c/o Stratford Hotel,
Cincinnati, Ohio.

Dear Sir:

This will be handed to you by Cpt. H. R. Saville of the Philadelphia Agency, who has been engaged in shadowing the party I wired you about in cipher, as follows: 2276

"Wire immediately if R. S. Waddell of Wilmington, Delaware, is now in Cincinnati; think can be found South East corner Third and Broadway. Want to place shadow; therefore, inquire carefully."

and to which you replied as follows:

"Mail at party's office Union Trust Building indicates he will arrive tomorrow. He has home and family in this city." 2277

Will you kindly assist him as much as possible in locating the party, and just as soon as he locates him, he is to wire to Chicago for assistance.

Yours truly,

(Signed) J. H. Schumacher,
Sup't.

H. W. M.—M.

Q. After you received this letter, what if anything did you discover or do that had any bearing upon your movements?

2278 *R. S. Waddell—Direct*

Mr. McCarter: I object to that word "discover."

The Court: The word "discover?"

Mr. McCarter: It is what he did in fact.

Q. Well, what did you do after the receipt of that letter? A. I went down to the Stratford Hotel and hunted up the party referred to.

Q. Did you succeed in finding him? A. I did, I found out his business.

2279 Q. Mr. Waddell, what date was it, if you recall, when you organized the Buckeye Powder Company? A. The 28th of January, 1903.

Q. When was the first meeting held? A. I think the following day.

(A certified copy of the articles of incorporation of the Buckeye Powder Company received in evidence and marked Plaintiff's Exhibit 1153); also a receipt of the Secretary of the State of Delaware for the payment of the annual fee, for December 30, 1912, received in evidence and marked Plaintiff's Exhibit 1154).

2280

Q. The Buckeye Powder Company is still active as an organization, is it Mr. Waddell? A. Yes, sir.

Q. Now, Mr. Waddell, referring to the letter which you said you found in Cincinnati, I will ask you to state what you did by reason of having seen that letter afterwards with relation to the steps which you took—future steps that you took—concerning the location of your mills? Can you answer the question? A. I left Cincinnati as quietly as possible, slipped away and had my dress suit case taken to the depot by my son, who was a student in the city, left my hotel bill unpaid, and money with him—with my son—to pay it a couple of days later

and an order for my trunk which he was to receive so that I might not be——

Q. Now, don't give any conclusions? A. Yes.

Q. What did you do then? A. I then traveled through the states of Illinois, part of Missouri, under my middle name W. R. Stewart. I registered at hotels and avoided as much as possible all public appearance.

Q. Where did you go in your efforts to find a location? A. I went first to Litchfield, Illinois; finding nothing there I went to Hannibal, Missouri, looked over the surroundings there and there was nothing that met the requirements. I went from there to Quincy, Illinois, and from there to Springfield, and examined that neighborhood about Riverton and other locations. From there I went to Petersburg, Illinois and from there to Peoria. 2282

Q. At Peoria, what did you do with reference to making a location? A. I went out on all of the railroads, twelve of them, running into the city, and searched for a suitable location. It was very difficult to find a location for a powder mill. 2283

Q. Tell the jury what requirements in your judgment were necessary for you in obtaining a proper location for a powder mill? A. The location must necessarily be on an important railroad that was capable of making rates and securing good rates from other railroads, and where sidetrack facilities could be obtained. It must be located a long ways, fully a one-half mile distance from any inhabited dwelling, to comply with the laws of the state. That necessitated a very remote section where no part of the land was within one-half mile of an inhabited dwelling. The location must have good water facilities for boilers, steam purposes; it should be rough ground where there is natural protection in valleys and ravines and timbered well for protection of one

2284 *R. S. Waddell—Direct*

mill from another, otherwise barricades would have to be built between mills.

Q. Protection in what respect? A. From explosions—in the event of explosions. They should be widely separated and in separate valleys if possible. The location must be near enough to a village or town or city to afford church and school facilities for the workmen; they would not be satisfied in a remote country district. There were number of requirements, all of which must be complied with to
2285 make a suitable powder site.

Q. Now, did you find those requirements in the site which you selected at Peoria? A. I did.

Q. How far from Peoria was this site? A. About fourteen miles.

Q. Near what railroad station? A. Near Edwards, it is in between Edwards and Cram Station on the C. B. & Q.

Q. I wish you would tell in a general way how the powder mill is constructed, that is to say how the various buildings are constructed with relation to each other, the distance they are apart and gen-
2286 erally everything.

Mr. McCarter: Is this the powder mill, is that the question?

Mr. Abbott: Yes, the powder mill.

A. The site that I selected was a valley running —facing on a railroad track with hills—little hills, abutting hills on each side of the valley. The valley was about 600 feet in width. The hills were timbered, heavily timbered. The front of the plant was on the westerly hills, in front of the westerly hills, and the stock houses, the machinery, power houses, all of the—where the raw material was prepared for making powder, was stored on the front

of the hill out of danger, and where an explosion in the hills could not affect the vital part of the plant, the power house.

Q. Now, in taking steps for your location at this point, what if any requirements were there, legal requirements which you complied with? A. I felt that there was a legal requirement that I get some protection against injunctions that might be agitated against me. (Objected to and objection sustained).

2288

Q. What I am inquiring about now Mr. Waddell, is the legal requirements that you were compelled to follow with respect to the location of your plant under the laws of the State of Illinois? A. I was compelled to be a half-mile from any inhabited dwelling.

Q. I understand that, but what steps did you have to take in order to comply with that legal requirement, was there any proceedings in court or otherwise? A. I did take proceedings in court.

Q. Yes, that is what I am inquiring about; what was the nature of those proceedings?

2289

A. I secured the services of the county surveyor who made a plat of all the surrounding territory, showing that the location of the plant complied with the law—that it was a half-mile from any inhabited dwelling and was not on a highway. I took that to attorneys who filed a petition in court setting forth——

Mr. McCarter: We object.

The Court: Never mind, the details; you took steps and you secured the right, did you?

The Witness: Yes.

Q. Did you then proceed to acquire title to the

land from the former owners of the property? A. I took an option on the land for sixty days.

Q. Did you afterwards conclude that option? A. I did later on; after I had——

Q. Well, never mind, now what did you pay for the land which you purchased at that time? A. $5,450.

Q. How many acres was it? A. 110 acres.

Q. Do you know anything about what the value of adjoining land was at that time? A. Yes.

2291 Q. What was the date of the purchase of this property? A. About March, 1903—I have forgotten the exact date—April.

Q. Mr. Waddell, what if any difference is there in the character of the land which you bought—this 110 acres for use as a powder plant—for your powder plant, and the surrounding land? A. I think the section, the part that I selected was very much superior to the surrounding land for powder purposes, but the adjacent land was similar in many respects.

2292 Q. Was the surrounding land valuable for powder purposes at all, in your judgment? A. No, I think not.

Q. I will ask you Mr. Waddell, what your knowledge was of the value of lands that were used for powder plant and powder plant purposes in 1908. (Objected to and objection overruled.) A. What was my experience?

The Court: What was your knowledge, derived in any way?

A. (Continued): I had purchased a great many sites for magazine purposes. I knew the values of land, especially required for magazines, the difficulty of locating them I knew the values of powder mill sites for land peculiarly adapted for that pur-

pose and there are only a few sites in the country that would compl ywith the laws and be wall adapted for protection in the building of plants, they are very rare, and I know the exceptional value of such plants above the value—the ordinary value of farm lands or lands for other purposes. I had purchased in all the Southern states through the Central States for both the Hazard and the du Pont Companies for a term of years, and I think I know about what the difficulties of locating and complying with the laws were, and with the requirements 2294
of the neighborhood, and what the peculiar value is given to magazine locations.

Q. Now, then, applying that knowledge to your location, to the location of the Buckeye Powder Company mills, and the plant in 1908, what would you say was the true and fair value of that ground on which the plant was located at that time——

Mr. Katzenbach: You mean of course for a powder mill.

Q. (Continuing) I mean for a powder mill. (Ob- 2295
jected to and after a qualifying examination by defendant's counsel, the objection was overruled). A. That includes machinery?

Q. No, only the ground, at this time? A. Ten thousand dollars.

Q. That is outside of the actual value of the buildings and machinery? A. All improvements, yes.

Q. While we are on this subject, I will ask you to state what was the total cost of the buildings that you erected on this ground for powder purposes? A. The total cost of our plant was approximately 117——

Mr. McCarter: One moment, I think we are entitled to the actual cost.

2296 *R. S. Waddell—Direct*

Q. I asked about the buildings, but if you cannot segregate—— A. I cannot do that, I would have to deduct the price of the land from the other; I know the total cost of the whole plant.

Q. Including machinery and all? A. Including everything.

Q. What was the total cost then of the plant including machinery? A. $117,000, approximately.

Q. Was there any depreciation in the value of your plant, the mills, machinery, the buildings and
2297 so forth, between 1903 and 1908 when you disposed of it? A. No.

Q. Now, then, will you state what methods you undertook or used with reference to the purchase of machinery and the character of the machinery which you used in this mill and plant of the Buckeye Powder Company? (Objection overruled.) A. I applied to the only people that I knew were in position to furnish me powder mill machinery and got options on— —

Q. Now, state to whom you made applications
2298 for powder mill machinery? A. I took an option from Baugher, Kurtz & Co., York, Pa., for sixty days. I applied to I. & E. Greenwald & Company.

Q. What did you take an option upon? A. Upon powder mill machinery, not complete for the mills, but most of it. I applied to I. & E. Greenwald & Company from whom I had had previously had an estimate on a powder mill, and who built the Indiana powder mill machinery, and they refused to sell me. (Objection overruled.) I applied a little later to Olin Scott, builder of powder mill machinery, at Bennington, Vermont, to sell me a corning mill.

Q. Did you succeed in making any purchase of him? A. He refused to——

Q. Give the list of those persons to whom you applied first and then we will take u pthe other

matter? A. Prox-Brinkman Manufacturing Company, Terre Haute, Indiana, built machinery for the Indiana Powder Mills, they declined to sell me, and Pusey & Jones, Wilmington, Delaware, who built machinery for the du Pont people, they declined to quote me. (Motion to strike denied). Allentown Foundry and Machinery Co., Allentown. I applied to them for a press, and they declined.

Q. Were there any others? A. That is all I recall.

Q. Now, then, will you state what if any reasons were given to you—or in the first place I will ask you to state if these persons or any of them at the time when you made application gave you any reason for declining to sell machinery to you? A. Yes.

Q. Do you know of any relations, business relations or contract relations which existed between Olin Scott and the du Pont Powder Company with reference to the sale of powder machinery? A. Yes.

Q. From whom did you obtain the information, or from whence did you obtain the information, as to the relations between Olin Scott and the du Pont interests? A. From Olin Scott's letters.

Q. Only from him? A. Only from him.

Q. Now, were any reasons given to you by Prox Brinkman Manufacturing Company? A. Yes.

The Court: I will allow the fact that reasons were given, but not the reasons.

Q. The reasons which they gave you, were reasons which they gave for declining to sell you?

Mr. Katzenbach: That is objected to as leading.

The Court: That is inferable anyhow.

Q. All right, as long as it is understood. Were

any reasons given to you by the Allentown Machine & Foundry? A. Yes.

Q. By the A. G. Greenwald Company? A. I. & E. Greenwald—yes.

Q. By Pusey & Jones? A. Yes.

Q. Now, I ask you to answer the general question whether the reasons that were given to you by each one of these parties were of a similar character or not? (Objection sustained. To which ruling of the Court, plaintiff's attorney then and there
2303 excepted and said exception was allowed.)

Q. Were any reasons given by Bauer, Kurtz & Co.? A. No.

Q. Now, of whom did you finally purchase your machinery? A. Bauer, Kurtz & Company and later of Prox-Brinkman.

Q. Mr. Waddell, after you located your plant and constructed your buildings, what then did you proceed to do? A. Manufacture powder.

2304 Q. How long did you continue to manufacture powder? A. Up to about the first of September, 1908.

Q. Were there any interruptions during that period of your business? A. Yes, sir, there were some breaks in the operation.

Q. State how and when those interruptions occurred? A. They occurred at different times; when my magazine would get so full that I couldn't store any more powder, and I couldn't sell it, I would have to quit for a little while until I relieved the magazine.

Q. Did any interruptions occur at any time on account of explosions? A. Yes, I think we had two.

Q. I wish you would tell when the first explosion occurred? A. In January, 1904, we lost a press,

but that did not interrupt us very much. We were then installing another press and it was completed very soon.

Q. When did the second explosion occur? A. It occurred on the 16th of November, 1905.

Q. Did you have any other explosion at any time? A. There was another explosion in a press.

Q. I mean was there another one after that, a third one? A. Well, there were some trivial explosions.

Q. Now, then, I wish you would describe the circumstances and conditions under which the second explosions occurred? A. The second explosion was of the horizontal press. The building was destroyed, the machinery was not affected. We had to build another building and remove it. The explosion occurred at about ten minutes before one, in the middle of the day, when the machinery was not in operation. 2306

Q. During the time that you were operating this plant, I will ask you whether or not you had any communication or came in contact with a man by the name of Piatt, W. H. H. Piatt? A. Yes, sir. 2307

Q. State when and under what circumstances you first met Mr. Piatt? A. Piatt came to my office in Peoria about Decoration Day, 1904, presented a card with his name and his business representing——

Mr. Katzenbach: One moment, we object to what his card stated.

The Court: That has already been in evidence.

Mr. Abbott: But not from this witness.

The Court: No. He may show what the card stated, that is what was on the card.

Q. What did the card show? A. He represented

the du Pont Company, W. B. Dwinnell of the Advisory Counsel, Wilmington, Delaware.

Q. What transpired after that? (Objection overruled.) A. A conversation between Mr. Piatt and myself.

Q. Relate that conversation? (Objection overruled.) A. Mr. Piatt said that Mr. du Pont, knowing that he was going to call at Peoria asked him to call on me and presented Mr. du Pont's regards. I asked Mr. Piatt when he came
2309 to the city. He told me that morning. I asked him if he had ever been in the city before. No, he had never been there. He said that it was not the custom of the du Pont people to allow the employees in their offices to visit their mills and said that he would like very much to visit a powder mill and asked if he could go to my mills that day. I did not then reply to the question. I asked him if he had not been to my mills before? He told me he had not and I then told him that I knew that he had been in the city the preceding week, and that he
2310 had had a conference with Harry Paige and tried to hire him at $50 a month and $5 for each letter and a dollar for each telegram, to betray my business in shipments on the C. B. & Q. Railroad. I also knew that he had hired a man by the name of O. D. Head to do some spying and make some drawings of the machinery in my mills. I also knew that he had attempted to hire Fred Nagel, agent of the C. B. & Q. Railroad at Edwards, who did the billing of the powder shipments from the Buckeye Mills, he admitted all those things.

Mr. McCarter: We object to that.
The Court: Yes, what did he say?

Q. Say what he said when he admitted that? A.

He said he knew that he had done so. And I told him then that in reply to his request to go to my mills, to say to Mr. du Pont that I wanted to send a message to Mr. du Pont by him, and to say to Mr. du Pont that my latch string hung out and that I extended a cordial invitation to Mr. du Pont or any of the officers of the du Pont Company to come to Peoria and to be my guest, and to go to my mills and inspect them, but that I drew the line at a contemptible shyster lawyer that was engaged in the kind of business he was, Piatt. I advised him, 2312
I told him if there was any manhood in him he should stand by the profession he claimed to belong to, and not dishonor it. I told him to say to Mr. du Pont that if they did not cease hiring spies, chasing me with detectives, and hiring spies in my mills, hiring railroad agents to betray me, and furnish information of the shipments from my mills and hiring miners to refuse to use my product, that I would take him into the United States Court and shake him out, and I thought I could keep the Advisory Council pretty busy. Mr. Piatt then left the office. (Motion to strike out answer, denied). 2313

Q. Had you ever seen Mr. Piatt before this conversation which you have described? A. I saw him talking with Harry Paige.

Q. Describe the circumstances under which you saw him talking with Harry Paige? A. Well, when the conversation occurred, Harry Paige telephoned me to come down to a resort in Jefferson St. I did so, and met Paige and he and—I saw Paige, and he and Piatt went into an adjoining apartment. I heard the conversation between them. This was some three or four days before Piatt came to my office and after I had listened to the conversation, I looked at Piatt, and I recognized the man when he came into my office.

2314 *R. S. Waddell—Direct*

Q. Now, you referred to a man by the name of O. D. Head, whose name you gave in this conversation with Mr. Piatt. Who was Mr. O. D. Head? A. He was the agent of the Prudential Life Insurance Company at Cincinnati, one of the solicitors.

Q. Do you mean at Cincinnati? A. At Peoria.

Q. Under what circumstances did you—by the way did you yourself ever meet Mr. Head? A. I did.

Q. How extensive, so far as the black powder
2315 business in the United States was concerned, Mr. Waddell, was the business of the Buckeye Powder Company—how many states, territories and countries did it cover? A. I could define the territory better by boundaries than I could by states because we did not include full states, did not reach—we took in the western part of West Virginia, all of Ohio, Indiana, and a little of Northern Kentucky, Illinois, Iowa, Missouri, a small part of Kansas, a very little of it, Nebraska, Colorado, a small portion, and a small part of Wyoming. We sold pow-
2316 der in Montana and Wisconsin and Minnesota and Michigan.

Q. You sold powder in all these states that you have named? A. Iowa, yes.

Q. And you sold it in Illinois, and delivered it in these other states? A. I did.

Q. Do you know anything about how extensive the business of the du Pont Powder Company and the Hazard Powder Company and other companies was that you represented? A. Yes.

Q. How extensive was that as to territory? A. They shipped to all the states in the Central States and the Southern States and among all the Western states, practically the entire country.

Q. And in foreign countries? A. Yes.

Q. What foreign countries? A. South America, all the South American States.

Q. Mr. Waddell, I show you plaintiff's Exhibit for identification 52-W and ask you to look at that and state whether or not you know anything about that document? (Handing witness) A. I know about the document so far as the figures in type are concerned.

Q. You heard the testimony of R. S. Waddell, Jr., regarding that matter, did you? A. I did.

Q. Do you know anything about the figures in writing that are on the document, or any of them? A. I gave directions for the placing of them there. 2318

Q. What particular figure did you direct should be entered upon that document? A. The figures in black ink.

Q. Now, will you state how and under what circumstances you gave those figures and instructed that they should be marked there? (Objection overruled.) A. I was making an estimate of the damages that the Buckeye Powder Company sustained, and giving the fair and just price that should be obtained in the different districts where the—for each of the sales that were made there. (Objection overruled.) 2319

Q. Will you state how you arrived at the determination of the amounts which are set forth in the column marked cost including thirty cents profit, and freight charges? (Objection overruled.) A. I endeavored to establish and fix a fair and reasonable price at which I should have been able to have sold the powder named in this chedule of sales in the different districts—Illinois—wherever the powder was delivered, and I fixed these prices as my judgment of what would be a fair and reasonable price and that would have permitted ordinary and not exorbitant profits for Buckeye powder. I want to correct that idea there in regard to the thirty cents profit. That was merely an ap-

proximate and was put on by the young man who made up this list. That I did not authorize.

Q. Now, how do you wish to have that matter changed in order to conform with your views? (Objected to and objection sustained).

Q. Well, now then, how did you proceed to ascertain the cost of Buckeye powder which is included in the black ink? (Objection overruled.) A. I knew the cost of Buckeye powder at the mills delivered f. o. b. cars fro mmy experience in
2321 the manufacture of it, my estimates and calculations of the cost of powder. I then took into consideration the average freight for a given district, say for the state of Illinois and Indiana and after adding that to the cost of the powder I estimated what would be a fair and reasonable profit considering all of the risks and the emergencies in the powder business, and I fixed upon a reasonable and fair price and with due consideration to what others had fixed for their price.

Q. Are you able to state at this time what was
2322 the fair and reasonable price that others had fixed for their powder? (Objection sustained.)

Q. Will you state to the Court and jury the different elements that you used in making up this total figure which you have set forth as the fair price at which you should have sold Buckeye powder to the various customers which are set forth on that exhibit? A. I took into consideration the cost of the powder at the mills, based upon the raw material, labor and cost of manufacturing complete, and the cost of selling, overhead expense; then added to that the cost of freight for the reason that all powder in carloads is sold delivered, and I had to meet that requirement, because that is the general requirement of the United States, that all powder for many years has been delivered in car

loads. I added the approximate freight for a given distance and based upon my experience in the powder business for many years I regarded the price fixed fo each of the districts, each of the locations named on this sheet where powder was sold, as a reasonable and fair price at which it should be sold.

Q. Now, what in your judgment is a reasonable and fair profit or was a reasonable and fair profit for you to have made upon such powder as you sold while you were manufacturing black blasting powder during the year 1903 to 1908 inclusive? (Objection overruled. A. Approximately thirty cents, but it would be impossible to make the great variety of prices in a given locality that the addition of thirty cents to the fractional freights would make, so that it has been the custom to fix a price for a district and I follow the same rule as the custom of the country in the sale of powder and fix a price of $1.20 for the State of Illinois, which would approximately give thirty cents in every particular—the average would be thirtq." 2324

Q. Sometimes a little more and sometimes a little less. 2325

The Court: What difference would it make if you were putting it in another district?

The Witness: The additional freight.

The Court: That would be cost, wouldn't it?

Witness: That would be added to the cost and it would raise the price.

The Court: The thirty cents profit in your judgment should go on every keg?

Witness: The thirty cents—approximately thirty cents should go on every keg.

2326 *R. S. Waddell—Direct*

Q. I will ask you to state Mr. Waddell, whether during your efforts—during your conduct of the business of the Buckeye Powder Company, during the year 1903 to 1908, what steps did you take to dispose of your product—to sell it? A. I solicited the trade personally and through the mails. I secured the services of John G. Miller as general agent at Chicago and of Mr. E. C. Burroughs as agent at St. Louis, and I have employed at different times one man perhaps at a time, representatives, who
2327 would call on the trade and others who would endeavor to induce the trade to accept our powder.

Q. How long an experience in the business did Mr. John G. Miller have? A. I think some probably ten years.

Q. How long an experience did Mr. Burroughs have? A. Burroughs had been a salesman all of his life, but not all the time in the powder but in other lines.

Q. Is Mr. Burroughs living or dead? A. He is dead.

Q. Did you have an agent by the name of Laugh-
2328 lin? A. P. P. Laughlin.

Q. How long was Laughlin engaged with you? A. With me?

Q. Yes. A. About four or five months I think.

Q. What experience had he had before he came with you? A. He had been for about twenty years General Sales Agent of the Ohio Powder Company at Youngstown, Ohio, and was with the du Pont Company when he came to me.

Mr. Waddell's examination was interrupted at this point and the deposition of Jacob E. Schoemehl, a witness for the plaintiff, was received in evidence and read to the jury.

On Direct Examination Mr. Schoemehl stated that he resided at Terre Haute, Indiana, and is the Secretary of the Frank-Prox Company; that in 1903 and 1904 he was bookkeeper for the Prox-Brinkman Manufacturing Company at said place; that the business of said company at said time was manufacturing mining machinery, coal mining machinery, and all kinds of repairing of machinery, and powder mill machinery, and in the general supply business; that that company had some correspondence with the Buckeye Powder Company located at 2330
Peoria, Illinois, which correspondence was offered by the plaintiff and received in evidence and read to the jury as follows:

12-17-03.

R. S. Waddell, Esq.,
Peoria, Ills.

Dear Sir:

Yours 15th to hand. In answer will say we cannot make you a price on the mills for a few days. 2331
But believe we will be able to do so by Jany. 1st. Trusting you will be able to wait for us until then we remain.

Yours Truly,

Herman C. Prox,
V. P.

(Memorandum in lead pencil):

(Mention my absence from city & note they desire to quote us on a mill after Jany. 1st and we will delay placing our order until we hear from them about date named.)

2332 *Jacob Schoemehl—Direct*

Peoria, Ill., Dec. 22, 1903.

The Prox & Brinkman Mfg. Co.
201-301 N. Ninth St.
Terre Haute, Indiana.

Gentlemen:

Replying to yours of the 17th inst. We note your desire to quote us on wheel mill after January 1st
2333 and we will delay our order until we hear from you about the above named date.

Our Mr. Waddell, President, is absent from the city and your letter will be referred to him on his return.

Yours truly,

Treasurer.

Terre Haute, Indiana, Jan. 9, 1904.

2334

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:

We received your letter stating that you would close for your powder mill this week. In answer will say that we are very sorry but we have an arrangement with the Powder Trust preventing our making machines at present. We expected, when we wrote you sometime ago, that this contract would be annuled but owing to delays it has not been closed. We believe that we will be able to close it before the 15th one way or the other and if you could we would like for you to wait on us that long, if not, we will have to let the matter drop.

2335

Thanking you for the inquiry and hoping to hear from you, we remain

Yours truly

The Prox & Brinkman Mfg. Co.,
Herman C. Prox
H. C. P. V. P. & G. M.

The direct examination continued as follows:

2336

Q. In the copy of the letter which has just been offered in evidence dated January 9th, 1904, you refer to an arrangement which you had with the Powder Trust preventing your making machines at present. Will you state whether or not that arrangement was in writing or not? A. It was typewritten and signed in ink by the principals.

Q. Have you got the original contract to which you refer? A. Yes, sir.

Witness produced a document and was asked to state whether this constituted "the arrangement" which he referred to in the letter dated January 9th, 1904, to which he replied:

2337

"A. That is the contract that was referred to—the agreement."

Said document received in evidence as plaintiff's Exhibit 155 and read to the jury as follows:

AGREEMENT.

This agreement made and entered into by and between the Prox & Brinkman Manufacturing Co., of Terre Haute, Ind., first part, and the Indiana Powder Co., parties of the second part, witnesseth:

FIRST. The party of the first part, their heirs

or assigns, in consideration of certain obligations to be hereinafter stipulated by the parties of the second part, agree that they will not enter into the business or engage themselves in business in any way, shape or manner in the manufacture of machinery for the manufacture of explosives, black powder, or dynamite, for a period of five years from the signing of this agreement, unless it is agreed to by the Indiana Powder Company, its heirs or assigns and permission granted by the Indiana
2339 Powder Company, its heirs or assigns for such machinery to be manufactured, and in the event of the Indiana Powder Company, its heirs or assigns wishing said machinery to be manufactured, the same shall be granted by written permission from the Indiana Powder Company, its heirs or assigns, in consideration of the above the Indiana Powder Company.

SECOND. In consideration of the above the Indiana Powder Company agrees to give Prox &
2340 Brinkman $5,000.00 per year worth of work in repairs and new construction, as designated by the Indiana Powder Company, its heirs or assigns, and in the event of the Indiana Powder Company, its heirs or assigns not securing for them the required $5,000.00 worth of work per year, they will pay them for any deficiency a sum of 20% on the $1.00 as their profit in lieu of not furnishing them with the $5,000.00 worth of work. It being understood and agreed by both parties whose signatures are herewith attached, that in the event of the amount of work falling short in one year and running over the following year, that it shall be taken from the 20% which has been paid in cash, if any. However, if the Prox & Brinkman Company should manufacture and repair to the amount of more than $5,000.00 or over $25,000.00 worth of work during

the five years, the excess shall not be considered by the Indiana Powder Company, but it shall pay full prices for anything over the excess of $5,000.00 during the five years.

It is understood and agreed by both parties hereto that they are doing certain work for Mr. A. G. Cummings, of Joplin, Mo., for which they have a contract with him and that his contract is to be filled and after the fulfillment of this contract there shall be no other contract taken or any machinery manufactured except upon written orders from 2342
the Indiana Powder Company, its heirs or assigns.

Signed and entered into this the 3rd day of June, 1902.

THE PROX & BRINKMAN MFG. CO.,
Frank Prox., Pres.

Attest:

GEO L. ROOD, Secty.,
Indiana Powder Co.,
by J. Smith Talley, Pres.

[SEAL]

2343

On cross examination the witness stated that some time in December, (the dates being given in the foregoing letters), Mr. Waddell applied for some machinery, the matter was delayed for two or three weeks and it was then furnished to him.

On re-direct examination the witness identified certain correspondence between G. A. Maddox, Assistant Vice President of the E. I. DuPont Company, Wilmington, Delaware, and the Prox-Brinkman Manufacturing Company, which were offered by the plaintiff and received in evidence and read to the jury as follows:

E. I. du Pont de Nemours & Co.,
Wilmington, Delaware.

July 21st, 1903.

Operating Department.
Messrs. Prox & Brinkman,
Terre Haute, Indiana.

Gentlemen:

In understand there is some money yet due by
2345 the Northwestern Powder Co to your firm which debt was contracted during the construction of the mill when it was owned by Mr. Keller. There seems to be some uncertainty as to the amount. I would be very glad if you get that straightened out. It is the wish of the present management to close up all old bills and get all matters entirely straight. I am sure you will be glad to hear this and will do all you can to help by itemizing the bill, thereby straightening up this matter.

Yours very truly,

2346 G. A. Maddox,
H-GAM Asst. to Vice President.

E. I. du Pont Company,
Wilmington, Delaware.

December 30, 1903.

Operating Department.
Mr. Herman C. Prox, Vice President,
Prox & Brinkman Manufacturing Co.,
Terre Houte, Indiana.

Dear Sir:

I have just gotten back from a trip and find your letter of December 18th, asking that your invoice of June 3rd, due on contract between Indiana Powder Co. and Prox & Brinkman Manufacturing Co. be paid at once.

In the first place, there was a question whether or not you would allow us to apply purchases of the Northwestern Powder Co. to the contract, which question you answered on November 2nd, stating that you did not think the Northwestern purchases should be applied to the Indiana contract, but that beginning with December, 1903 we could so apply all further purchases for the Northwestern, but that they must be purchased in the name of the Indiana Powder Co. Of course, we know that the Indiana Powder Company, under the contract, has a right 2348
to purchase powder machinery from your Company and send it where they please and sell it to whom they please; be assured Mr. Prox, we did not have to have you suggest that method of getting machinery for the Northwestern Plant and applying it to the contract.

I am very much surprised that in your letter of December 18th you say, "We wish to state that we wrote you that Northwestern Powder Company's orders might be purchased under the name of the Indiana Powder Co., but we find that this would not be 2349
in accordance to contract, and we will handle same as written only, and the Northwestern or any other of your Companies work must not be credited against this contract.

Now Mr. Prox, the Indiana Powder Co.'s contract binds them to give Prox & Brinkman $5,000.00 per year worth of work in repairs and new construction, as designated by the Indiana Powder Co., its heirs or assigns and in the event of the Indiana Powder Co., its heirs or assigns not securing for them the requested $5,000 worth of work per year they will pay them for any deficiency a sum of 20% on the dollar in lieu of not furnishing them $5,000 worth of work.

Please note Mr. Prox, we merely agree to give or secure $500 worth of work for your Company, as

indicated by the Indiana Powder Company or pay a certain forfeit if we fail to do so. Now where in the contract is it said that only materials and work used at the Fontanet Plant shall be applied *to this contract.* Please advise me whether you will not recall your letter of the 18th and let your letter of November 2nd stand as written.

Again, our Auditing Department's records show payments between June 3d, 1902 and June 3, 1903, as follows:

	June 12th	4287	70.01
	Aug. 25th	4404	68.77
	Aug. 12th	4476	54.09
	Aug. 16th	4561	87.95
	Aug. 17th	4626	265.39
	Oct. 17th	4718	63.16
1903	Jan. 11th	4802	50.17
	Dec. 19th	4888	131.16
	Jan. 17th	4980	209.38
	Feb. 17th	5060	17.42
	Mar. 13th	5131	30.75
	Apr. 11th	5218	174.48
	May	5293	28.19
			$1250.92

whereas your bill indicated that we paid you only $1211.58.

Our Auditing records would make us owe you on the Indiana contract $749.82, whereas your bill calls for payment $757.68. You will, therefore, itemize the dates and amounts which we paid between these dates, that we may determine which accounting Department is correct.

Believe Me Mr. Prox, we are able and willing to pay our debts and keep our contracts.

Personally I do not consider the contract between the Indiana Powder Company and the Prox & Brinkman Manufacturing Co. beneficial to the Powder Co., however, this is not the question. The Powder Company made the contract with you in good faith and will keep it both in letter and in spirit, so long as you act in good faith.

Hoping that you will give me an itemized statement showing dates and amounts paid you between June 3, 1902 and June 3, 1903, and further reply 2354
that we may buy in the name of the Indiana Powder Company and ship where we please, I remain,

Your truly,

G. A. Maddox,
Ass't. to Vice President.

Dic. GAM
AD.

E. I. du Pont Company, 2355
Wilmington, Delaware,

Operating Department. January 8, 1904.

Mr. Herman C. Prox, Vice Pres. & General Manager
Prox & Brinkman Manufacturing Co.,

201 North 9th Street,
Terre Haute, Indiana.

Dear Sir:

I note in your letter of January 5th, 1904, addressed to me, that you offer to cancel contract signed and entered into June 3d, 1902, by and be-

2356 *Jacob Schoemehl—Re-direct*

tween the Prox & Brinkman Manufacturing Company, party of the first part and the Indiana Powder Company, party of the second part, concerning the manufacture of Powder making machinery, etc. I do hereby accept your offer to cancel same.

I now understand that the contract shall be treated in every respect as if same had never been made between the parties.

Yours truly,

2357

G. A. Maddox,
Ass't to Vice President.

Dic. GAM
AD.

E. I. du Pont Company,
Wilmington, Delaware.

Operating Department. January 14,1904.

2358 Mr. Herman C. Prox, V. P. & Gen'l. Mgr.
Prox & Brinkman Mfg. Co.,
Terre Haute, Indiana.

Dear Sir:

I note in your letter of January 11th, addressed to me, that you accept my offer to cancel the contract entered into June 3d, 1902, by and between the Prox & Brinkman Maunfacturing Company, party of the second part, concerning the manufacture of powder making machiney. Said acceptance to date from January 11th. I write this letter merely to let you know that I have gotten your letter with the date of your acceptance, so that we may thoroughly understand each other in the mat-

ter. The aforesaid contract is, therefore, by mutual agreement between us declared null and void, and of no effect after January 11th, 1904.

Very truly,

G. A. Maddox,
Dic. GAM. Ass't. to Vice-President.
AD.

2360

Terre Haute, Ind., Jan. 16, 1904.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:

Your favor of the 13th to hand. In answer will say that before you order a mill we want to make you prices and are in position now to build the mill as we have been released from our Trust contract. 2361

Yours truly,

The Prox & Brinkman Mfg. Co.
Herman C. Prox,
H. C. P. V. P. & G. M.

2362 *R. S. Waddell—Direct*

Thereupon Mr. Waddell resumed the stand and continued his testimony as follows:

Q. Mr. Waddell, in order to clear up the situation, will you state what you did with reference to making an application to Prox. Brinkman—for machinery? A. I made personal application to Mr. Herman Prox, during the year, 1903.

Q. About what time was that? A. About July or August, 1903, the first time. I saw him twice
2363 and endeavored to buy machinery and failed. I wrote him a letter, two or three letters for the same purpose. (Objection overruled.)

Q. Now, you recall what was the result of your first application; did you get the machinery? A. I didn't.

Q. Did he give you any reasons why he wouldn't let you have the machinery?

Mr. Katzenbach: Well, that is objected to.

2364 The Court: I will allow the statement of fact, whether he gave any reasons or not, not what the reasons were at this time?

A. Yes.

Q. Now, what were those reasons? (Objection overruled.) A. Gave us a reason that he was under a contract with the Powder Trust not to make machinery for outsiders.

Q. Now, when you made the second application to him that you speak of, did he give you any reason why—— A. Gave me the same reason.

Q. Each of the subsequent applications that you made—what answer did you get? A. Gave me the same reasons until afterwards he made me a proposition, after——

Q. When was it that he made you the proposition? A. January, 1904.

Q. Was that proposition in writing? A. He wrote me, yes.

Q. Have you got the letter? A. I think I gave that letter to the Government.

Q. I show you Government's Exhibit 42 of Vol. 1 of exhibits of the Government's case and ask you to look at it and state whether or not that is the document you have referred to—or rather whether that has any relation to the document you have 2366
referred to? A. That is a copy of the letter I gave the Government.

(Letter referred to received in evidence and read to the jury, the same being a letter dated Terre Haute, Indiana, Jan. 9, 1904, addressed to the Buckeye Powder Company, Peoria, Ill., and signed by Prox-Brinkman Mfg. Co. by Herman G. Prox, V. P. & G. M. The same is set forth in full, supra, page 778.)

Q. Will you describe just briefly how the City of 2367
Peoria was located with reference to railroad facilities at the time that the Buckeye Powder Company did business under your management from 1903 to 1908? (Objection overruled.) A. Peoria is the second city of the state, 150 miles from Chicago. It has twelve railroads—all of the leading trunk lines of that section of the country pass through it, and it was the most desirable distributing point.

Q. Now at the time when you began business, what if any situation obtained with reference to freight rates on powder which was subsequently was changed? A. When I took an option on the land I did it for the purpose of ascertaining what basis of freight rates could be established from Peoria. I went to Chicago to the C. B. & Q. Rail-

2368 *R. S. Waddell—Direct*

road and the freight rates then in force were prohibitive and I asked the C. B. & Q. to give me a line of rates that would put me on an equality with the Mooar, Iowa, mills of the du Ponts. I knew their rates of freight and I wanted to be placed on an equal basis with the du Pont Company.

Q. What was the result of those negotiations with the railroad company? A. Their rates were very greatly reduced and a complete system of
2369 commodity rates was put in force by the C. B. & Q. in conjunction with all the other railroads, centering at Peoria which placed me on an equality with the other powder companies and made a very great reduction in the rates.

Q. I wish you would describe as briefly as you can, and in your own way the location of Peoria with reference to coal production in that country and the coal mines. A. It was located well to the north of the Illinois coal field. My choice of that location was because of the fact that the south-
2370 ern part of the State already contained two powder mills while there were none in the northern part. It was very convenient to the Iowa coal fields, shipments could readily be made from Peoria and the Northwest through to Montana on an equal basis with the Iowa mills, and I also could reach the southern part of the State and the coal fields of Michigan, having an advantage somewhat over the mills in the southern part of the State. A large volume of trade tributary to Peoria.

Q. Do you know how many pounds of powder it takes to mine a ton of coal?

Mr. Katzenbach: Well——

Q. I will put it—if counsel want to object—I will ask the witness if he knows how much powder it takes to mine a ton of coal.

Mr. Katzenbach: I think it would require some qualifications of this witness as a miner and particularly there is a great deal of difference in coal——

The Court: Do you want to ask him? Oh, yes, it varies without a doubt.

Mr. Katzenbach: ——and a very considerable difference in powder.

The Court: If he has any knowledge upon the subject Mr. Abbott.

2372

Q. I will ask him. Mr. Waddell, have you any knowledge of the amount of powder it takes to produce a given quantity of coal? A. Yes.

Q. Now state how you obtained that knowledge? A. From experience in the coal business, and from the statistics of the State of Illinois published from year to year and from my knowledge of the powder business.

Q. What are those statistics published, in what form? A. In the form of state reports of the coal mining industry.

2373

Q. Now, what else was it that you—— A. And from my knowledge of the powder business in its application to the mining of coal.

Q. Have you information acquired in the manner in which you have indicated as to the amount of coal that was produced in Illinois during the years 1903 to 1908. A. Yes.

Q. Per year. Can you give that information from memory? A. In 1903 the production of coal in Illinois was about 36,000,000; in 1908 about 54,000,000 tons of coal.

Q. Now how much powder does it take to produce a ton of coal in the State of Illinois? (Objected to and objection overruled.) A. In hand mining, that is shooting off the solid, the average for the State of Illinois is about a pound of powder to a

ton of coal. In machine mining it varies from eighty tons to one hundred tons to a keg of powder —twenty-five pounds of powder—some little over three tons to a pound of powder.

Q. At the time when you began business of the Buckeye Powder Company I will ask you to state whether you know if the amount of coal produced in the State of Illinois was increasing or decreasing? A. Constantly increasing.

2375 Mr. McCarter: I object.

The Court: He has already testified of an increase in five years without objection. I think it is competent. I will allow it. We hope there is a development, there is a constant increase in the production.

Q. I will ask you to state whether—if you know whether—there was at the time when you began the business of the Buckeye Powder Company, a sufficient amount of powder produced in the district which you expected to serve from your plant
2376 to supply the numerous requirements for the increase in the production of coal. (Objection sustained.)

Q. Have you any information on the subject as to whether there was sufficient powder produced within the district which I have indicated to keep pace with the production of coal? A. Yes; I have information.

Q. Will you state what that is—— Well, where did you acquire that information, how did you acquire it? A. While I was general sales agent for the du Pont people, the du Pont company.

Q. And in your work on behalf of that company, how did you ascertain this fact which you have stated that you knew? A. During the entire summer and well into the fall of 1902 the du Pont com-

pany was over sixty days to three months behind in filling its orders. There was a great dearth of powder in the west. We shipped powder from the Brandywine Mills of Wilmington, Delaware, from the Wapwallopen Mills of Pennsylvania to satisfy the extra demand for powder in Illinois—they couldn't fill their orders.

Q. What was the excess in tons of coal in the State of Illinois for which there was no immediate supply of powder at the time when your plant went into operation? 2378

By Mr. Katzenbach:

Q. Mr. Waddell, do you know as a matter of fact in 1902 that the entire anthracite coal regions were shut down? A. No.

Q. By a strike in the anthracite district? A. A part of that time.

Q. For a long period of time? A. A part of that time, yes.

Q. Now, was not that the cause of the abnormal demand then for powder in the Illinois coal fields? 2379
A. No; I don't think that caused it.

Q. You don't think it influenced it at all? A. No, not in Illinois; that was bituminous coal.

Q. Then you don't think that the shutting down of the anthracite coal mines increased the production of coal in the bituminous coal fields? A. Not in Illinois; it may have done so in Pennsylvania, not in Illinois.

Mr. Abbott: I don't think this is qualifying the witness.

The Court: No.

By Mr. Abbott:

Q. Now what was the excess in tons of coal in the State of Illinois for which there was no immediate supply of powder at the time when your plant went into operation? A. There was an increase every year in the amount of powder demanded to mine the increased amount of coal produced that would have required at least $250,000 kegs additional to take care of the new trade.

2381 Q. About the time that you entered—about the time your mills began to do business, what was the situation in that district with reference to other companies selling powder? Were there other companies selling powder at Peoria or elsewhere? A. There was quite a number of agencies at Peoria.

Q. Will you state how many agencies there were at Peoria at that time when you located your mills there? A. There was the du Pont agency with Chas. J. Off & Company, the Phoenix agency with Dooley Brothers, the Hazard agency with Oakford & Fahnestock, the King agency with Walker Hard-

2382 ware Company, the Laflin & Rand agency with the Peoria Fuel Company, and the American agency,—I have forgotten the name of the American agency.

Q. Now, what, if any, change was there in that situation with respect to agencies which occurred about the time that your mills began business? (Objection overruled.) A. The change occurred during the building of my mills, about June or July, 1903.

Q. What was that change? A. All of the agencies in Peoria were withdrawn except the du Pont agency.

Q. Now, into whose hands was the du Pont agency placed at that time, if you know? A. It was made a double agency,—Charles J. Off & Company and Dooley Brothers were agents.

Q. Now, what do you know about any steps that were taken at that time to concentrate the business of the various companies that had transferred business in Peoria before, separately?

Mr. Katzenbach: This is all—of course you understand of his own knowledge.

The Court: Yes, of course, it must be.

A. Only what I observed from the withdrawal of agencies and centralizing them. 2384

Q. Can you state about as near as—will you state as near as you can about the date when you observed this consolidation of agencies and the withdrawal of agencies as you remember? A. About June, 1903.

Q. Has there ever been any change in that situation—was there any change from 1903 down to 1908? A. No.

Q. Do you know anything about the firm of Dooley Brothers at the present time? A. Yes.

Q. Do you know anything about a committee named or called "The Peoria Committee"? A. Only by hearsay. 2385

Q. From whom did you obtain any information upon that subject?

Mr. Katzenbach: That is objected to as immaterial.

Mr. Abbott: If he says it is upon hearsay, Your Honor, I would like to find out what he means by "hearsay."

The Court: Very well, I will let you do that.

Q. What do you mean by "hearsay," Mr. Waddell, in that connection? A. I read it in the minutes.

2386 *R. S. Waddell—Direct*

Q. In what minutes did you read it? A. The Lent minutes of the Association.

Q. Before that you didn't know the name of this Committee? A. No.

Q. During the progress of your efforts to secure business did you at any time come in contact with the miners in your district? A. Yes, I have.

Q. What, if anything, did the miners have to do with the purchase of powder? A. They were in position to control it.

2387 Q. Did you at any time during your experience in connection with the Buckeye Powder Company come in contact with any agreements which were used by the coal operators and the American United Mine Owners? A. I did.

Q. Now will you state what your experience and knowledge is—and was during that period—concerning agreements which existed between the coal operators and the United Mine Workers of America? (Objection overruled.) A. I did know of them—do you want to know what my experience

2388 was?

Q. Yes. A. I was present as a visitor in the convention; biennial conventions were held between operators and miners. I was familiar with the discussions of the terms and agreements and had discussed the question of the agreements with the members of what was known as the price committee and the scale committee.

Q. In that connection was your attention ever called to such agreements as were in use between the operators and the mine owners—the agreements which you have just testified to? A. Yes, I have just received the printed copies both from the operators and the miners.

Q. I show you exhibits P 1158-9-60-61, and ask you to look at them and state whether or not you

recognize these documents as having any relation to the agreements which you have just testified to? A. Yes, these are the agreements that were in use by the miners and the operators.

Q. Did you at any time have any knowledge of anything that was done by the miners or operators under any of these agreements with reference to the purchase of blasting powder? A. Yes, that question arose very frequently.

Q. Well, now, state what you know of that matter? (Objection overruled.) A. The miners bought 2390
their powder from the operators at an agreed price of $1.75 a keg and they had the right to demand the brand of powder that they desired.

Q. I will ask you, Mr. Waddell, whether or not you know of anything else that was done by the miners with reference to the purchase of black blasting powder, and whether any of those miners ever did, so far as you know, exercise their right as you have stated it to be, to select the grade of powder which they desired to use? A. Yes, on a number of occasions. 2391

Q. Now I wish that you would tell the Court and the jury what you know, in a general way, and as specifically as you can, with reference to any demands or any influence which was used by the miners upon the operators affecting such trade as the Buckeye Powder Company had for black blasting powder with any of the coal operators?

A. Yes.

Q. Well, now then, will you proceed to explain what you know with regard to those matters? A. I know that the Clark Coal & Coke Company, Mr. Horace Clark, president, was a stockholder in the Buckeye Powder Company and desired to use Buckeye Powder in his mines. I went in to the mines myself and witnessed the shooting of the powder

and the test of the powders in comparison with du Pont and Buckeye. I saw the results of the shooting. The miners, independent of the results they obtained, decided they would not use Buckeye Powder.

By Mr. Katzenbach:

Q. Were you there when they made the decision? A. I was in the room downstairs right under them
2393 when they announced what thei rdecision was. (Motion to strike out overruled.)

By Mr. Abbott:

Q. Now proceed and relate the circumstances? A. Same particulars occurred.

Q. Is that all that occurred at the Clark Coal & Coke Company's property? A. The Buckeye Powder was ruled out of the mine, the Clark Coal & Coke Company used about 22,000 kegs per year in their two mines, and we lost the business.

2394 Q. Did I understand you to say that the Clark Coal & Coke Company was interested in the Buckeye Powder Company? A. Horace Clark, the president of the company, was a stockholder in the powder company, yes.

Q. Any other instance that you know of personally? A. Yes, similar conditions were obtained at the mines of the Maplewood Coal Company.

Mr. McCarter: Object.

The Court (to the witness): You must not say "similar." You must give the exact conditions by stating them.

A. Messrs. McElwee & Ditewig, owners of the Maplewood Coal Company, were stockholders in

the Buckeye Powder Company; they desired to use our powders in their mine.

Mr. McCarter: That must be hearsay.

Mr. Abbott: I hardly think that comes within the class of hearsay——

The Court: In what way did they manifest their desire, let us hear that.

The Witness: They asked me to ship the powder to them and expressed their desire. (After interruption and argument, continuing) Maplewood Coal Company ordered a number of shipments—— 2396

The Court: How did they order them?

The Witness: Part of them verbally, part of them by telephone, some of them were given to me while I was at their mine. I was told to ship and I did ship.

Q. Now, what was the result so far as the continuation of the use of Buckeye Powder at the Maplewood Coal Company's mine is concerned?

2397

A. There is a Pit Committee in every mine, and this Pit Committee voices the result of the vote of the miners on any topic, or if the vote is not taken the Pit Committee decide themselves, unless there be a protest. I have attended their meetings where these questions have been determined and I have also met the Pit Committee in a great many mines where the questions have been raised. The Pit Committee at the Maplewood Mines in my presence notified Mr. McElwee that they would not have Buckeye powder and demanded du Pont. (Motion to strike all after "protest" overruled.)

Q. Now, did you or did you not continue to make sales to the McElwee & Ditewig, or to the Maplewood Coal Company? A. I didn't.

2398 *R. S. Waddell—Direct*

Q. Did you ever have any further conversations with either of those gentlemen or any officer of the Maplewood Coal Company with reference to Buckeye powder? A. Oh, I frequently solicited the business.

Q. Did you at any time ever have any conversation with Mr. Clark as representing the Clark Coal & Coke Company with reference to the purchase of black blasting powder after this experience which you have testified to? A. Quite frequently.

2399

Q. Did you at any time ever succeed in selling him black blasting powder? A. No.

Q. Now, can you, of your own knowledge, state any other circumstance or experience which you had with the miners with respect to the use of Buckeye powder? A. Yes, I met the miners, or the Pitt Committee, at various places.

Q. Well now, name some other place and time when you met the miners and the Pit Committees on the subject of Buckeye powder? A. I met the Pit Committees at Edwards, the station from which

2400 our powder was shipped; William Kinglush and two other gentlemen there. They were the Pit Committee from Howarth & Taylor's mines.

Q. How many miners were employed in Howarth & Taylor's mines? A. Some eighty to one hundred and twenty-five.

Q. About how many kegs of powder did that mine consume per annum?

Mr. Katzenbach: How does he know?

Q. How do you know? A. Between six and eight thousand, depending——

The Court (to the witness): Have you any knowledge upon this subject yourself?

Witness: Yes.

By Mr. Katzenbach:

Q. Where did you get your knowledge? A. General knowledge of the mining business—a miner uses from six to seven kegs of powder per month—each miner—it depends upon the length of operation of each coal mine, about the quantity of powder they use.

Q. How do you know how many miners Howarth & Taylor had; how do you know that, Mr. Waddell? A. I knew the local Union there in Edwards; 2402
knew all the men employed—a great many of them during their idle times in the coal mines I employed them in the powder mills—very familiar with them—knew most of them personally. I took the train at Edwards, going and coming.

By Mr. Abbott:

Q. How far was this mine located from your mills, Mr. Waddell? A. About a mile.

Q. How often did you see the mines? A. About twice a week for a number of years. 2403

Q. How often did you see the owner of the mines? A. Oh, it would average perhaps once a week.

Q. Now state what conversation or experience that you had with this Pit Committee that you were just referring to? (Objection overruled.) A. The demand of the Pit Committee on me or proposition that they meet me?

Q. State what that proposition was.

The Court: One moment—not a general proposition. I assume that this was a case like before, where they refused to take the powder.

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Mr. Abbott: Well, I don't want to get this out through any misunderstanding, this relates to——

The Court: Everything that the Pit Committee said to him, wouldn't it?

Mr. Abbott: No.

Q. I will ask you whether this proposition had any reference whatever to the use of Buckeye powder in Howarth & Taylor's mines? A. Yes.

2405

Mr. Abbott: Now, I think, if your Honor please, we have a right to have him state——

The Court: Not everything, even at that. I will allow you to show that the Pit Committee after using their powder declined to use it any further.

Q. Well, did you make any sales of Buckeye powder to Howarth & Taylor's mines at any time? A. I did; quite a quantity.

Q. Did you at any time after that cease to make
2406 sales of Buckeye powder to Howarth & Taylor's mines? A. I lost the business.

Q. Now, will you state whether or not you ceased to sell powder to Howarth & Taylor on or about the time that this conversation occurred? A. Yes.

Q. Now, state what the conversation was? (Objection sustained.)

Q. State what, if any proposition was made to you at that time having any reference to the use of the Buckeye powder and to the continued use of Buckeye powder in the Howarth & Taylor mines? (Objection sustained.)

Q. Mr. Waddell, do you know what has become of Mr. Kingbush, the member of the Pitt Committee which you stated you had conversation with? A. I do not know where he is, I searched for him, I heard

that he was dead, but I do not know definitely, I could not get any trace of him.

Q. Do you know who the other persons were at that time members of the Pitt Committee? A. I had their names, and I searched for them, I hunted for them all over the country. Miners changes from one locality to another, and it is very difficult to trace them.

Q. There were three men took part in this conversation, in this conversation that you have referred to? A. Three members. 2408

Q. Do you know of your own knowledge, Mr. Waddell, of methods that were used at any time by manufacturers of black blasting powder with miners to induce them to reject certain grades of powder and recommend other grades of powder, I am inquiring now of your experience from the time when you entered the employ of the Hazard Powder Company down to the present time. Objection sustained.)

Q. Did you have any knowledge, Mr. Waddell, —your own personal knowledge,—while employed by the Hazard Powder Company or the du Pont Powder Company or any of the interests that were represented by either of those companies, regarding the employment of miners or inducements which were used through miners, to cause them to recommend one grade or one make of powder and to reject another grade or make of powder? A. My knowledge of that would have to come through other people there, other than my own. I never bought a miner personally. (Motion to strike out denied.) 2409

Q. You say that your information in that regard must come from others. What others do you have in mind from whom you obtained such information? (Objection sustained.)

Q. Did you at any time have any conversation

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or get any information from any person connected with the Hazard Powder Company or du Pont Powder Company or any other company which you represented while you were in the employ of either of those companies, concerning the employment of miners or the methods used in inducing miners to recommend one grade or make of powder and to reject another grade or make? (Objection sustained).

Q. Do you know anything about the system
2411 known as the "trade report system," in use by the defendants? A. Yes.

Q. State what you know—describe your knowledge of the system, how it originated and what the purpose of it was. A. The system was originated in the dynamite branch of the powder trust, and I was sent by Eugene duPont and Mr. Alexis I. duPont, who was vice president of the dynamite interests to investigate the trade reports system introduced by Mr. Haskell in the dynamite interests for the purpose of ascertaining whether it was
2412 suitable to use and whether I would recommend it for the black powder interests. I was sent to Mr. Kerr.

Q. When was this that you were sent on this mission? A. I should think about 1899 or 1900; I have forgotten the exact date.

Q. Now, did you investigate their system at that time? A. Mr. Kerr had been instructed by Mr. Alexis I. duPont, vice president of his company, to give me the fullest information in regard to it. He showed me the system of reporting, and the reports they gathered in, the nature of the reports. How they obtained information from their agents and travellers—salesmen—and then disseminated the information to the branch offices or their salesmen who might be interested in other information that had come to them through other sources.

Q. State how they disseminated this information. A. It was sent out by the trade bureau.

Q. Proceed, Mr. Waddell. A. Information that would come from one salesman that would interest another department or another office would be sent to that office, giving the nature of the information. I reported to Mr. duPont after I had examined the system thoroughly that I would not recommend a spying system of that description for use in the black powder business, and we did not adopt it.

Q. Now concerning—you testified the other day 2414
regarding certain conversations that you had had with employees of the railroad companies. I will ask you to state whether or not at any time you caused or instituted an investigation into the reasons why information was being given out concerning shipments from your mills in advance of those shipments being received by the consignees? (Objection sustained.)

Q. Mr. Waddell, will you state whether it is or is not true that information was given out concerning shipments that were made from the Buckeye mills previous to the time of those shipments 2415
being received by consignees? (Objection sustained.)

Q. Mr. Waddell, during the carrying on of your business between 1903 and 1908 did you at any time make any shipment to any consignee wherein advice of that shipment reached you from some other source than the consignee before he had received the information? (Objection overruled.) A. Yes.

Q. Can you at this time state the names of some of the persons from whom you received such advices? (Objection overruled.) A. From Bruce and Burdick, Joliet, Illinois; from Applegate & Lewis, Huber, Illinois; from John G. Miller, Chi-

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cago; from Northwestern Coal & Mining Company, Devere, Missouri. That is all I recall just at present.

Q. Now did you at any time make any investigation——

The Court: Hold on, that is not complete yet. As I understand these are the persons from whom advice was received.

Mr. Abbott: Yes.

2417 The Court: All right, how about what?

Q. Now, what did they advise you?

The Court: Not what they advised him; about what? You are talking about shipments that left his plant to certain customers, as I understand your question?

Mr. Abbott: Yes.

The Court: Concerning which shipment advices were received from other persons before the consignee knew of the shipment?

2418

Q. Well now then what other persons did these customers advise you they had received those advices from?

Mr. Katzenbach: We object to that; that is asking this witness to detail the substance of a conversation had with some one, not mentioning whom, with some one else, not mentioning whom.

The Court: Read the question.

(Question repeated.)

The Court: No; that will not do. You see what this witness has done is to give the names of the consignees.

Mr. Abbott: Yes.

The Court: That is not——

Mr. Abbott: If we show, if your Honor please that—if we show that these consignees received these advices from the defendants or the representatives of these defendants, are not we then entitled——

The Court: No, you see, I took it to be that your purpose was to show this: That consignments were made by this Buckeye concern to certain of their customers, that advices were received of those consignments, received by the Buckeye people from sources other than the customers before those customers could have known of the consignment. This does not do it. Now what you have done, you have mentioned the names of consignees and your present purpose is to tell what those consignees heard from somebody else. 2420

Mr. Abbott: If we can show though, your Honor, that that information came from these defendants, then we have a right to show, have we not, that this witness made an investigation and ascertained how these defendants got that information? That is all we are leading up to. 2421

The Court: In the first place you haven't shown that these defendants had the information.

Mr. Abbott: I beg pardon?

The Court: You haven't shown that the defendants had that information.

Mr. Abbott: I know, but we can't show it all at once; we have tried to go at it in a more direct way and have not been permitted to do that. We have gone the other way. We have shown that the consignees got this

2422

information. Now I think that we ought to be permitted to show from whom they got it—at least to connect them up with the defendants in this case and then find out how the defendants got this information. That leads to the investigation and the results of it.

The Court: Step by step I am not prepared to say that some part of your offer ought not to be received. Show first then

2423 that the consignees to whom these shipments were made could not have received information from the Buckeye people at the time they reported knowledge of the consignments?

Q. I will ask you Mr. Waddell, to state whether in these particular instances that you have named any of those parties could have received information from the Buckeye Company or any of its representatives concerning those shipments at the time when they had knowledge of those shipments. (Objection overruled.) A. No.

2424 Q. Now did you——

The Court: Now then, you had better fill that out. Why couldn't they have known

Q. Well now why—— (Objection overruled.) A. Because our shipments—shipments from Buckeye mills made on any date—any day—were billed out that day and the bills of lading and advices of the shipment were mailed to us that night from Edwards, Illinois, to the Peoria office of the Buckeye Powder Company and reached us the following day. The earliest advices the Buckeye Company at its office in Peoria had of the shipments was the day following. I have received from the consignees advices before I received it from the

mills or from the shipment office, that they had learned that a shipment—giving the definite car number and all the details—had been made from the Buckeye mills the preceding day and I didn't know it myself.

The Court (to the Witness): From which source would the consignee get notice of the shipment, the mills or the Peoria office?

Witness: From the Peoria office only; they did all the billing. 2426

The Court: All right.

Mr. Abbott: Now I think if your Honor please we are up to the point where we can ask this witness the question as to what caused an investigation to be made as to how that information got out.

The Court: Of course, you may now show how it occurred provided he don't tell as the result of his investigation matters which are in hearsay.

Mr. Abbott: Yes; I don't know whether 2427
we will get to the point where we will be stopped on that, but I——

The Court: You ought to know at this time whether you will come within his inhibition of mine and if it does, don't attempt it.

Mr. Abbott: The point that I make your Honor is this: I don't want to go counter to any ruling that your honor makes. I am trying very hard and of course it is very difficult in this case to always keep within the line. But my theory is this, and I will explain the theory of this particular examination. The only way in which we can show how this witness knew where that information came from is to show that he

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caused a certain investigation to be made with railway officials, to show what he ascertained from railway officials as to the means used and the methods which were used, through the railway company and its employees, for giving out that information.

The Court: If you can't do it——

Mr. Abbott: If we can't do that then I don't wish to go that far.

2429 The Court: You can't do that, because that depends don't you see upon the accuracy and the truthfulness of somebody else other than this witness.

Mr. Abbott: Well, I won't then undertake at this time if your Honor please, to go into that matter any further, because I feel that it wouldn't be worth while, but I will make at this time the offer that——

The Court: You may make your general offer and take your exception without going into the details. That is sufficient.

2430 To which ruling of the Court the plaintiff's counsel the nand there excepted and said exception was allowed.

Q. Concerning the matter of prices, Mr. Waddell, I want to ask you a few questions there: What method did you follow during the years 1903 to 1908 in order to ascertain what were the ruling prices for black blasting powder with which you had to compete? A. The only prices that I know anything about were the prices that I had when I left Wilmington, Delaware, and were established

by the Powder Association on the 19th of December, 1902. $1.35 east of the Mississippi River—$1.45 west of the Mississippi River.

Q. Between that time and the time of the issuance of the first price list, what information—how did you acquire your information regarding prices? A. I was wholly in the dark in regard to it. Any changes that might have been made by the associated companies, any increase of rebates on their contracts, I knew nothing about except as I would get it in contact with the trade. 2432

Q. Do you know of any instance of your own knowledge where any customer of yours was induced to leave you by reason of any less price which was offered to him than prices which you had offered? (Objection overruled.) A. Yes.

Q. Will you state those instances? A. I lost the trade of Charles F. Keeler, a stockholder in Buckeye, on account of cut prices made by the du Pont Company.

The Court: (To the Witness.) How do you know that, without going any further. 2433

A. Mr. Keeler sent the du Pont letters to me quoting lower prices and asking me to meet them, from time to time.

Motion to strike answer out denied, with leave to renew if not connected.

Q. Have you got those letters? A. I gave them to the Government.

Q. Do you know of any other case of your own personal knowledge where you lost a customer by reason of a cut in price? A. Yes, sir.

2434 Q. Will you name that person? (Objection overruled.) A. Brechnitz Brothers—Brechnitz was a stockholder.

Q. And where was he located? A. Belleville, Illinois.

Q. Can you recall when this loss occurred on account of cut in price? A. I had a contract with Brechnitz made about the first of 1904, and there were numerous cuts from $1.20—$1.15 was the contract price and I had to shade my price.

2435 Q. State what cuts were made in that price.

The Court: Cuts made by the Buckeye people?

Mr. Abbott: I am asking him only if he knows that cuts were made by anybody in the price?

A. I know what I did in lowering the price.

Q. State of your own independent recollection then what you know of the various sales that you made to Mr. Brechnitz and the various prices which

2436 you made him—the change in prices. A. my contract wor $1.15; then it was reduced to $1.10, to $1.05, to $1.00 and rebated to ninety-four cents, so that ninety-four cents was the net price, and then one sale at ninety-two cents. Then I surrendered the business.

Q. When was it now that you surrendered the business? A. About 1905, I have forgotten the exact date—1905, two and one half years before I sold out the mills.

Q. Do you know of any instance of your own knowledge where the du Pont company sold its powder to any consumer of black blasting powder at less than cost? (After argument) A. Yes.

Q. Now will you give the circumstances by which you know that to be the case? A. In the cases

where they sold powder at ninety cents—ninety-two cents—in all cases of that kind, and in many cases where they sold at ninety-five cents delivered, where the freight rate was high, and in the district in which I operated.

Q. Do you know of any circumstances of your own personal knowledge where the du Pont Company and other manufacturers of black blasting powder respected each other's trade? A. Yes.

Q. State such instances as you have within your knowledge? A. You want the instances? 2438

Q. Yes, such instances as you know of. A. I know that I never had but one competitor, never, in all of the Central States, in the sale of powder and that competitor was the powder company that held the contract with the customer—no other powder companies.

Q. Wait a moment, what company by "the powder company" do you have reference to? A. It was always that company to which the Association had originally assigned the contract.

2439

The Court: That does not tell us very much. Don't you know what the company was?

The Witness: Well, it was the company that originally made the contract, and renewed it down indefinitely—to date.

Q. Can you name any company of that character and its connection with any particular contracts or series of contracts you have in mind as having been respected by the E. I. du Pont, de Nemours Powder Company?

Mr. Katzenbach: We object to that question as irrelevant and incompetent; it assumes that they respected something and the

answer would be hearsay in addition to that.

The Court: I don't comprehend fully the former answers.

By the Court:

Q. Do I understand in all your trade, you had but one competitor? A. All of the trade of Indiana, Illinois and Iowa was under contract of one or the other of the associated powder companies.

2441 Q. Now, one or the other of what? A. One of these sixteen powder associates—members of the association and the competitor was the particular powder company to which that trade had been assigned by the powder association.

Q. Assigned when? A. Assigned during the period beginning in the fall of 1897 under their system of contracting and which never varied, and once a customer was assigned to the du Pont Company he was permanently a du Pont customer. The contract was made with the du Pont Company and renewed from time to time.

2442 Q. That relates to the time before you went into business, doesn't it? A. The time from 1897 continuing down to 1908 when I sold out.

Q. What knowledge have you that that same system continued after you left the du Ponts? A. Why, I came in contact with it every day.

Q. You came in contact with competition? A. Competition with—for instance if it were the Newsom Brothers of Peoria, Illinois, to whom the du Pont contract had been given, authority for the du Ponts to contract, no other company ever competed with me in the trade at Newsom Brothers and no other company ever sold Newsom Brothers powder excepting the du Pont Company. Contracts were continually renewed as they expired, and they fre-

quently, a month or two months before they expired, the consideration was given in the shape of a reduced price for a renewal. I kept in touch with those renewals all the while, and I knew that that entire trade of Illinois, Iowa, Missouri and Indiana was contracted in that manner on down to—down to to-day.

Q. Outside of the fact that you never met a different competitor in a particular locality or concerning a particular customer, how do you know that that particular competitor was renewing old 2444
contracts? A. I knew it by the powder kegs that were used there, that is by the mine, and by knowing the kind of powder he used in his mine all the while.

Q. Would that indicate anything more than the fact that he still got the powder from the same source that he was having consumed there? A. In many instances I saw the contracts of customers, the customers would show me their contracts.

The Court: Very well, proceed.

Mr. Katzenbach: I would ask that the last 2445
preceding answer to the last preceding question of the witness be struck out as being based upon the testimony furnished by others and not responsive to the question.

The Court: I think the witness ought to differentiate, if there is a difference, in his answer, as concerning those whom he saw the contracts and those whom he did not see contracts. He has testified now generally.

Mr. Abbott: I think your Honor does not mean to hold that the only source of his information must be the contracts themselves.

The Court: No, I mean to say he has given now a general answer in response to my ques-

tions and it would appear that his sources of information were different in different cases. Now of course that being so, we want to know just what the different sources are and determine whether or not they are hearsay or competent.

By Mr. Abbott:

Q. Mr. Waddell, will you indicate what particu-
2447 lar customer or customers of black blasting powder you know of whose contracts you saw during this period if you can recall. A. I saw the Applegate & Lewis contract. I saw the Jones & Adams contract, two of them I think in Springfield, Illinois.

Q. Of course you understand—— A. I don't know, there was a great many of them that I saw, that were showed to me at different times.

Q. I want to be definite about this. Of course you understand I am inquiring about such contracts as you knew were in existence previous to 1903, not merely contracts which you saw after 1903, but I
2448 am inquiring with reference to those which were renewed.

Mr. McCarter: How does he know about the renewals because he saw the contracts?

The Court: That is what we are getting at. And this relates to a continuance of the old contract, that is the primary purpose of your question, and the next question is, how does he know they are renewals.

Mr. Abbott: That is what I will ask him if I am certain on that point.

A. Of course the best source of my information you don't accept, that is the statement of—

The Court: The statements which you accepted for your commercial purposes, are perhaps sufficient for your purposes, but they cannot be received here—that is, all of the sources of information cannot be received here.

Q. You had experience in regard to the system of contracting which had obtained during the time that you were employed by the Hazard Powder Company and down to the time when you left the em- 2450
ploy of the du Pont Powder Company, did you not? A. I did.

Q. I wish you would describe how that system originated and generally the object of the system.

Mr. McCarter: We object to that.

Q. In the first place how did the system originate? A. During the fall of 1897, a general system was adopted under which all agents of powder companies applied to their principals for the privilege of contracting with a given customer or set 2451
of customers, stating at the time the application was made, according to the rules adopted and consideration given them, the number of kegs of powder they had furnished each customer during the preceding two years and asking that the rebate be fixed in proportion to the number of kegs that had been furnished in the preceding years.

Q. What were the advantages to the customers by entering into a contract? A. The customer received a rebate off the particular brand of powder which he contracted for. All other powder companies in the association must quote the full schedule price. Say the schedule was $1.25 adopted by the Association, and it was du Pont contract, the du Pont

give the ten cent rebate, and all other companies must quote $1.25 so that threw the trade of that particular customer to the du Pont company or whatever company was entitled to it.

Q. What was the benefit to the du Pont Company? A. The du Pont Company tied up the trade of that particular customer and had the trade of that customer set aside for it for a term of years with the privilege of renewal.

2453 Q. Now what if anything did these contracts provide with reference to the giving out of information concerning the contract? (Objection sustained:)

To which ruling plaintiff's counsel then and there excepted and said exception was allowed.

2454 Q. Now what, if anything was the practice, at the time about which I have inquired of you, concerning renewals of contracts? A. That was fixed by the compendium of rules, that the contracts could be renewed at their expiration on the same terms as had been originally granted.

Q. Do you know anything about the system of contracts which obtained in the middle west if there was such a system during the years 1903 to 1908? (Objection overruled.) A. Yes.

Q. Describe what that system was.

Mr. McCarter: We object to that as irrelevant.

By the Court:

Q. From what did you derive knowledge what

were the evidences of things from which you drew your conclusions? A. I helped and assisted and acted upon a committee for T. C. du Pont in awarding a great many of those contracts.

Q. This relates to 1903 to 1908? A. These contracts were made in 1902 for terms of two, three or four years and were in existence up to 1905, some of them.

The Court (to the witness): You may testify to that if you know of that—that which had its origin at the time of course when he was in the employment of the defendants. 2456

By Mr. Abbott:

Q. Mr. Waddell, how does it happen that you know anything about the system of contracts which obtained during the years 1903 to 1908? A. By the fact that I knew that nearly all of the contracts lapped over from 1903 for one or two or three or four years, and that they were continuous and that they were kept going and powder was furnished 2457 under those contracts, I knew that.

By the Court:

Q. How did you know that? A. I assisted in making the contracts. I acted for Mr. du Pont in the work of the Special Committee in awarding a great many of the contracts, fixing the terms for one, two or three years that they were to run and that would run them down to 1904 and 1905. I knew they continued along after 1903, the majority of them, and I knew, of course, through that knowledge of them, although I didn't see a contract made by the Powder Company personally after that time, and I was not present when it was made.

(Motion to strike the answer denied.)

By Mr. Abbott:

Q. Mr. Waddell, will you state what the situation of the Buckeye Powder Company was during the years 1903 to 1908 so far as its ability to manufacture powder and supply the demand up to its capacity was concerned? A. We had ample capital. We had the mills and the facilities for making and delivering 250,000 kegs of powder per year; and I had the contracts made for the soda, the chief in-
2459 gredient, by the year generally for the sulphur.

Q. Was there or was not that capital stock paid in? A. $100,000 in cash.

Q. Now, what was the character of the buildings and machinery with reference to their use for making black blasting powder? Be as specific as you can. A. They were the very best that we could buy. We had a Hamilton-Corliss engine, ranked among the best. Our electric machinery was furnished by the General Electric Company and the Westinghouse people. I considered them the best that I could get. Our powder mill machinery was good.
2460 We had all of the facilities. Our wheels were the largest in the country, twelve-ton wheels, 24-inch face—20 and 24-inch face, the very best that we could buy.

Q. I will ask you to state whether or not the machinery which you acquired originally for the use in your plant was acquired at the then market price for machinery of that class, was it or was it not? A. I believe it was as cheap and possibly some of it was a little cheaper than I could have obtained it elsewhere; but there was other machinery that I could not get and I had to have specially made.

Q. Now then, what was this machinery that you had to have specially made? A. There was no corning mill—graining mill that I could buy in the

market at the time excepting one that was on sale by the people at York, Pennsylvania.

Q. Did you attempt to make any purchases of any machinery of anyone else other than Prox & Brinkman? A. Yes.

Q. And were you able to make those purchases? A. No.

Q. Now, who were the persons of whom you attempted to purchase machinery other than Prox & Brinkman? A. Olin Scott, Bennington, Vermont; Allentown Foundry & Machine Company, Allentown, Pennsylvania; Pusee & Jones, Wilmington, Delaware; I. & E. Greenwald, Cincinnati; and the Prox & Brinkman Company, which I understand are the only manufacturers outside of the powder companies themselves of powder machinery. 2462

Q. These names that you have given were the only manufacturers of powder machinery outside of the powder manufacturers themselves; is that right? A. The only ones.

Q. Then, you bought your machinery of Bauer, Kurtz & Company? A. Of Bauer, Kurtz & Co., yes. 2463

Q. Now, Mr. Waddell, concerning the character of the employees that you had in your employ during the time that you were manufacturing powder, I will ask you to state where they came from, and what their general experience was in the powder manufacturing business? A. Henry Justice, the superintendent, had been assistant superintendent of the Indiana Powder Mills, and he brought with him from those mills nearly all of the head men, that is the men who were in charge of the special mills—head wheel men, head press man, head corning mill man, head glaze man. The assistants or seconds to these men were, some of them, old practical powder men, who came from other mills, some

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from Pennsylvania mills, some from Mooar, Iowa, mills, some from Senior, Kings, mills, Miami mills and some were the ordinary men that are hired about powder mills.

Q. Did you have any requirement or any conditions under which you employed these men; did you have any contract for their employment? A. Yes; they had a Union, Powder Workers' Union. We made contracts by the year with the Union.

Q. I show you Plaintiff's identification 1111 and
2465 1112, and ask you to state whether you know what those two identifications are? A. These are the contracts with the Powder Workers' Union.

Q. Do you know the signatures? A. Yes; all of them on this one (indicating).

Q. (Handing other paper to witness.) And all of these? A. And all of these.

Q. And what is that? (Indicating.) A. The seal of the company.

Mr. Abbott: We offer these two documents in evidence.

2466

(Plaintiff's Exhibit for Identification, P. 1111 and P 1112 received in evidence as P 1111 and P 1112.)

Q. Can you state what was the formula used by you in manufacturing black blasting powder while you were operating the Buckeye Powder plant? (Objection overruled.) A. Yes.

Q. How did you acquire that information? A. I gave the formula to the men at the mills—I originated it.

Q. Now what was that formula? A. 72 pounds of nitrate of soda, 11 1/5 pounds of (refers to paper) I would like to get that right——

Mr. McCarter: Well, I think if he knows

this formula he should speak from memory.

The Court: Well, if he constructed it he may figure it out.

A. 11 1/5 pounds of sulphur, and 16 4/5 pounds of charcoal.

Q. Now, do you know anything about the formulaes that were used by other manufacturers of black blasting powder? A. Yes.

Q. What other manufacturers of black blasting powder do you know the formula of? A. du Pont, 2468
Hazard.

Q. What was that formula, of the du Ponts? A. Practically the same as this, 72, 11 1/5, 16 4/5.

Q. What was the formula used by the Hazard? A. Same.

Q. What was the formula used by the Laflin & Rand? A. Theirs differed slightly; they didn't go into the niceties of dividing it into fifths. They made it 72, 12 and 16.

Q. I will ask you, Mr. Waddell, if you know what was the total output of the various mills which 2469
were located in the territory which you have heretofore described as the territory which was in the district that could be served from the Buckeye plant? A. I cannot give that to an exact figure. Approximately the Mooar, Iowa, mills——

Mr. McCarter: One moment. We are going to object to it. He is now trying to give information that he has gotten from some other source; it must be so.

The Court: Let him establish whether he has the knowledge of the output and capacity.

Q. How did you obtain this information that you

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have given with reference to the output of these mills? A. I knew approximately the output of the du Pont mills and I came in contact with all of them in the trade—knew their customers, about what they would require and in a pretty close way I knew about what the output of their mills were as I came in contact with the trade.

Q. All right, Mr. Waddell, will you state what that output was? (Objected to and objection overruled.) A. The output of the Mooar, Iowa, plant
2471 of the du Ponts was about a million kegs a year, of the Equitable Powder Manufacturing Company at Alton, between 280,000 and 300,000 per year, kegs, of the Phoenix Powder Mills at Bellville, 225,000 kegs per year; of the Pleasant Prairie, Wisconsin mills of the du Ponts and Laflin & Rand, 125,000 kegs per year. Later the Egyptian Powder Mills were built, and up until the time they were bought by the Equitable their output was between one hundred and fifty and one hundred and seventy thousand kegs per year. The United States Pow-
2472 der Company in Indiana had an output up to 1905 of 175,000 kegs per year. The Excelcior Powder Company at Holmes Park, near Kansas City, Missouri, 150,000 kegs per year. I think that included all the mills within the territory that I primarily reached by Buckeye.

Q. Now, can you state the total amount included in the figures which you have given to the Court? A. Approximately 2½ million kegs.

Q. And what was the total output of the Buckeye Powder Company mills during the same period? A. Our average output per year was a little over 90,000 kegs.

Q. Can you state at this time how many kegs you manufactured during the year 1903? A. I have made up those figures from the books—1903—very

small amount—I think I could give you almost the exact figures from the figures that I have taken off the books if I am permitted to do it.

Q. Have you any data at your hand at the present time from which you could refresh your memory? A. Yes, I have. (Produces paper.) 7,043 kegs in 1903.

Q. How much in 1904? A. 108,211 kegs.

Q. And in 1905? A. 158,106.

Q. And in 1906? A. 74,786.

2474

Q. In 1907? A. 86,375.

Q. And in 1908, down to September 18th? A. 32,059.

Q. Now, did you have anything to do with the—A. There were a few kegs additional to that that I haven't a memorandum of, there were approximately a few extra kegs——

The Court: It is not necessary to go into the few extra kegs.

Mr. Abbott: No, I don't care to go into that unless the other side does. 2475

Q. Did you have anything to do with the operation of the Buckeye Powder Company plant after September 8, 1908? A. I did, for a year.

Q. In what capacity or under what circumstances did you have anything to do with the operation of that plant? A. I hired to Mr. Olin,—who was with the Western Powder Manufacturing Company—a year, and he gave me the title of Manager.

Q. Do you know anything about the number of kegs that were manufactured by that plant during that period? (Objection overruled.) A. We only run a half year on blasting powder, and a half year on rfle. We made 107,000 kegs.

Q. During that half year? A. During the half

2476 Q. Now, at this time do you know anything about what was done with the black blasting powder which was manufactured by the company that succeeded the Buckeye Powder Company while you were in their service? (Objection overruled.) A. Yes.

Q. Now, what was done with the powder which was manufactured by the Western Powder Manufacturing Company during this period that you were in its employ? (Objected to and objection
2477 overruled.) A. It was sold to Egyptian, Equitable, Austin, du Pont, American Powder Mills, packed in their kegs, each company packing its own product in its own kegs, each company marketing in its own—there was a proportion of the output reserved for Buckeye and for Western.

Q. Can you state of your own knowledge what proportion of the output of that mill was reserved for use by the Western Powder Company? (Ob-for use by the Western Powder Company? (Objection overruled.) A. Very small proportion. I
2478 can't give you the exact number of kegs.

Q. You stated that this powder was packed in the kegs of these various companies whose names you have given. Was or was not it so packed on the premises before it was sent out? (Objection overruled.) A. Yes, packed when it was made, and on order from each company.

Q. Do you know whether or not all of the powder that was sent out in these various kegs under different names was manufactured at the plant of the Western Powder Manufacturing Company? (Objected to and objection overruled.) A. At the start we bought—one carload, I think, from Equitable, which was shipped up to Buckeye plant, and they acquired about a thousand kegs in the inventory of Buckeye.

Q. Do you know what was done with the thousand kegs of powder that was purchased from the Buckeye plant? A. Yes.

Q. Now, what was done with that one thousand kegs? A. Part of it was shipped out as Buckeye to Buckeye customers and part was shipped out to Buckeye customers, though in du Pont kegs—transferred to du Pont kegs—packed in du Pont kegs and shipped to their customers.

Q. When you entered the employ of the Buckeye Powder Company what was the salary which 2480
you received as president of that company? A. Five thousand dollars per year.

Q. How long did that salary continue? A. About a year and a half.

Q. And then what happened? A. I reduced my salary to thirty-six hundred.

Q. And how long did that continue? A. Up until I sold out.

Q. When you entered the employ of the Western Powder Company what salary did you receive? A. Twelve thousand dollars a year.

2481

Q. You were asked the other day what salary you received while you were with the du Pont Company, and I wish to put that question again. A. Ten thousand the first year; eleven thousand the second, and twelve thousand for succeeding years.

Q. Now, I wish you would state what efforts you made at any time during the existence of the Buckeye Powder Company under your direction between 1903 to 1908 to dispose of that property. A. No efforts until about 1907. We tried to sell to several parties.

Q. Well, now, who were those parties? A. The Coal Operators of Illinois—we tried to form a company with them. The Consolidated Coal Company of St. Louis. The Mine Workers of America, the

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Illinois Miners' Union—they had about two million dollars in their treasury, and I tried to sell the plant to them; and our stockholders tried to sell it to du Ponts' and also to Mr. Olin and Mr. Lent.

Q. What stockholders in particular did you have in mind, if any, that tried to sell it to the du Ponts? A. Mr. Luthy, President of the Merchants National Bank, was the stockholder.

Q. Do you know anything about those negotiations yourself personally? A. Not until after they
2483 were over; I knew of them then.

Q. Now, you mentioned Messrs. Olin and Lent; when did you first begin your negotiations with Mr. Olin and Mr. Lent to sell them that property? A. About January, 1908.

Q. And when did you conclude your negotiations? A. September 18, 1908.

Q. What did you finally dispose of the property for, how much? A. Seventy-five thousand dollars, payable twenty-five thousand in cash, twenty-five thousand in a year, twenty-five thousand in two
2484 years and for a little over fifty-five hundred dollars covering the inventory of the materials.'

Q. When you disposed of this property to Mr. Olin what, if anything, was done by him with reference to the making use of the property for manufacturing powder? Did he begin at once? A. Yes, very soon.

Q. State whether at the time you sold it the plant was in operation? A. Well, it had been up to the 1st of September, but while we were negotiating I suspended operation.

Q. How long did that suspension continue? A. Eighteen or twenty days.

Q. Now, proceed and state whether or not there were any changes made by Mr. Lent at the time he took over the property for the purpose of con-

tinuing the manufacture of powder? A. There were some slight changes made in the industrial railway track that ran around the plant; some minor changes, and there was a separator put in for the separation of rifle powder, which is different from the blasting powders, different sizes of grains —very much smaller—had to have a new separator specially for the rifle. Otherwise there was no change during the year.

Q. Were there any changes in the buildings in any way? A. No. 2486

Q. Were any changes made during the time that you were in the employ of that company in buildings or machinery other than those that you have mentioned? A. No. There might have been some minor repairs, but there were no changes during the year.

Q. After you disposed of the property, what, if anything, was done with the proceeds which you received from the sale of that property? A. We paid our debts and distributed the balance to the stockholders.

Q. What was the final difference that was received by the stockholders? A. $16,681, about. I can give it to you exact if I may—— 2487

Q. If that is approximately correct, it is satisfactory to me. A. The loss on the stock was about $81,811.15, cash loss.

Q. What, if anything, did you do after you found that your customers were being lost, for the purpose of protecting your interests as you deemed them to be, to save yourself from further loss of customers? A. I don't know whether this would be an answer to your question—I filed a petition with the Department of Justice at Washington to help me if they could, protect my interest.

Q. Mr. Waddell, do you know what system prevails or did prevail during the years 1903 to 1908,

inclusive, concerning the kind of agents there were for the sale and handling of black blasting powder? A. Yes.

Q. Will you state to the Court your knowledge upon that subject as to what kinds of agents have been from time to time established and used in the sale of black blasting powder? (Objection sustained.)

2489 Mr. Katzenbach: We object to that unless there is some connection in the question between these defendants or with these defendants. How would an agency of someone else engaged in black blasting powder be important?

The Court: Your question is open to that objection, do you mean the Buckeye or the du Pont Company or do you mean someone else?

2490 Q. Do you know anything about the system that prevailed in the Hazard Powder Company and the du Pont Powder Company before you left the employ of the latter company? A. Yes, sir.

Q. Concerning agencies? A. Yes.

Q. State what that system was. A. They had several kinds of agencies. There was the salaried agents, who received a salary, usually a general agent in charge of an office, and then there was a commission agent who received a percentage on his sales, usually ten per cent or on carloads 5 per cent, and then there was what we knew as the net price agent, to whom we made a net price, allowing him to make his own profit above that net price. Also an agent to whom a selling price was given and a commission, or an allowance for his services below that general selling price.

Q. Mr. Waddell, will you state how wide your experience has been in connection with black blasting powder plants of the United States? A. I have been pretty familiar with black blasting mills.

Q. How many plants of that character have you visited in the United States? A. Some eight or ten I think.

Q. Will you name those that you have visited? (Objection overruled.) A. I visited the Hazard plant at Schagticoke and Hazardville, I think four times, and was there a day each time, and examined the machinery thoroughly, knew the plant all pretty well. I visited Brandywine Mills of the du Ponts.

Q. Where are they located? A. Located at Wilmington, Del. I visited the Ohio Powder Mills, at Youngstown, Ohio. I had blueprints of those mills and visited the King Mills at King's Mills, Ohio, near Cincinnati. I had the drawings and blueprints of those mills also. I visited the Miami Mills at Goes Station. I am not quite so familiar with those. I visited the Phoenix Mills at Kellogg, W. Va., a number of times. And the Indiana Powder Mills, I was there two or three times while they were building. I was consulted in regard to the machinery and method of putting it up, and so on. I visited the Phoenix plant at Phoenix, Illinois. I don't know so much about that as I do of the others. I have also visited the Equitable Plant, Mr. Olin's plant at East Alton, Ills., and the Buckeye Plant and the Northwestern.

Q. Is that all you recall at this time? A. I think that is all—Oh, well, I visited one, too, in Pennsylvania. One at Horal, Pa. It is owned by Mr. McAbee.

Q. Mr. Waddell, in your testimony, as you have heretofore given it, did you wish to have it [illegible]

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stood that there had been absolutely no depreciation whatever in the plant of the Buckeye Powder Company? (Objection overruled.) A. I spoke of the depreciation in the value of our plant, $117,000 I think I stated was the cost of our plant. Now, as I understood the question—was there any depreciation in the value of that plant. I said, no. We increased the value of the plant. I think the plant at the time I sold out we had added to it enough to make it of value of at least $134,000, as I fig-
2495 ured it at that time. And $5,000 of that increase was in the land, increase in the value of the land.

Q. Mr. Waddell, you are familiar with the testimony of Mr. Coyne with reference to the capacity of certain plants, so-called independent powder plants, are you? A. Some of them. Not all of them.

Q. You were familiar with a certain exhibit which Mr. Coyne offered, or which was offered through Mr. Coyne, in which the capacity of the Buckeye Powder plant was fixed at 300,000 kegs
2496 per annum? A. I saw that statement; yes, sir.

Q. Will you state what the facts are with reference to that matter—as to whether the capacity of the Buckeye Powder Mill was 300,000 kegs per annum?

Q. Will you answer the question, Mr. Waddell. A. Will you read that question, please?

Q. (Repeated.) A. The ultimate capacity of the plant, run full time, and about all the time that an ordinary manufacturing plant could run, from 280 to 300 days per year, would be 300,000 kegs, as Mr. Coyne stated; but I was giving the conservative output of the plant, as I could have produced, with the amount of working capital that I had, at 250,000, a conservative estimate of what could be readily be produced with the plant.

Q. Have you ever had any experience in connection with black blasting powder plants, in so far as their operation was concerned, and did you ever form any opinions based upon that experience, concerning the amount of depreciation, which takes place in such plants? (Objected to and objection overruled.) A. In my own experience—the only experience I had in operations of the plant was the Buckeye. I have observed plants and have—I know something of machinery and its use, and as to rebuilding the plants. 2498

Q. Do you know whether or not there is an amount—whether it is the custom to charge off a certain amount, from time to time, for depreciation? (Objected to.)

By the Court:

Q. Do you know it? A. No; I do not know definitely what any specific amount would be, excepting my own impressions.

Q. You don't know what the custom is in regard to such matters? A. Not in powder mills. I know in a general way what manufacturing plants ordinarily take, but it would not be confined to powder mills. 99

By Mr. Abbott:

Q. Mr. Waddell, will you state whether or not you have any knowledge of certain mines known among the coal operators, or others, as "team mines," or "country banks"? A. Yes.

Q. Will you state what they are? What is the designation; what is that designation for? A. They are known as non-shipping mines and team mines. They are small mines, not having a shaft, not reaching lower bodies of coal, but they go into the hill-

side and they mine coal only for delivery with teams around a town. They are usually in the vicinity of some town or city, but they do not do any shipping of coal by railroad cars.

Q. Will you state whether or not there were during the years 1903 to 1908 any such mines in the neighborhood of Peoria? (Objection overruled.) A. Yes; nearly all the small shipping mines were in that vicinity.

2501 Q. Can you readily recall to your mind any such mines, giving the names of the owners of such mines? A. Yes; there was the East Peoria Coal Company—Giebelhauser's mine; the Lake Erie Coal Company, and one other one—the Wolschlag Mine on the east side of the river, across from Peoria; and a number of them in what we know as Big Hollow—the Mohn Mine, Mohn Coal Company, and I do not recall—about a dozen of them in that vicinity, small.

Q. About how many men, all told, if you know, are employed in that class of mining in and around Peoria, what is known as the Peoria district (Ob-
2502 jection overruled.) A. Oh, from 2 to 15 men would be the—15 would be the extreme. Most of them employ eight or ten men.

Q. You mean for mining? A. Miners. During the busy season; they do not operate continuously during the year.

Q. What I wanted to get at was about the total number of employees in mines of that class? A. I think; I should estimate in the team mines in the vicinity of Peoria, within 10 miles of the city, a total of 150 men.

Q. Now, Mr. Waddell, did the Buckeye Powder Company at any time have any contracts with any consumers of black blasting powder? A. Yes.

Q. Were those contracts in writing? A. Yes.

Q. I show you (handing to witness) certain documents and ask you to examine them, and state whether or not they have any relation to the contracts which you had with various persons? A. This (indicating) is a contract with the DeKalb Coal & Mining Company.

Q. State whether or not they relate to contracts, and then I will offer them? A. Yes; those are all contracts of the Buckeye Powder Company.

Q. Are or are not those all of the contracts that the Buckeye Powder Company at any time had with 2504
customers? A. With coal operators; yes, there is possibly a renewal of the contract with the Northwestern Coal & Mining Company of Bevier, Missouri, that may not appear here. That renewal was under an option named in the contract, but they had a continuous contract from 1904 to 1908, inclusive.

(Said documents were received in evidence and marked Plaintiff's Exhibits 1305 to 1317 inclusive.)

Q. Now, I would like to have you state, Mr. 2505
Waddell, whether any of the persons, or corporations, with whom those contracts that have just been introduced in evidence were executed, continued to be customers of the Buckeye Powder Company after the expiration of the terms of the contract? A. May I look at the contracts?

Q. Yes; take the exhibits and examine them. As you examine them, state which one? A. The New York Coal Company of Columbus, Ohio, we lost before the expiration of the contract.

Q. State the circumstances under which you lost the New York Coal Company, before its expiration? A. I shipped them one carload of powder, I think on a two year contract. They were named a better price.

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Mr. Button: Now——

The Court: (To the witness) Of course, circumstances which you know of your own knowledge. You can state what you did.

A. I surrendered the trade.

Q. Proceed, Mr. Waddell, and tell what the facts were with regard to any representations that were made to you, concerning prices offered by other companies?

2507

The Court (to the witness): I do not want the details of what was said to you.

A. The company, through its president, informed me they had a lower price, and gave me the opportunity to meet it. I declined the business and cancelled the contract.

Q. Who was the president of the company? A. Mr. E. M. Poston. White Breast Fuel Company of Illinois. I lost that trade, because I declined to furnish them more powder. Their credit was not good. They were back on their bills and I surrendered the business. Cancelled the contract. United States Gypsum Company. I filled that contract, but it was not renewed. Randolph Macon Coal Company.

2508

Q. Who was the president of the company? A. Mr. W. E. Merlin was general manager. The president was Mr. Weir.

Q. What were Mr. Weir's initials. A. I think Colonel W. E. Weir. I think it is Colonel Weir of Kansas City.

Q. Do you recollect the deposition that I produced in this case, from Mr. Weir? A. Yes, sir.

Q. Is that the Mr. Weir that you have in mind? A. The same one.

Q. Now, take the next and state what the circum-

stances were surrounding the surrender of that contract? A. Mr. Merlin informed me——

Mr. Button: I object to what he informed him.

The Court: Relate in a straight and general way why the contract was not fulfilled, if it was not. Did you ship anything under it?

I shipped possibly 12,000 kegs under the contract, and it was called. 2510

Q. Why was it cancelled? (Objection overruled.)

A. The contracting party, Randolph Macon Coal Company, had a lower price that I could not meet.

By the Court:

Q. Well, they said they had a lower price? A. They said they had a lower price which I could not meet, then we cancelled the contract.

Q. And which you did not? A. Which I did not meet. 2511

By Mr. Abbott:

Q. Do you know what the total amount of the annual consumption of black blasting powder was by the Randolph Macon Coal Company? (Objection overruled.) A. 45,000 kegs, approximately. The next is the Great Northern Fuel Company of Kansas City, Mo. Their mines were near Novinger, Missouri. The president is Mr. W. S. McCaull; signed the contract for three years.

Q. What is the date of the contract? A. The date of the contract was the 25th day of May, 1905.

Q. Now, how long did you continue to furnish

powder under that contract? A. Shipped him one carload, and he said to me——

(Objected to and after argument):

The Court: If it is a question of a lower price, he may state the general fact that Mr. McCaull said he had a lower price offered; then nothing more may be shown. Other matters will not be allowed to go in.

2513 A. McCaull informed me that he had a lower price and cancelled his contract. Charles F. Keeler Coal Company of Chicago. We had a contract with Mr. Keeler for one year.

Q. Was the contract continued? A. No.

Q. Were any reasons given why it was not?

The Court: Was it fulfilled?

A. I furnished, I think, about three carloads of powder under the contract, and on reduced prices. I began at $1.15, $1.05 and $1. The last shipment
2514 I made to him was $1. He informed me he had a better price. I could not meet it and released him from his contract.

Q. Did Mr. Keeler sustain any relation to the Buckeye Powder Company, in any way? A. He was a stockholder.

Q. At that time? A. Yes, sir. Mr. C. G. Brecknitz of Bellville, Illinois. The contract was dated the 31st day of May, 1904; terms two years.

Q. Did you fill that contract? A. No, sir; it was cancelled.

Q. When was it cancelled? A. Rather it was not cancelled; I released Mr. Brechnitz. The price I gave him was $1.15, was reduced to $1.12, $1.10, $1.05, $1.00, 95 cents, 92 cents. He informed me he had a better price or better arrangement, re-

quiring less money to carry on his business, and asked that the contract be suspended, and I consented.

Q. What was the occasion for your reducing the price from time to time? (Objection overruled.) A. Quotations of competitors.

Q. You made reductions from time to time on representations made to you by Mr. Brechnitz? A. I did.

Q. That he had better prices? A. Yes, sir.

2516

Q. Now, in regard to Mr. Brechnitz, what relation, if any, did he sustain to the Buckeye Powder Company? A. He was a stockholder in the company.

Q. Did he continue to be a stockholder after the breaking of this contract, or determination of this contract? A. Yes, sir. He is today. Or his estate is.

Q. Is this the same Mr. Brechnitz who gave a deposition in this case? A. This is the George Brechnitz; the father is dead and he was succeeded by his two sons. Emil was the elder of the sons 2517
and operated the business, and succeeded his father in the operation of the business, and he was the one who gave the deposition.

Q. Do you remember when Mr. C. G. Brechnitz died? A. I should think about 1904.

Q. This contract was terminated in 1905, did you say? A. I don't know just the date, but I judge it was about that time, 1905.

Q. With whom of your correspondents, or which one of these parties was it that made those statements to you about the better price, and final arrangement? Was it C. G. Brechnitz? A. All of the powder business was conducted by Emil Brechnitz.

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Q. Emil Brechnitz? A. The father was the banker.

Q. He was the one who gave the deposition? A. Yes, sir.

Q. Was he the one with whom this document which was referred to a while ago as Defendant's Exhibit 192, in the Government case—was he the one with whom you had negotiations concerning that matter? A. Yes, sir.

2519 Q. And those negotiations were in 1908? A. Yes, sir. The contracts of the Northwestern Coal and Mining Company, Bevier, Mo., were originally made at, I believe, $1.20, and reduced to $1.15, $1.17½, $1.15, $1.10, $1.05, $1.03, $1.00, 97 cents.

Q. What were these? A. Mr.——

Q. Proceed. A. Mr. Thurston, the treasurer, informed me that he was offered a lower price. I consented to meet it. He told me he thought 97½ cents was low enough for powder and he would stay with me, and he has. He bought the Buckeye continuously, and I contracted with him for Western

2520 —during the year I remained with the Western Powder Company.

Q. Now, those various changes in reductions of prices which you made him, were they made upon representations to you that he had a better price? A. Yes, sir.

Q. Were they made for the purpose of meeting those prices? A. I met the prices. (Continuing.) Contract with the Weir Coal Company was at $1.16.

Q. You say you continued to sell powder to Mr. Thurston's Company continually? A. Yes, sir.

Q. Will you state about how many kegs of powder you sold him, all told? (Objection overruled.) A. My recollection is about 67,000 kegs during the continuation of the Buckeye business.

Q. State whether or not any complaints were made to you as to the quality of the powder which you shipped to Mr. Thurston at any time during the period of your business with him? (Objection overruled.) A. Never. The contract of W. E. Weir, president of the Weir Coal Company (examines paper). I will give you his name now, F. E. Weir, I thought it was W. E. Weir. This contract was made the 1st day of February, 1904, at $1.16 a keg for deliveries at Huntsville and Bevier, Mo. This was the predecessor of Randolph-Macon, 2522
and it included other mines later under the Randolph-Macon contract.

Q. Randolph-Macon was the mine who had that other contract you referred to a while ago? A. Under the first I named. This contract was made at $1.16. I reduced the price to $1.12 and later the price to Randolph-Macon.

Q. Why did you reduce the price from time to time, as you have indicated? A. On information from Col. Weir that he was offered lower prices.

Q. You have stated what was the capacity of 2523
the Randolph-Macon—what the Randolph-Macon consumed in a year, of powder. Will you state what the Huntsville mines consumed per year? (Objection overruled.) A. The F. E. Weir Company consumed about 50,000 kegs of powder per year. That included the Huntsville mines.

Q. What else did it include? A. Some of the mines in Kansas that I did not have a contract with.

Q. Did or did not it include the Randolph-Macon mines? A. All of the Randolph-Macon mines; yes, sir.

Q. So that at that time that contract covered a quantity of powder amounting to about 50,000 kegs per year. A. Yes, covered it all. I didn't ship there, though.

Q. Have you examined all the contracts? A. There is another one here. No. There is the De Camp Coal Mining Company. This contract was made the 8th day of June, 1905, at $1.05 a keg.

Q. And how long did you continue to supply powder under that contract? A. During the entire term of the contract, at reduced prices.

Q. Will you indicate, if you can, what the prices were, and the changes that took place from time to time? A. I would have to refer to the books
2325 for that.

Q. Will you do that during the noon hour? A. I will. Willis Coal Mining Company of St. Louis. Their mines were at Willisville, Ill. The price was $1.10 a keg. It was made the 31st of May, 1904.

By Mr. McCarter:

Q. For how long? A. A period of two years.

By Mr. Abbott:

Q. Did you continue to supply powder under that particular contract during the full term of the contract? A. No, I supplied about 20,000 kegs
2326 under the contract, the price went down to a point that I could not meet the quotations given to me by the company, and they asked to be released from their contract, and I gave it up.

Q. Can you state now what the various reductions in price were? A. I will have to refer to the books for that.

Q. Will you do that during the noon hour? A. I will.

Q. By the way, in connection with that last contract, I will ask you if you know who was the superintendent of the Willis Coal Company mines, or manager? A. I know him very well. He gave his deposition here.

Q. Do you refer to Mr. Jeremiah? A. Jeremiah, yes.

Q. Will you state whether or not you had any complaint at any time from any one connected with the Willis Coal Company, concerning the powder which you shipped to them? A. No.

Q. And you supplied them with 29,000 kegs? A. Abount 29,000 kegs.

Q. Very well. Proceed with the next. A. I think that covers all the contracts.

Q. During the course of your management of the Buckeye Powder Company, from 1903 to 1908, inclusive, did you at any time endeavor to enter into 2528 contracts or to secure contracts with other consumers of black blasting powder than those parties whose names you have given here as parties with whom you had contracts? A. Yes; a great many of them.

Q. As I understand you, you did not succeed in making any except these contracts that have been submitted? A. I recollect a contract with the Staunton Coal Mining Company; they do not appear to be among these papers.

Q. Where was that company located? A. At 2529 Staunton, Ill.

Q. Can you explain the absence of that contract? A. I don't know where it has escaped, or where it may be. I only have an indistinct recollection of it, but I will look it up in the books and give you the data.

Q. Aside from those then, you had no contract with any other consumer of black blasting powder, during this period? A. No, sir.

Q. I will ask you to state the names of such persons, as you can recall, with whom you made any effort in any manner to get their business for black blasting powder? A. Yes. With nearly every coal operator in the State of Illinois, including among them just a few that I could name. Jones & Adams Coal Company.

Q. Located where? A. Chicago. Chicago & Big Muddy Coal Company, Chicago; Chicago & Herrin Coal Company. Sunnyside Coal Company.

Q. Where? Chicago. The mines were at Herrin. O'Gara Coal Company. They had about 19 mines. The Deering Coal Company; they had about 15 mines; the Illinois Collieries Company.

Q. Where was that latter company located? A. They had 12 mines, I think, along the Chicago & Alton Railroad below Springfield. The main offices
2531 were in Chicago.

Q. Did they have offices anywhere else? A. At Springfield.

Q. I will ask you to state who was the president of that Company? A. Mr. Traer, William Traer. Staunton Coal, the Consolidated Mining Company, Consolidated Coal Company of St. Louis, having probably 15 mines in Illinois, and they owned the Western Mining Company, associated with it, and they bought it in conjunction. They had about 25 mines in Missouri, southeast Kansas and Arkan-
2532 sas.

Q. Now, about what was, if you know, the total amount of powder consumed by that company during a year?

Mr. Button: I object to that.

Q. In a given year?

Mr. Button: That must be hearsay.
The Court: If you know.

A. Yes, I know.

Mr. Button: May I ask the source of his knowledge?

The Court: That has been inquired so many times before.

By Mr. Button:

Q. Have you any personal knowledge on the subject? A. Yes. I bid on the contracts a number of times, and I had the list of all their mines. I discussed it with Mr. Simpson, the general purchasing agent, very frequently.

Q. Did you make a contract with them? A. I 2534
never made a contract with him. I sold them a good deal of powder.

Q. Then all you know is what he told you about his requirements? A. I had to bid on certain quantities of powder.

Q. Did that cover the entire requirements that you were bidding on? A. I bid in two ways. I bid once on the Illinois mines of the Consolidated Coal Company, of St. Louis, and then I bid another time on the entire mines, including all of the southwest. I don't know just how many mines. I sold
them a number of carloads. 2535

Q. And that is the entire source of your knowledge on the subject? A. No, sir. I have been to the mines. I know a good deal about them, and I have shipped to the mines. I know what the concern was.

A. Their consumption varied from 60,000 kegs in 1904 up to 110,000 kegs in 1908. I also bid at one time in connection with the Central Coal & Coke Company, and the Western Coal Mining Company, on a total of 185,000 kegs per year.

By Mr. Abbott:

Q. Who was the person who had charge of the affairs of the Western Coal Company and the Cen-

tral Coal & Coke Company with whom you had most of your business? A. M. D. Simpson, the general purchasing agent of the Gould interests. That included the Wabash Railroad interest; was the Consolidated & Western Coal Mining Company. And Mr. Keith, Charles Keith, was president of the Central Coal & Coke Company of Kansas City. I have forgotten the name of the purchasing agent there that I met, I know him quite well.

2537 Q. Now, did any of those gentlemen give you any reasons why, any special reasons, why they could not do business with you?

Mr. Button: I object to that.

The Court: I will allow him to show whether they offered him a contract.

A. Yes.

Q. Now, proceed, within the ruling of the Court, and tell the facts in connection with that matter. A. I offered to contract with them and they stated they were already under contract.

2538 Q. Did you at any time offer to contract with them when they were not under contract? A. I never knew them when they were not under contract, excepting the Western when I bid on their proposition.

Q. About what time was it that this occurred, this bidding on the Western business? A. They gave opportunities, solicited bids once a year. They renewed their contract yearly.

Q. Can you state at this time what you offered to furnish your powder for? A. The prices varied according to the delivery points. I quoted as low as 98 cents delivered in Illinois and $1.20 delivered in Arkansas.

Q. You mean delivered to their mines in Illi-

nois? A. Delivered to their mines in carload lots.

Q. Illinois and Arkansas? A. Illinois and Arkansas. The freight rates to their Western mines were heavier. They contracted at 97½ cents and I sold them at $1.08.

Mr. Katzenbach: I object.

By the Court:

Q. (To the witness): Contracted with you? A. 2540
No, sir.

The Court: Strike it out.

By Mr. Abbott:

Q. Do you know anything about this matter of whom they contracted with, of your own personal knowledge? A. Yes, sir.

Q. State what the source of that knowledge is? A. I sat in an adjoining room in Mr. Simpson's office when my brother called on him, representing 2541
the du Pont Company, with Mr. Spicer, and I conferred with Mr. Simpson in one room while my brother was conferring with him in the other, and I knew the proposition.

Q. Was it at this time that these contracts were made that you have indicated? A. Yes. One of them.

Q. Do you know what the price was which was made by the du Pont Powder Company, as represented by your brother and Mr. Spicer?

Mr. Button: We object.

The Court: He can show what he heard was offered in the adjoining room.

heard what was said in the adjoining room?
The Witness: Yes; the door was open.

By Mr. Button:

Q. Did you hear through the partition? A. The door was open. I sat right by the side of the door.

Q. Who was doing the talking there? A. I was there conferring with Mr. Simpson when my brother and Mr. Spicer sent in their cards, or rather Mr.
2543 Spicer sent the cards in, and he asked me to step into the other room and said he wanted me to hear the conversation, and I heard it.

By Mr. Abbott:

Q. Now, tell what the conversation was that you heard? A. My brother, Fred J. Waddell, was representing the du Pont Company from the Wilmington, Del., office, and he stated that he had been sent out to St. Louis, that the prices were ridiculously low; he said our price to you should have been
2544 $1.10. Mr. Simpson told him he could do better from the Buckeye than that. He said, "Well, I don't think you will do much better than that as an average price to your mines. I know my brother's inclination too well to know that he would deliver powder from Illinois down into Arkansas for any such ridiculous price. These prices have been cut down from day to day, were cut down from what we think should be the right price, the average price to your mines, and it is now down to 97½ cents, and I have been sent here to clean it up. Now, we will give you until 2 o'clock this afternoon to decide whether you will make the contract with us at 97½ cents. If not, it will be withdrawn." He took the time to confer with Mr. Brush or Bush—Brush—the president of his com-

pany, and the gentlemen left. I then discussed the question, the conversation that I had overheard with Mr. Simpson, and I advised him to make the contract; that I couldn't meet any such figures.

Q. You were to inform yourself regarding prices at which you sold powder to the Willis Coal Mining Company, and the DeCamp Coal Mining Company. Did you do that? A. I did.

Q. What are the facts in that matter? A. The price to Willis started in at $1.10; was reduced to $1.00 and the major part which I supplied Willis was at a dollar, until I had to give up their business. DeCamp started in at the price named in the contract, and that was reduced to $1.00—the major part of theirs was furnished at a dollar. 2546

Q. Now, you spoke of having made various—having released the New York Coal Company from its contract, upon representations that another price—a better price had been made. Will you state whether there was anything in the contract itself which required that to be done? Do you recollect? 2547

Mr. Button: The contract speaks——

The Court: The contract speaks for itself. All this witness could do would be to point it out, that is all.

Mr. Abbott: Very well. I think if your Honor please, in view of our past evidence in that matter, I will read one or two of them to the jury. I will now read from Plaintiff's Exhibit 1305: "First party hereby guarantees the price of $1.10 per keg delivered against bona fide offers by others. Should a lower price be named party of the second part first party may elect to meet the lower price, otherwise second party is at lib-

2348

erty to purchase from others until such time as first party meets the lower price."

Now, the contract with Randolph Macon Coal Company and the Buckeye Powder Company, contains this provision, after setting forth the price: "The above price is guaranteed against any lower price made on Buckeye powder, in the same district. Should a better price be made by other reputable powder companies to party
2349 of the second part, and should party of the first part decline to meet the lower price, party of the second part shall be at liberty to purchase from such other company, until such time as party of the first part may elect to accept said lower price, when purchase shall be resumed under this contract."

The contract between the Buckeye Powder Company and the Northwestern Coal & Mining Company, has this provision: "The above price is guaranteed against any lower
2350 price made on Buckeye powder in the same district. Should a better price be made by other reputable powder companies to party of the second part, and should party of the first part decline to meet the lower price, party of the second part shall be at liberty to purchase from said other company until such time as party of the first part may elect to accept said lower prices, when purchases shall be resumed under this contract."

Q. Mr. Waddell, you were proceeding to relate the names of persons and consumers of black blasting powder, upon whom you had called or to whom you had made an effort to sell Buckeye Powder. You were referring to a conversation that you had

with Mr. Simpson. Had you finished relating that matter? A. I might state I sold Mr. Simpson about 12,000 kegs of powder, but I did not have a contract with him at the time.

Q. When did you make that sale? A. The latter part of 1907—during the fall months of 1907 I shipped him I think 12 or 15 carloads at $1.08 per keg—$1.08½ cents per keg.

Q. At what point was this delivered? You say he has a number of mines? A. Southwest Missouri and Southeast Kansas. 2552

Q. Now, do you know whether that powder was used by Mr. Simpson? A. I do.

Q. Do you know what the results were, so far as the use of the Buckeye powder in that field was concerned?

Mr. Button: Objected to, unless he was there and saw it.

By the Court:

Q. Were you there? A. I did not visit the mines 2553 myself. I visited the offices of the coal company in St. Louis, and talked with the officers, and I got the orders that I did not fill.

By Mr. Abbott:

Q. From that district? A. From that district.

Q. Mr. Waddell, will you give the names of other consumers of black blasting powder, to whom you made efforts to sell and made contracts with during the period from 1903 to 1908, if you can recall? A. There were more than a hundred of them in Illinois, aside from those that I have named. All of the members of the Illinois Coal Operators' Association, which include all the large operators

of the state, and all of the Missouri coal operators. All of them in Michigan and most of them in Ohio. I know the Sunday Creek Coal Company——

Q. What results did you have with your efforts to sell the Sunday Creek Coal Company?

Mr. Button: Objected to as immaterial. We do not see why, your Honor—why the defendants are connected in this thing in any way.

2555

Q. Well, did you succeed in making any sale to the Sunday Creek Coal Company? A. No.

Q. Were there any reasons given to you, why they did not purchase powder of you? A. Yes, sir.

Mr. Button: Objected to as immaterial.

The Court: Where there has been no contract, no sale, and he failed to sell, he may show the offer he made to them. He may show the quotation he made to them.

Mr. Abbott: Very well.

2556

Q. What was the quotation which you made?

The Court: You are not required to show it.

Mr. Abbott: No, but I desire it, if your Honor please.

Mr. Button: Was it in writing?

Q. Well, was it in writing? A. No, it was verbally, orally.

Q. Did you receive any answer, either written or verbally, from the officers of the Sunday Creek Coal Company, with reference to your proposition? A. Yes, sir.

Q. In what form was it, written or verbal? A. In writing, yes, a letter. I think I had two or three letters from them.

Q. What was your quotation? A. My recollection is $1.10, but I may be mistaken about that.

Q. Now, will you state how extensive was the business of the Sunday Creek Coal Company? A. About 75,000 to 100,000 kegs a year.

Q. (Handing witness) I show you Plaintiff's Exhibit P-105, and ask you to state whether you know anything about that document? A. Yes, sir, letter 2558
from the general manager of the Sunday Creek.

Q. I show you Exhibit P-106, and ask you if you know anything about that document? A. Yes, letter from the same party, general manager.

Q. (Handing to witness) I ask you to look at P-107 and ask you if you know anything about that document? A. Yes, the manager of stores of the Sunday Creek.

Q. Are these the writings that you state you received from the Sunday Creek Coal Company, with reference to your offer to sell them powder? A. 2559
Yes. In further reply to that question that you asked, it would be impossible for me to give a list of all the coal operators that I called on, in various states. I attended their meetings frequently when they would assemble, and solicited the business of all of them.

A certain letter written by John H. Winder, General Manager of the Sunday Creek Coal Company, of Columbus, Ohio, to the Buckeye Powder Company, Perio, Illinois, dated June 21st, 1904 (marked P-105), was received in evidence as Plaintiff's Exhibit 1318 and read to the jury as follows:

2560 *R. S. Waddell—Direct*

June 21, 1904.

Buckeye Powder Company,

Peoria, Ill.

Gentlemen:

Your letter of the 15th to us in reference to powder has been received. Please advise what price you can make in carload lots delivered at points in the Hocking Valley along the line of the Hocking
2561 Valley Railway, T. & O. C., and Zanesville & Western, and points in carload lots delivered in the Kanawha District along the line of the K. & M. Ry. We use all told between seventy-five and one hundred thousand kegs per annum.

Yours very truly,

J. H. Winder,
General Manager.

A certain letter written by John H. Winder, Gen-
2562 eral Manager of the Sunday Creek Coal Company, of Columbus, Ohio, to R. S. Waddell, President Buckeye Powder Company, dated July 16th, 1904 (marked P-106), was received in evidence as Plaintiff's Exhibit 1319 and read to the jury as follows:

July 16, 1904.

Mr. R. S. Waddell, President,
The Buckeye Powder Company,

Peoria, Ill.

Dear Sir:—

Referring to your favor July 8th and previous communication also the figures left with [illegible]

Schwarts: All of these matters were brought to my attention a day or two ago upon my return, having been continuously absent from the city for several weeks.

I would advise that we have closed our contract for powder for the coming year.

Yours truly,

SN Jno. H. Winder,
General Manager.

2564 A certain letter written by G. E. Tetirick, Manager of Stores of Sunday Creek Coal Company, of Columbus, Ohio, to Buckeye Powder Company, dated October 6th, 1905 (marked P-107), was received in evidence as Plaintiff's Exhibit 1320 and read to the jury as follows:

Columbus, Ohio, Oct. 6, 1905.

The Buckeye Powder Co.,
Peoria, Ill.

2565 Gentlemen:

Replying to yours of October 4th, will have to advise that we have a contract for Powder that is good for two years, this Company having lately taken over the property of the Continental Coal Company.

G. E. Tetirick,
Manager of Stores.

Q. Well, did you or not use your best efforts and your best ability to make sales of the products of the Buckeye mills, to the various consumers of black blasting powder in the district which you reached? A. I was exceedingly active [illegible]

Mr. Katzenbach: I object to that as immaterial and incompetent.

The Court: I will allow it to stand. I do not think it make much difference, one way or the other. He was in the business. Of course he was trying to sell his goods.

Q. Now, Mr. Waddell, in your efforts to dispose of your product, did you at any time ever come in contact with a concern known as J. H. Somers &
2567 Company? A. Yes.

Q. Where were they located? A. Principal offices were at Cleveland, Ohio. Mines in Michigan.

Q. Did you at any time make sales of powder to that company? A. Yes, I sold them a few carloads.

Q. Did you continue to sell them powder? A. No.

Q. Was any reason given to you why they did not continue to purchase powder of you? A. Yes.

Q. Were those reasons in writing or otherwise?
2568 A. Part of them in writing and part were oral.

Q. What was the part orally?

Mr. Button: We object to that, your Honor. It has not appeared that we ever made any quotation to this concern or had any business dealings with them whatsoever.

The Court: Well, it should appear, Mr. Abbott, as I view it now, that if you want to show that the Buckeye failed to get business, you ought to show that the du Ponts had the business—obtained it.

Mr. Abbott: Well, your Honor says, "du Ponts." I take it that if we show that any of the defendants or co-conspirators——

The Court: Well, of course I speak briefly.

Mr. Abbott: Certainly.

Q. Now, do you know, Mr. Waddell, who obtained the business or had the business of J. H. Somers & Company?

Mr. Button: What do you mean?

Mr. Abbott: I am asking if he knows who sold them powder.

A. Yes.

Q. Who made the sales of powder to them, when you were not able to make them sales? A. Yes. 2570

Q. Now, what concern was it?

Mr. Button: Objected to. It must be hearsay.

The Court: Well, in what period?

Mr. Abbott: During the period from 1903 to 1908, while he endeavored to make sales to that concern of the product of the Buckeye mills.

Mr. Button: That does not give us any information, because we do not know when he made such endeavors.

Mr. Abbott: Very well. I will try and assist counsel that way. 2571

Q. About what time was it, if you can recall, when you did make such endeavors? A. I called on them in 1904, 1905 and 1906, several times.

Q. Now, will you answer the former question. I will put the question again then. Do you know from whom J. H. Somers & Company purchased their powder during that period you have mentioned, that you made efforts to sell them powder? A. Yes.

Q. Now, who was it? (Objection overruled.) A. Austin Powder Company of Cleveland, O.

Q. Will you now state what occurred between you and any representative of the [illegible]

2572 *R. S. Waddell—Direct*

Company, with reference to the purchase of powder—what was said orally?

Q. Then, Mr. Waddell, did you succeed in, or did you continue to make sales to the J. H. Somers Company of Cleveland, Ohio, after the period when you say you sold them a certain quantity?

A. No.

Q. Were any reasons given to you why the J. H. Somers Coal Company could not purchase or continue to purchase powder of you?

2573 Q. Mr. Waddell, do you know what prices were quoted by any other person or any other manufacturer of black blasting powder?

Q. Can you recall what his quotations were?

A. I don't remember the figures now.

The following letters were offered by the plaintiff as exhibits, said offer was objected to on the ground that the same are irrelevant, immaterial and incompetent, and said objection was sustained.

To which ruling the plaintiff's counsel
2574 then and there excepted, and said exception was allowed.

The letters so offered and refused were marked P. 109, 110, 111, 112, 113 and 114, and are as follows, to-wit:

J. H. Somers & Co.
Cleveland, Sept. 10, 1904.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:

Your Mr. R. S. Waddell was here the 5th and promised to send me some samples of your powder.

One or two other large users of powder with their offices in this city have been in to see me in regard to your powder. I have asked them to defer their orders or any changes they would make until after these samples had arrived and we had made a thorough investigation of your ability to turn out the kind of powder we require.

The samples Mr. Waddell had with him were beyond question in regard to quality, etc. Some of these other companies I speak of have no contract for powder consequently you could start to doing 2576
business with them at once. It is a little different with us; we are tied up with a contract for the next few months but expect to make some change if we are not taken care of a little better than we have been.

Please forward these samples at once, and oblige,

Yours truly,
J. H. Somers & Co.
Wm. D. Somers
Pur. Agt. 2577

J. H. Somers & Co.

Cleveland January 31, 1905.

Buckeye Powder Company,
Peoria, Ill.

Gentlemen:

We have yours of the 28th inst., and in reply will state our present contract does not expire until March. It might be well for you to take this matter up with us at that time.

2578 *R. S. Waddell—Direct*

Your statement that your powder is "excelled by none" must be correct, as we have heard several parties speak well of your product, and we have a set of your samples, which also speak well for themselves.

We use very little Single F. powder. In Michigan we use only FF. Our three mines in this territory have used about 6,000 kegs of F F since October 1st. When Mr. Waddell was in Cleveland he stated your mill was either well supplied with F or
2579 FF, the writer does not remember which.

We have been informed that you have been very successful in your new enterprise, and we are very glad you have met with this success, which no doubt, is due you.

Yours very truly,
J. H.Somers & Co.
Wm. D. Somers
Pur. Agt.

2580 J. H. Somers & Co.

Cleveland March 8, 1905.

The Buckeye Powder Company,
Peoria, Ill.

Gentlemen:—

We have yours of the 3rd inst. with reference to furnishing powder for our Michigan properties, and note what you say in regard to Mr. Steven Corvin, as being your agent. You have failed to quote us prices on powder, and we would ask you to kindly take this matter up at once and give us your best price delivered, St. Charles, Mich.

We have purchased 7,200 kegs of FF powder since October 1st for these properties and you can tell by these figures about how much we will use per year especially as the coal business in this particular district last winter was not very good.

We might say in conclusion that we expect to buy powder a little cheaper this year than last, and this business, no doubt, will be yours if you quote the right price.

Yours very truly

J. H. Somers & Co. 2582

Wm. D. Somers Pur. Agt.

J. H. Somers & Co.

Cleveland March 25, 1905.

The Buckeye Powder Co.
Peoria, Ill.

Gentlemen:

We have yours of the 23rd inst. with reference to furnishing powder for our Michigan mines. We 2583 are sorry to state that your price quoted several days ago did not meet favor, and as you said you can meet any price that is named we will wait until you make another quotation before we place this business.

We have a much better price than the one you have quoted and while we are very anxious to give our friend Mr. Corvin this business, yet we cannot see our way clear to pay a higher price for your powder than we would have to pay for the powder we have been using in the past.

Yours Very truly,

J. H. Somers & Co.

Wm. D. Somers

Pur. Agt.

2584 *R. S. Waddell—Direct*

J. H. Somers & Co.

Cleveland, April 15, 1905.

The Buckeye Powder Company,
Peoria, Ill.

Gentlemen:—

We are a little late in acknowledging receipt of
2585 your quotation of March 31st, however, we have been thinking the matter over and have been in constant correspondence with our superintendent at St. Charles in regard to the matter.

In your letter you state if any Powder Company made us a better price than 1.05 delivered they were entitled to the business. We have the better price all right—same being $1.02-½, but we have not decided definitely in regard to the Michigan business. As we use a great deal of powder and have always been well taken care of we want to know positively
2586 if we can get powder promptly after we have placed our order for the same.

We have been signed up for sometime for our powder in Ohio, and have included the Michigan properties in this contract in a way that we can purchase powder from the same company we purchase our Ohio powder providing we do not give you the business.

We cannot give you any definite information on this matter until our superintendent has time to render his decision.

Yours very truly,

J. H. Somers & Co.,
Wm. D. Somers,
Pur. Agt.

J. H. Somers & Co.

Cleveland,

Aug. 23, 1905.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:—

We herewith enclose our order #1248 for one carload of FF blasting powder, price to be $1.02-½ 2588
delivered as per your letter of Aug. 21st. You no doubt have been advised by Mr. Corvin that we are buying our powder for $1.00 per keg at the present time. We are willing to pay you 2-½ per keg on this order as we are anxious to give your powder a trial.

Yours truly,
J. H. Somers Coal Co.
Wm. D. Somers,
Pur. Agt.

Q. Did you ever have any dealings at any time 2589
with the Indiana Bituminous Company with reference to making sales of powder to them? A. Yes, sir.

Q. Did you succeed in making sales? A. Yes, sir.

Q. Did you continue to make sales? A. A number of carloads; yes, sir.

Q. Did you at any time cease to make sales? A. I did.

Q. What was the reason, if you know, why you did not continue to make sales?

Mr. Button: We object.

The Court: Keeping within the ruling, you may answer.

A. My price was too high.

Q. State what your price was? A. My recollection is that I began at $1.10, and went down as low as $1, and then I lost the business.

Q. Now, the Weverly Coal Mining Company of Kansas City; did you have any business with them? Did you try to sell them any powder? A. Yes, I sold them.

Q. Did you continue to make sales to them. (Objection overruled.) A. No.

2591 Q. What was the reason, if you know, why you were not able to continue making sales? (Objection overruled.) A. My price was too high.

Q. Do you remember what your price was? A. I don't recall it.

Q. The Morgan Valley Coal Company. The Morgan Valley Coal Company of Ohio, did you at any time endeavor to make sales to that company? A. Yes.

Q. Did you succeed? A. I don't recollect.

Q. The Rombauer Coal Company of Missouri, did you make any effort to sell to them? A. Yes.

2592 Q. Did you succeed? A. No.

Q. What was the reason that you did not succeed, if you know? (Objection overruled.) A. They were under contract.

Q. Now, Donk Brothers Coal & Coke Company. Did you have any business with that company? A. Yes.

Q. Did you sell them any powder at any time? A. Yes, about fifteen to seventeen thousand kegs.

Q. Did you at any time cease to sell them powder? A. Yes.

Q. Do you know the reason why you did not continue to sell them powder? (Objection overruled.) A. My price was too high.

Q. Can you recall what your price was? A. It

began at $1.05; then went to $1.02, and to $1, and I lost the business at $1.

Q. The Sangamon Coal & Coal Company of Springfield, Ill. Did you have any—did you at any time sell them any powder, or make any effort to? A. Yes.

Q. Did you succeed in selling? A. Yes, I sold them two carloads and small lots.

Q. Did you continue to sell? A. No.

Q. What, if any reason, if you know, why you lost—why you ceased to continue to sell? (Objection overruled.) 2594

Q. What claim was made to you—what representation was made to you for giving a reason for discontinuing to purchase powder of you further by the Sangamon Coal Company? A. My price was too high, and the miners—a part of them—did not like my powder.

Q. The Astoria & Woodland Coal Company. Did you at any time make any effort to sell powder to those people? A. I did.

Q. Did you succeed? A. Yes. 2595

Q. How much powder did you sell them? A. They bought in small lots. I don't know the total quantity. Sold them for several months.

Q. After that you ceased to sell them? A. Yes.

Q. Were any reasons given to you—any representations made to you by the Astoria Woodland Coal Company, as to their reasons for not wishing to continue? A. Yes.

Q. What were those reasons? (Objection overruled.) A. The price was too high.

Q. What was the price that you sold your powder at to them, if you can recall? A. I don't recall.

Q. Now, the Canton Union Coal Company of Canton, Ill. Did you at any time make any effort

to sell powder to the Canton Union Coal Company? A. Yes.

Q. Did you succeed? A. Yes.

Q. How much powder did you sell them? A. Quite a quantity, in small lots.

Q. Did you continue to sell them? A. No.

Q. What, if any, representations were made to you by any person connected with that company, giving their reason why they would not continue to purchase powder of you? A. My price was too
2597 high.

Q. What was the price that you offered for your coal? A. I don't recall the figures, without reference to the books. (Objection overruled.)

Q. Now, the Simmons Coal Company, of Canton, Illinois. Did you at any time sell them powder? A. Yes.

Q. Did you continue to sell them powder? A. No.

Q. How much powder did you sell them? A. I think two or three small lots.

2598 Q. What, if any, reason was given why they did not continue to purchase powder of you? (Objection overruled.) A. They were under contract to others.

Q. What was your price, if you recall? A. I don't remember the price.

Q. Reeves & Galloway. Did you at any time sell them powder? A. Yes.

Q. Did you continue to sell them powder? A. No.

Q. What, if any reason, was given to you by the members of that company for discontinuing the purchase of powder? A. My price was too high.

Q. What price was it, can you recall? A. No, I do not.

Q. The Clark Coal & Coke Company of Peoria,

Ill. Did you at any time endeavor to sell powder to that company? A. Yes.

Q. Did you succeed? A. Yes.

Q. How much powder did you sell them? A. A total of less than 500 kegs.

Q. By the way, who was president of that company? A. Horace Clark.

Q. Did he sustain any relation to the Buckeye Powder Company? A. He was a stockholder.

Q. Was any reason given to you by Mr. Clark, or any other person in connection with the Clark 2600
Coal & Coke Company, for discontinuing the purchase of powder from you? (Objection overruled.) A. Yes.

Q. What reasons were those? A. Miners refused to use the powder.

Q. The Sunnyside Fuel Company, of Cuba, Ill. Did you at any time sell powder to that company? A. Yes.

Q. Did you continue to sell powder to them? A. No.

Q. Was at any time any reason given by them why you did not continue to sell powder to them? 2601
(Objection sustained.)

Mr. Button: Now, one moment, now your Honor, it is evident that he cannot include all the consumers of powder in the country in this same question. It seems to me it is prejudicial in this case without showing any connection of the defendants with this trade. To say that he went to this, that and the other person and they refused to buy powder of him because his price is too high, I don't see what possible connection it has with the defendants here. It has no connection. I don't see why it should be in and we again object. I don't know of anything that con-

nects the defendants with any of these transactions.

The Court: Of course, if it does not connect with the defendants in either one or the other issues raised in this case, it is not pertinent.

Mr. Button: We don't know any testimony that connects it.

The Court: You see, the ruling began, Mr. Abbott, in those cases where there was evi-
2603 dence that the duPonts had furnished the powder. Now, as you extend this, if you get beyond anything where you can connect the defendants or any of their alleged co-conspirators with the sales, why, of course, the testimony is irrelevant.

Q. Mr. Waddell, you heard the testimony of Mr. William Coyne, who was on the stand the other day? A. Yes.

Q. Do you know anything about a certain list
2604 that he gave at that time which referred to certain competitors of the du Pont Powder Company, covering a period during the years 1903 to 1908? A. I think I remember it.

Q. I call your attention, Mr. Waddell, to the Senior Powder Company, and I will ask you to state what the facts are, so far as you know, with reference to that company being an independent competitor in the field during the period mentioned there? A. So far as I know it is.

Q. Has it been during the entire period? A. I think so.

Q. Now, do you know anything about the district within which the Senior Powder Company operated and sold its powder? A. Yes, sir.

Q. Do you know any of the officers or managers

of the Senior Powder Company? A. Yes; all of them.

Q. Did you have any information concerning the business of that company in any way? A. Yes.

Q. Are there any other plants there, Mr. Waddell, that you have any information of that kind concerning? A. The Western Powder Manufacturing Company, for the year 1908.

Q. For how long a period? A. Well, it is for the year 1908.

Q. Does it take the whole year of 1908? A. No, 2606
sir. They only operated from October 10th to December 31st of that year.

Q. You have that knowledge first hand? A. Yes, sir.

Q. Or through somebody else? Are the figures stated here correct, so far as that company goes? A. The figures given by Mr. Olin are the correct figures.

Q. Now, you may lay those to one side. I may ask you to refer to them again. In regard to the other two sheets, what are they? A. Dynamite 2607
capacities for the years 1903 to 1908, inclusive.

Q. Have you any knowledge of any of those plants and the capacity and output of plants that are indicated upon those two sheets, any of them? A. Only in a general way.

Q. Very well. Lay that to one side. Now, I call your attention to Plaintiff's Exhibit 1219, and ask you to state whether you have examined that exhibit. (Paper was handed to the witness.) A. Yes, sir; I have looked this over.

Q. Will you state if you have any knowledge of the conditions which obtained during 1903 and 1908 which affected the price of blasting powder in the various districts that are indicated upon this exhibit 1219, especially with reference to the existence of competitive plants? A. Yes.

2608 *R. S. Waddell—Direct*

Q. State what the facts were so far as competition was concerned in the district known as Marquette.

A. I know the Marquette field pretty well. I certainly know the competitive conditions there.

Q. I beg your pardon? A. I certainly know the competitive conditions there.

Q. How did you obtain the knowledge that you have regarding the conditions in the Marquette district? A. From a general knowledge obtained dur-
2609 ing a number of years, in knowing what the production was in that field, what mills were located there, what mills could supply it at reasonable freight rates, and what mills supplied the trade generally in that field.

Q. How about transportation conditions, do you know about those? A. Yes, sir. I came in contact with it and visited the fields myself as a salesman.

Q. Now, in order to save time, Mr. Waddell, I am going to ask you a general question with reference to each one of the districts that are indicated
2610 here. There are upon this sheet shown the Marquette district, the Boston district, the New York district, Philadelphia district, the Hazelton district, the Pittsburgh district, the Huntington district, the San Francisco district, the Cincinnati district, the Nashville district, the Birmingham district, the St. Louis district, the Chicago district and the Denver district and the Duluth district. A. Yes, sir.

Q. Now, as to those districts, as to each one of those districts, I will ask you whether or not you have knowledge of the competitive conditions which prevailed during the years 1903 to 1908, with respect to the location of plants, particularly? A. I have.

Q. Have you knowledge of any other competitive

condition that prevailed during that period, in each of those districts? A. I know from what source of supply the powder was drawn to satisfy each district. I knew about what the trade was, and I knew, of course, the distribution of trade as between the general powder companies for a district.

Q. How did you acquire that information? From what souce did you obtain your knowledge? A. As general sales agent at Wilmington and since then 2612
in contact with the trade.

Q. Referring again, then, Mr. Waddell, to the Marquette district, I would ask you to state what were the conditions in the Marquette district during the period from 1903 to 1908, with reference to the location of plants, transportation facilities and other competitive conditions?

By Mr. Button:

Q. Well, when were you in that district, Mr. Waddell, during the period in question? A. I was 2613
there in the fall of 1903; during 1904, 1905, 1906, 1907, 1908 and 1909.

Q. In the fall of each year? A. Not in the fall of each year. I was there during the year.

Q. How many times during each year? A. I think I visited the Mesabe Range on an average of twice a year.

Q. How long did you stay on these visits? A. It usually took me three days to cover the Mesabe Range, visiting all of the mining points.

Q. Were you there for the purpose of selling powder? A. Yes.

Q. What kind of powder were you selling? A. Buckeye.

Q. Black blasting powder? A. Black blasting powder.

Q. How many mines were there there that you visited? A. I think in the Mesabe Range there were about—well, they varied—60 to 80 mines, very large ones. Most of them were controlled by the United States Steel and by——

Q. What is the principal explosive used by those mines? A. Dynamite.

Q. Very little black powder used? A. Very little, yes. Not very little, but as compared with dynamite. There is more dynamite used.

2615 Q. Deliveries there are made largely by wagon, are they not, as far as powder goes? A. I delivered in carloads when I sold.

Q. Well, how many customers did you have in that district? A. I had three.

Q. Did you ever—three altogether during these years? A. Altogether, yes. I was not able to compete up there.

Q. Then any knowledge you have with regard to conditions up there must be largely from what you were told on these visits, must it not? A. No.

2616 I knew the trade years before. I have had a general knowledge of the trade for years.

Q. But during this period was not your knowledge gained from what these people told you whom you visited? A. No. Part in that respect, perhaps, but I knew what they were using—what powder they were using, and about the quantity they were taking, and I knew what they were paying, and I knew I did not sell them.

Q. Very good. You knew from what they told you. You did not see them use all their powder, did you? A. No.

Q. Therefore, knowledge in these regards as to what they were doing, was from what they told you on those visits, was it not? A. No; I had a general knowledge of the business that you get

from contact with trade, the same as any salesman would get.

Q. Certainly. The salesman gets ordinarily what he is told, does he not, when he makes those visits? A. No, he uses his common sense.

Q. So you are testifying from your common sense on this proposition? A. General knowledge gained from all sources, yes.

Q. But your knowledge is based then on common sense and on what these consumers told you? A. Yes. 2618

Q. What other sources of information? A. Well, I had a complete list of the trade when I visited there. I went first to Hibbing, Minn.

Q. Was that in this district? A. How is that?

Q. Was that in this district? A. Yes, it is supplied from the Lake Superior Powder Mills, which are located at Marquette.

Q. You say you had a list of the trade. That simply gave you information as to where the various mines were located, did it not? A. Yes; then I called on the mines. 2619

Q. Very good. Then, that would not give you much information as to competitive conditions, would it? A. Well, I knew the Lake Superior Powder Company——

Q. Won't you just answer the question, whether that list gave you any information as to competitive conditions? A. Yes, it contributed to the general information that I had.

Q. That is, it would tell you where these mines were, and that was all? A. Yes, and that they were consumers.

Q. Then you would go to a mine? A. Yes.

Q. And try to sell them powder? A. Yes.

Q. And they would tell you this, that and the other thing, would they not? A. Generally we talked of the [illegible]

2620 Q. And then you would either sell or not, and come home? A. I would quote my price, and if it was not satisfactory I did not get the business, did not get the order.

Q. Very good; then terms, these three customers you had, can you name them? A. I can name one, Stevenson Iron Mining Company.

Q. How much did you sell that concern? A. I think I sold two carloads. I know I sold them 1,000 kegs; I think I perhaps sold them more.

2621 Q. That was during the whole period? A. Yes.

Q. Cannot you remember the other two customers? A. They were contracting companies; no, I can do it by reference to the books.

Q. Can you remember how much you sold the other people? A. The other people?

Q. The other two? A. I think a carload each.

Q. So altogether in five or six years you sold four carloads? A. Yes.

Mr. Button: We do not object to the first two inquiries; strike out the other, competitive conditions.

2622 The Court: (To the witness:) Take the first two, so as to keep the testimony within control.

The Witness: What are those two first?

The Court: Location and transportation facilities.

The Witness: The nearest plants located to the Mesabe Range, or what was known as the Marquette district, was the Lake Superior Powder Company at Marquette in the Northern peninsula of Michigan. There were no other plants that contributed or that could reach that field, except the Mooar, Iowa, plant of du Pont.

Mr. Button: We object to his stating anything except the location of these plants, your Honor.

The Witness: The Mooar, Iowa, plant of du Ponts could compete.

Mr. Button: I understand the question to be the location of these plants—where were they?

The Court: (To the witness) Just give the location of those plants and the transportation facilities. 2624

The Witness: Pleasant Prairie, Wis., Buckeye.

By Mr. Abbott:

Q. Where was the Mooar, Iowa, plant located? A. At Mooar, Iowa.

Q. How far away was that from the Mesabe Range or this Marquette district? A. Over 300 miles; possibly 400 miles. I do not know the exact distance.

Q. How far away was the Pleasant Prairie 2625 plant? A. Well, I have not looked up the distance. I should think 250 miles.

Q. What was the other plant? A. Buckeye.

Q. How far away was that? A. About the same distance as Mooar, Iowa. We were about on a parallel with the trade in the Northern Peninsula of Michigan, the copper mines and the iron mines on the Mesabe Range.

Q. Now, you say about the same distance. Do you mean with respect to transportation facilities? A. Yes.

Q. Not merely an air line distance? A. No.

Q. Were there any other conditions that you know of in that district, which affected the competitive situation? (Objection overruled.)

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The Court (to the witness): The question is whether you know of any.

A. Yes, I do.

Q. Well, state what they are? A. I know the Lake Superior Mills are located right in the heart of a mine district, in close contact with it—copper mines and other mines right in the locality of the mills that could be supplied from there at very low cost of transportation. They have vastly the ad-
2627 vantage over any outside competitor.

Q. Now, any other conditions that you care to mention in that connection? (Objection overruled.) A. Only the advantage in favor of the Lake Superior Powder Company of long time in business and long connection and long supply of that trade.

Q. Now, take the Boston district. What were the competitive conditions affecting the Boston District during the period from 1903 to 1908, with respect to location of plants and transportation facil-
2628 ities?

A. You mean competitive plants of the du Pont Company?

Q. State the plants, giving the names of the plants located in the Boston district, or which supplied powder to the Boston district during this period? A. Wilmington, Delaware; Wayne, New Jersey; Schagticoke, New York; Hazardville, Conn., and Boston, Mass.

Q. Was there a plant located at Boston? A. No. I withdraw Boston. Boston does not make any blasting powder. A plant near Portland, Maine.

Q. Do you know the name of that plant? A. The Oriental. Those are all the plants in that field, excepting there may have been some powder made at the other plants of Laflin & Rand, in New Jersey.

Q. Can you recall the names of those other plants? A. They had a plant called the Orange plant, where they made Orange powder, Orange rifle. I don't think they made any blasting powder anywhere excepting at Wayne, New Jersey, and Schagticoke.

Q. Take the New York district. What were the conditions there, the conditions that obtained in that district with respect to competitive plants and also railroad transportation facilities?

2630

Mr. Button: We object, your Honor.

Mr. Abbott: Strike out the word "competitive." I see what counsel is driving at. I withdraw that word.

A. The only plants that could compete in the New York district are the ones that I named.

Q. Give the names of the plants? A. Exactly the same as I have given for Boston, with the exception of the one plant at Portland, Maine. The Portland, Maine, plant would not supply ———. Could not reach the New York market. 2631

Q. Were there any other conditions in the New York district that affected the prices of black blasting powder?

Mr. Button: We object to that.

Q. In that district?

The Court: If he knows.

Q. If you know. A. No, sir; I don't know of any of them.

Q. I will ask you that same question with reference to the Boston district? A. There were none that I knew of.

Q. Now, the Philadelphia district, the same questions that I have propounded to you heretofore with reference to the other two districts, concerning plants and transportation facilities? A. Plants that could compete in the Philadelphia district——

Q. Don't use the word "compete." State what the plants were? A. Competitive plants in the Philadelphia district were Wilmington, Delaware; Brandywine mills, Wayne, New Jersey; and any other plants of the Laflin & Rand Company in New
2633 Jersey that may make blasting powder.

Q. Can you call over those names? I would like to identify them as nearly as I may with the exhibit, if you have them? A. If I refresh my memory. In the Philadelphia district I deem Wilmington, Dela.; Stores Junction, Pa.; Consumers' plant, Farmingdale, N. J.; Ferndale, Pa.; Moosic, Pa.; Shenandoah, Preb Station, Pa.; Wayne, N. J.; Tamaqua, Penn.; Wopwallapen.

Q. Are there any on the succeeding identification with reference to giving a list of independent plants
2634 that supply that district? The succeeding sheet? A. It appears to be dynamite. Oh, black powder, yes. Connell, at Treverton, Pa.; Cressona, Pa.; mill at White Haven, Pa.; Rockdale, near York, Pa., located at Hoffmanville. And those depend on what the outline of the Philadelphia district would be, how far up into Pennsylvania it would extend. All of these plants could not reach Philadelphia on a fair freight rate. The powder in the Philadelphia District is not consumed in the City of Philadelphia, but mainly in the quarries.

Mr. Button: Well, if your Honor please, I think we had better get through with the location of the plants before a summary is given.

The Court: Yes.

By Mr. Abbott:

Q. Take the Hazelton plant, the Hazelton District, do you know anything about any conditions that prevailed during the years 1903 to 1908 there, with respect to the location of plants and transportation facilities? A. All of the plants located in Central Pennsylvania in the anthracite coal field could compete in that district.

Q. Were those plants included in the names which you have just read as being in the Philadelphia district, or were there others? A. There were others in that district that had local trade. 2636

Q. Did it include the names you have read in the Philadelphia district? A. No, sir. Not all the same kind.

Q. I would like to have you name then what plants located in the Hazelton district could supply powder in that district, to consumers of black blasting powder in that district. In other words, that could compete for the business of any particular customer at that time.

2637

A. Conemaugh, at Seward, Pa.; Consumers, Stores Junction, Pa.; Enterprise, Gracedale, Pa.; Ferndale, Ferndale, Pa.; Moosic, Moosic, Pa.; Oliver, Lauren Run, Pa.; Rushdale, Jermyn, Pa.; Shenandoah, Prebs Station, Pa.; Tamaqua, Tamaqua, Pa.; Wopwallapen, Wopwallapen, Pa. And in a portion of the district could be reached by Farmingdale, Farmingdale, N. J.; Rosendale, at Rosendale, N. Y., and Wayne, at Wayne, N. J. The other list, in the other list, Black Diamond Powder Company, Hauk Station, Pa.

Q. What list are you reading from now? A. The competing companies that are competitors of the du Pont. Connell, Treverton, Pa.; Cressona, Cressona, Pa.; Lakeside, Mahanoy Junction, Locust

Mountain, Prebs Station, Pa.; Lofty, at Lofty, Pa.; Miller, at White Haven, Pa.; Nuremburg, at Tomhicken, Pa.; O'Hare, at Prebs Station, Pa.; Pennsylvania, at Brandyville, Pa.; Roberts, at Prebs Station; Rockdale, at Hoffmanville, Pa.; Shamokin, at Shamokin, Pa.; Standard, at Horal, Pa.; Tomhicken, Tomhicken, Pa.

Q. Were there any other conditions——

Mr. Button: Is that the end? That was
2639 all?

A. That was all that could compete.

By Mr. Abbott:

Q. Were there any other conditions obtaining during the period from 1903 to 1908, inclusive, in the Hazleton District which affected the price of black blasting powder. (Objection overruled.) A. All of the mills in the Hazleton district have always, the ones I have known in the trade, and that is a great many years, have made a
2640 very inferior grade of powder. It is used in that locality, and is mainly marketed by wagon and distributed to the mines in that way. I never knew any of the powder shipped out of that district, Hazleton district, excepting a little by the Miller Powder Company, and one or two carloads from Wopwallapen that was shipped to me, and that I shipped to the west, to the other states. The powder is lightly pressed and is not glazed thoroughly, is improperly dried, not well made; does not keep well, and is unfit for marketing in the Western States, where a very high grade of powder is demanded. The trade of that locality is local. The outside powder companies making higher grade powders, do not ship in there. A better condition

obtains in the Scranton district, where a higher grade of powder is used.

Q. To save time, although the Scranton District is the last one here, I will inquire what you know about the Scranton District so far as the location of plants is concerned, the transportation facilities, during the period 1903 to 1908? A. The same plants as I have mentioned to the Hazleton District, would compete in there, would supply the trade of the Scranton District, but there would be 2642
some of them that would not seek trade there, for some of these plants are very small and supply local trade.

Q. Specify those plants, if you please? A. I would have to refresh my memory from this.

Q. Yes? A. I know what they are but——

Q. I would like to have you use that document that you have——

A. Yes. I sent men in the district who reported to me from Wilmington, and I went into the district myself. I have been over the field.

2643

By Mr. Button:

Q. Were you there between 1903 and 1908? A. I was there during the fall of 1903. I made a trip through the district. I was at Shamokin, York and Shenandoah, Oliver, called at the different powder mills.

Q. During that visit did you visit the plants of all these some twenty different companies you have mentioned here? A. No, sir; I visited probably—I visited the Rockdale plant, the Shamokin plant, Mr. Mullen, and the Oliver plant, and three or four plants located over the hill from Shenandoah. I have forgotten the names. I think O'Hara was one of them. They are very small plants, just across the mountain from [illegible]

2644 *R. S. Waddell—Direct*

Q. I didn't ask you that, Mr. Waddell? A. I visited those plants. I did not go into the details of their operation.

By Mr. Abbott:

Q. Take the Pittsburgh district, what plants were located in the Pittsburgh district so as to be able to supply black blasting powder to that district with respect to the location of the plants and
2645 transportation facilities? A. The Burton Powder Company, Quaker Falls, Pa. The Austin, at Cleveland, Ohio. The Ohio Powder Company at Youngstown. The Oriental at Fairchance. For a small part of the time, the Rand at Fair Chance.

Q. What part of the time did they cover? A. I do not recollect. I think the mills exploded about 1904 or 1905. The Miami Powder Company, at Goes Station. The King and Senior, of Cincinnati. The Phoenix at Kellogg, W. Va. The plant at Horal, Pa.; and at a great disadvantage, some of
2646 the plants in the Hazelton-Scranton district. The older companies all competed there, but at a disadvantage in freight.

Q. Were there any conditions that prevailed that you have any knowledge of during the years 1903 to 1908 in the Pittsburgh district that affected the price of black blasting powder in that district? A. Only the building of the new mills that increased the competitive conditions.

Q. Now, have you given a list of the competitive mills in that district? A. Yes.

Q. I mean the list of competitive mills as set forth on the exhibit there? A. I think I have mentioned all who had reached that district advantageously.

Q. Do you know of any conditions that prevailed

in the Pittsburgh district during the years 1906 and 1907? Was there any difference during those years and during the other years, 1903 to 1908?

Mr. Button: You mean conditions as to the location of the plants?

Mr. Abbott: Yes.

A. No.

Q. Any difference in the matter of railroad facilities during those years? A. No. 2648

Q. Now, take the Huntington district; what were the conditions which obtained during the years 1903 to 1908 with respect to the location of plants and transportation facilities in that district? A. Kings Mills, Senior at Cincinnati. Miami at Goes Station, Ohio. Phoenix. du Pont Mill at Kellogg, W. Va. Nemours Mills of the du Pont Nemours in West Virginia. Burton, Pittsburgh. Rand for a part of the time from Fair Chance.

Q. You may refer to the exhibits, if you desire, informing yourself on that matter. I want to check up with these two exhibits. A. I know the field. 2649 That is my old field. I know the district. I believe that is all that could compete in the Huntington district, which embraced West Virginia and a small portion of Southern Ohio.

Q. Was there any difference in the condition with respect to the location of plants and transportation facilities during the years 1906 and 1907 in that district than what obtained during the other years? A. No, sir.

Q. Now, take the San Francisco district, what were the conditions that obtained from the years 1905 to 1908 in that district, with respect to the location of plants and transportation facilities?

2650

By Mr. Button:

Q. Have you personally examined that district? A. Yes, sir. I built a plant in San Francisco in 1910.

Q. Was that your first examination of the district? A. No, sir. I had been there before. I had been in California before.

Q. When? A. I was there in 1876 or 1878; I was there again in 1893 or 1894. (Objection overruled.)

2651 A. There were two plants in California, supplied all the black blasting powder.

Mr. Button: May we have that stricken out? Here he was in California in 1876, and he is telling us who supplied the blasting powder from 1900 to 1908.

The Court: Fix the location of the plants.

The Witness: Location of the plants?

The Court: Yes.

The Witness: At a point, I don't know the

2652 local station, at a point near Sacramento, the Giant Powder Company, and at—I will have to refer to this list, I guess, to get the California. The California Powder Company, south of San Francisco, Santa Cruz.

By Mr. Abbott:

Q. Santa Cruz? A. Yes, sir.

Q. Take the Cincinnati district, what were the conditions that obtained in the Cincinnati district during the years 1902 and 1908? 1907 is the last price given here, with respect to the location of the plants and transportation facilities? A. Senior and Kings at Cincinnati. Miami at Goes Station. Du Pont at Kellogg, W. Va. Du Pont at Youngs-

town, Ohio. Du Pont at Fair Chance. The Oriental, at Fair Chance, Pa. The Chattanooga Powder Company. Du Pont plant at Ooltewa Junction, Tenn. The Rand plant near Knoxville, Tenn., in the Jellico field, and remotely, the Buckeye at Peoria. The Egyptian at Marion, Ill. Equitable at Alton. Du Pont at Phoenix, Ill. They were the only ones that could reach the Cincinnati district advantageously, and that is the Cincinnati district as I knew it, taking in the States of West Virginia, Kentucky, Ohio, Indiana and a part of Illinois. 2654

Q. Now, take the Nashville district, during the years 1907 and 1908, what were the conditions there with respect to the location of plants and transportation facilities? A. Nashville?

Q. Yes. A. Kings and Senior at Cincinnati. The du Ponts had a mill at Sycamore, near Nashville, which ceased manufacturing, I think, early in 1903.

Q. I am inquiring now, this price list here refers to the years 1907 and 1908, Mr. Waddell. A. 1907 and 1908?

Q. Yes. A. Well, eliminate the Sycamore, Birmingham, Ala., Chattanooga, Tenn., Rand near Knoxville. 2655

Q. Is that all? A. Phoenix, at Phoenix, Ill., and Equitable, could remotely reach the western part of that district.

Q. Take the Birmingham district, what were the conditions in that district from 1905 to 1908, inclusive, in respect to the location of plants and transportations facilities? A. The du Pont at Birmingham, Ala. The du Pont at—Chattonooga Mills at Ooltewah Junction, Tenn.; the Rand plant near Knoxville. That is all.

Q. Take the St. Louis district, what were the conditions which obtained from 1903 to 1908, inclusive, in the St. Louis district with respect to lo-

cation of plants and transportation facilities? A. The Equitable at Alton, Ill. The Phoenix at Phoenix, Ill., the Buckeye at Peoria. The Egyptian at Maron, Ill. The Excelsior, Holmes Park, Mo., and the du Pont Mills at Moore, Iowa.

Q. Was there any difference in the conditions which prevailed in that district during the years 1906 and 1907 from what prevailed in the other years that you have mentioned in respect to the location of plants and transportation facilities?

2657 A. In part of the former years only, the new mills that I mentioned, the Buckeye, which began operation in the fall of 1903, the Egyptian, which began in 1904, and the Excelsior in 1905, I believe, changed the conditions somewhat as to the years that they were not in operation.

Q. Now, take the Chicago district. What were the conditions which obtained in the Chicago district from 1903 to 1908, inclusive, with respect to location of plants and transportation facilities? A. The du Pont plant at Moore, Iowa, Buckeye at

2658 Peoria, du Pont at Pleasant Prairie, Wis.; Burton at Pittsburgh. Miami at Goes Station, Ohio; and also at Thebes, Ill., and I wish to include the Thebes, Ill., plant of the Miami in the St. Louis district.

Q. Is that all? A. I think that is all.

Q. Now, was there any difference in the conditions which prevailed with respect to location of plants and transportation facilities during the years 1906 and 1907 from what prevailed during the other years, 1903, 1904, 1905, 1908? A. Only that the Buckeye did not begin operation until the fall of 1903, and Burton about the beginning of 1905.

Q. Well, during 1906 and 1907, all of these plants were in operation, were they, that you have

indicated? 1906 and 1907? A. Yes. I will also include the Egyptian and Equitable.

Q. In what? A. In the Chicago district.

Q. Now, take the Denver district, what were the conditions that obtained in that district from 1902 to 1908 with respect to the location of plants and transportation facilities? A. Du Pont at Moar, Iowa. Du Pont at the two points in the Kansas, Turk and Pittsburgh. Du Pont at Patterson, Oklahoma. Buckeye remotely at Peoria. Excelsior 2660
at Kansas City. Mills at Holmes Park, Missouri.

Q. Will you state whether or not there was any other condition prevailing with respect to the Denver District, which affected the price of powder in that district, any one year more than another during 1903 to 1908? A. No.

Q. There were no such conditions? A. No such conditions as far as I know.

Q. Now, take the Duluth District. What were the conditions of that district with respect to the location of plants and transportation facilities during the years 1904 to 1908? A. Exactly the same 2661
as would apply to the Marquette District. They were practically the same, as we knew it, only the one supplies the Mesabe Range principally, and the other the Northern Peninsula of Michigan.

Q. I show you Plaintiff's Exhibit 1221, and ask you to look at it and state whether or not you recognize the document? A. Yes; letter from Mr. Coyne of the du Pont Company.

Q. Was this letter received by you? A. It was.

Q. Did you make any answer to that letter? A. I did.

Q. I show you a document and ask you to state whether this is the answer that you made to that letter (handing to witness)? A. It is; my signature.

2662 *R. S. Waddell—Direct*

(Letter offered and received as Plaintiff's Exhibit 1325).

Q. I will ask you to look at the pencil notations on that letter and state whether or not you saw anything about those pencil notations? A. I know Mr. Coyne's signature, is all.

Q. Now, I show you another paper and ask you to look at it and state whether you know what it is? A. Letter from T. C. du Pont, president of the
2663 du Pont Company, to me.

Q. This letter was received by you? A. Yes.

(Letter offered and received as Plaintiff's Exhibit No. 1326.)

Q. Did you make answer to that letter, Mr. Waddell? A. I did.

Q. I show you this paper and ask you to state whether that is your answer? A. That is my reply; my signature. (Objection overruled).

2664

(Letter offered and received as Plaintiff's Exhibit No. 1327).

Q. Do you know when the Indiana Powder Mills were destroyed by an explosion? A. The 14th of October, 1907.

Q. Did you know Mr. Bumstead? A. Yes.

Q. Who was Mr. Bumstead? A. He is the general manager of the Chicago office of the du Pont Company.

Q. During that time? A. I think not at that time. I think he was connected with the Pittsburg office. I do not know the date of his removal from there.

Q. Do you know Mr. W. S. Simpson? A. Yes.

Q. How long have you known him? A. How long?

Q. How long have you known him? A. Personally, for about six years, I think.

Q. Do you know what relation he sustained to the defendant in this case, to the E. I. du Pont de Nemours Powder Company, during the time that you have known him? A. Yes.

Q. What? A. When I first knew him, he was the successor of Mr. Dwinelle, or associated with Mr. Dwinelle, of the advisory counsel of the du Pont 2666
Company.

Q. Mr. Waddell, did you have any correspondence with any officer of the E. I. duPont de Nemours Powder Company previous to this correspondence which has been offered here? A. With one of their representatives; yes.

Q. Who was that representative? A. Mr. Spensley of Terre Haute, who was representing the du Pont Company at the Indiana Mills.

(Plaintiff's Exhibit 1326, read to the jury as follows:

2667

"October 18, 1907. Mr. R. S. Waddell, Peorial, Ills. Dear Sir: I have a letter from Mr. Bumstead this morning, in which he advises me of your kind offer to Mr. Spensely of your services in the unfortunate calamity. Let me assure you we all appreciate your kind thought of us at this time, and I have no doubt that could you have been there at the time, or shortly afterwards, you would have rendered invaluable service. As soon as we heard of the explosion, we started one man from Terre Haute, one man from Chicago, and two from Wilmington. The following day Mr. Alfred du Pont went on the ground. I assume, of course, that soon after the first shock, there was great chaos and confusion, and no doubt you could have been of great

service at the time. I think Mr. Alfred du Pont can take care of things now as they come up very nicely, and his past experience fits him particularly for the job. Let me assure you again we appreciate very much your kind thought of us in tendering your services to Mr. Spensley and sympathy. With kindest regards, I beg to remain, Yours very truly, T. C. du Pont, President."

(Plaintiff's Exhibit 1327, read to the jury as follows):

2669 Peoria, Ills. October 21, 1907. Mr. T. C. du Pont, President, Wilmington, Del. Dear Sir: Your favor of the 18th inst. received. I did not tender my services, although I should have been glad to render any possible aid. The local requirements of Fontanet can best be handled by your own men and outside influences should be avoided and restrained. It occurred to me that there might be a scarcity of powder in Indiana for a week or two, until you could reorganize supplies from other mills, and my offe was intended to cover any tem-

2670 porary requirements from our mills that you might need, to satisfy the more urgent demands of your trade. I was delayed in railroad connection at Terre Haute, from Saturday evening until 9:30 Sunday (yesterday). Did not visit Fontanet and knew nothing about the sad disaster, beyond what I have read in the press. Am glad to know you will not need any temporary aid from us. We have recently helped Egyptian and Equitable to the extent of our ability. Yours truly, R. S. Waddell. P. S.: Will enclose copy to Mr. Spensely, to correct his impression.

(Plaintiff's Exhibit 1221, read to the jury as follows):

Wilmington, Del., October 24, 1907. Mr. R. S. Waddell, President, Buckeye Powder Company, Peoria, Ills. Dear Sir: Would it be possible for you to help us out with some B blasting powder, and if so, at what price f. o. b. mills. Would also like to know what size grains you can furnish, what quantity per month and the number of months you could continue to supply us. Thanking you in advance for your early attention. Yours very truly, E. I. du Pont de Nemours Powder Company, William Coyne, Director of Sales. 2672

(Plaintiff's Exhibit 1325, read to the jury as follows):

William Coyne, Director of Sales, E. I. du Pont de Nemours Powder Company, Wilmington, Del., Dear Sir: Replying to your favor of the 24th inst. it has been the policy of our company for the past year to operate its mills at about 40 per cent capacity, merely enough to fill current unsolicited orders. We had a conference of stockholders this week, and I reported tenders of supplies to your company which were not needed. The question of 2673 ordering materials, increasing the force of workmen, and operating mills to capacity, was deferred for later consideration. At present, we are delinquent on shipments and have no powder of any grain to offer. Yours truly, Buckeye Powder Company, R. S. Waddell, President.

(In pencil, at the foot of the letter): "Mr. W. S. Simpson, please note and return, William Coyne, 10/28. Noted, W. S. S. Our information indicates that he is having trouble in keeping men; not furnishing steady employment, only operating about 3 days per week. Good men won't stay with him, W. S. S."

Cross examination by Mr. Button:

Q. Referring, Mr. Waddell, to the last correspondence which you read in reference to Mr. Coyne's application to the Buckeye Powder Company for some powder, you did offer to Mr. Spensely, I take it, to furnish the du Ponts with some powder? A. I did.

Q. And then that was on October 21st, 1907? A. Yes.

2675 Q. And Mr. Coyne, on October 24th, 1907, wrote you, asking for some? A. For future supplies, yes.

Q. His language was, as follows, was it not: "Would it be possible for you to help us out with some B blasting powder, and if so, at what price f. o. b. mill?" A. That is not all of the letter. That is part of it.

Q. That is part of it? A. Yes.

Q. The rest of it is, "Would also like to know what size grains you can furnish and the number of months you can continue to supply us?" A. Yes.

2676 Q. Now, then, two days later you wrote him that you did not have any to furnish, or had not had any for a year, your letter being, "Replying to your favor of the 24th inst., it has been the policy of our company for the past year to operate its mills about 40 per cent. capacity, merely enough to fill current unsolicited orders"; and then you so stated, did you not? A. Yes, I think so.

Q. You further stated, "At present we are delinquent on shipments and have no powder of any grain to offer"? A. Yes.

Q. That was the condition of affairs, then, at your mill in October, 1907? A. On that date, yes.

Q. On that date? A. On that date that I wrote that letter.

Q. Had not that been the condition for the past

year, at that date, as you stated in this letter? A. No, we had been sometimes 2,000, 3,000—5,000 kegs of powder we had on hand at a time. The next day we would ship out. We had from day to day varying stocks.

Q. But you had been manufacturing merely enough for a year to fill current orders and had solicited no new orders, is that correct? A. Oh, no, that is not correct, in the soliciting of new orders. We constantly solicit new orders.

2678

Q. Did you constantly solicit new orders for the year prior to October 26th, 1907? A. Yes.

Q. Then your statement in this letter to Mr. William Coyne, to the effect as follows: "Replying to your favor of the 24th instant, it has been the policy of our company for the past year to operate its mills at 40 per cent. capacity, merely enough to fill current unsolicited orders——" Then that statement was not true to Mr. Coyne? A. It was true for the general current business, but we were not seeking or soliciting an extension of our business for the sale of large quantities, running up to capacity.

2679

Q. Well, then, which was it? Did you solicit orders during that year previous to this date, or did you not? A. Oh, we constantly solicited orders, every day.

Q. Now, won't you answer this question as to whether this statement is correct or not? A. It is correct with my interpretation of it, yes.

Q. Won't you give us your interpretation? A. We solicited orders constantly, every day, for the amount of about 40 per cent. of our total capacity, estimated say at 300,000 kegs; 120,000 kegs a year, 40 per cent. would be.

Q. Is this an interpretation then of the language I have called your attention to here, which is

"Merely enough to fill current unsolicited orders"? A. I am interpreting——

Q. No, you are giving us the condition at your mill. I want your interpretation of the language in this letter. A. I will give it to you.

Q. Very well. A. We were not seeking an extension of our business in the supply of other powder companies with powder. We had already sold the Egyptian Powder Company 6,400 kegs, just prior to this, and Mr. Olin wanted 20,000 kegs. I
2681 declined to supply it. I did not have the working capital at that period to carry it on.

Q. Now, I will read the language to you again, Mr. Waddell—"Replying to your favor of the 24th, it has been the policy of our company for the past year to operate its plants at 40 per cent. capacity merely enough to fill current unsolicited orders." Now, what is your interpretation of that language? A. That was the policy of our company, the policy of our company, just as I stated there for the past year.

2682 Q. Did you mean that you were soliciting orders that you did not intend to fill? A. Oh, no; oh, no.

Q. Did you solicit orders during the previous years? A. We did, and filled them.

Q. Then I ask you again, this statement is not correct that you were making enough merely to fill current unsolicited orders? A. I am stating there what was the policy of the company in the operation of its mills—this policy.

Q. Do you mean to say that you did not intend by this statement to mean that you had only operated your mills at 40 per cent. capacity, for the purpose of filling unsolicited orders? Look at your letter (handing to witness). Is not that what you meant—is not that what you meant Mr. Coyne to understand by it. "It has been the policy"—— A.

It has been the policy—has been the policy of our company for the past year to operate its mills at about 40 per cent. capacity. There is a semicolon; merely enough to fill current unsolicited orders. By that, I mean that we were not seeking an extension of our business. Mr. Coyne's letter asked me to name the number of months that we could continue to supply him, and the quality that we could supply. "We had a conference of stockholders this week, and I reported the tenders of supplies to your company." That sentence there is a little ambiguous. "Which was not needed." That is any supplies which we did not need for our trade, whether or not I could tender it to them. "The question of ordering materials, increasing force of workmen and operating mills to capacity, was deferred for later consideration." The question that I presented to my stockholders was, "Will you put up more money, change the policy of your company, and increase its business," and they said, "No, not for the present; we will defer that." 2684

Q. In other words, you could go on next year making only 40 per cent. and not solicit orders. That is what you meant, was it not? A. No, we solicited orders every day, made by mail and personally. 2685

Q. Then you say the statement that you did solicit orders for a year before this, and the statement in this letter that you were making merely enough to fill those current unsolicited orders—you say those statements are both true, are they? A. That is unsolicited extension of business, yes.

Q. Now, you have produced a number of contracts here, Mr. Waddell, that you say were entered into from time to time by the Buckeye Powder Company. Where did you get these contracts, I mean on this occasion? Have they been here all the time?

A. My impression is I gave those to Mr. Abbott, when he visited Peoria.

Q. When was that? A. Or they might have come with the books in the box, when I shipped it to Trenton. I don't know.

Q. You packed the books and other papers up, did you not, that were sent here? A. Yes, I did.

Q. Well, were these among them? A. I do not recollect what was in the box. I got everything that I thought was required.

2687 Q. Where is the contract with the Deering Coal Company? A. I do not think I have got a contract with the Deering Coal Company.

Q. Did you ever have a contract with the Deering Coal Company? A. I do not think I had. I may have done so, but I do not believe I did.

Q. You have forgotten that incident entirely? A. If I had a contract with them, I have forgotten it.

Q. How large was the trade with the Deering Coal Company? A. Why, I should say that they would take at all of their mines 60,000 kegs a year, I think.

2688 Q. How much of it did you supply? A. We supplied two mines out of 19.

Q. How much powder? A. I think we supplied approximately sixteen or seventeen thousand kegs.

Q. A year? A. During the time that I supplied them. I do not know whether it was a year or not.

Q. Well, have you not any idea as to approximately how long you were selling powder to that concern? A. No; the sales were made by Mr. Miller, John G. Miller of Chicago. He represented us there and they were made through the Chicago office. I am not familiar with that.

Q. And you have no present recollection whatsoever, as to whether you had a contract—a written contract with the Deering Coal Company? A. I may have had. I do not recollect it now.

Q. You have no recollection whatever on the subject? A. No.

Q. You do not recall, then, some matters in relation to that contract was the occasion for you to start the United States Government up in prosecuting and bringing a proceeding against the du Pont Company? A. I do remember that it was not a contract. It was not a question of contract. It was a question of notification that was sent to me, by wire, that a carload of our powder was at 2690
Westville, refused.

Q. Just answer the question. A. I am trying to do so. I went to Westville, found the powder had been refused, shipped the carload back to the mill, and I did take action with the Government, and filed a petition with the Department of Justice, asking that suit be brought for the dissolution of the Powder Trust.

Q. You testified in the government suit, did you not, Mr. Waddell? A. Government case, yes.

Q. Do you recollect saying in answer to a question, "State what contract of your was interefered 2691
with by the associated companies," and you stated, "I had a contract with the Deering Coal Company of Chicago, with mines at Danville, Westville and Western Indiana." Do you recollect so testifying? A. I do not recollect. I knew more about it at that time, perhaps, than I do now. That is some five years ago.

Q. Inasmuch as this was the incident which you say started you up against this company, you think you have forgotten whether you had a contract with that concern or not? A. Well, I do not recollect the contract. I may have had one. I know I sold them a lot of powder.

Q. You are sure you recollected it at this date in 1908? A. I did remember it on that occasion.

Q. Now, then, there must have been a contract, was there not? A. I presume there was.

Q. Where is it? A. I do not know. Possibly Mr. Miller has it.

Q. You kept these contracts altogether, did you not? A. I don't know whether that contract was made by myself or by Mr. Miller.

Q. Did Mr. Miller make some contracts in his own name? A. I do not know that they were made in his name. I know he had an arrangement—con-
2693 tract sale to the Phillips Fuel Company that we did not have.

Q. Then there might be a lot of contracts that covered the supply of Buckeye powder and tied up the trade, as you say it, which you have not brought here. Mr. Miller has got them, is that it? A. He may have contracted as he did to the Phillips Fuel Company—for 10 carloads or 6 carloads of powder.

Q. I am not asking what he might have done. I am asking if there were not other contracts, tieing up the powder trade of the Buckeye Company, which
2694 you have not produced here. A. If it was a time contract with Deering——

Q. Please answer the question? A. There could not be a time contract made, unless we would make it at the Buckeye office in Peoria.

Q. Very well. Then Mr. Miller could not have this Deering contract, could he? A. He could have contracted a certain number of carloads, or certain number of thousand of kegs, as a sale.

Q. Now, you know well enough, Mr. Waddell, do you not, that you had a time contract with the Deering Coal Company? A. No; I do not recollect it. I may have had.

Q. Which is it? A. I do not know.

Q. You know further well enough that the du Pont Company did not have that trade, neither

before or after you had it, do you not? A. I know they had it.

Q. You do? A. Yes.

Q. When did they have it? A. The Deering Coal Company was a successor of about four or five other companies.

Q. I did not ask you that. When did the du Pont Company have the trade of the Deering Coal Company? A. Before the Deering Coal Company was formed. They had the mines which the Deering Coal Company was comprised of. 2696

Q. What date? A. What date?

Q. Yes. A. I think the Deering Coal Company was formed about 19—well, I don't know the date —1904 or '05; 1905 probably.

Q. When did you have the trade of the Deering Coal Company? A. I closed the trade of the Deering Coal Company, I think, about February, 1906.

Q. Whereabouts? A. When I shipped that carload that I spoke of there in my testimony, back to Peoria.

Q. By closing, you mean you ended your trade with them, is that it? A. I think that is the last shipment we made to them. They refused to use any more powder. 2697

Q. Did the du Pont Company have the trade after that date? A. Do you want the hearsay? I can——

Q. Do you know anything about it? A. I did not see the kegs. I can tell you what I know, by hearsay.

Q. Then your belief is that they have that trade, is that it? A. Part of it, yes.

Q. Do you not know as a fact that that trade was procured by the Equitable Powder Company and the Egyptian and the United States after you quit? A. No, I do not know that the United States had

any. I know that the Equitable had some. I do not know that the Egyptian had any.

Q. Do you not know as a fact that the du Pont Company did not have any of it, either before or after that date in 1906? A. I know they supplied during 1903 and 1904, a good many of the mines that went into the Deering Coal Company.

Q. I am referring to the period after you ended the contract with the Deering Coal Company, which must have been in 1904, a 2-year contract?
2699 A. I do not know.

Q. Ran up to 1906. After you got the trade, do you not know that it was the Equitable and the Egyptian and the United States that got it away from you? A. No, I know the Equitable got a part of the trade.

Q. And don't you know that the du Pont Company did not get any of it away from you? A. No, I do not know that.

Q. You do not? A. No.

Q. You pretended to know in the Government
2700 suit, did you not, when you testified? A. Yes, I did know. If you will let me tell you——

Q. And then you pretended to tell all about it, yet you only knew something that some one had told you in that suit? A. I got my information from the Deering Coal Company.

Q. You pretended to know it personally in that suit, did you not? A. Yes, I did.

Q. Whereas, all you did know was that some one had told you? A. I thought the Deering Coal Company were good authorities.

Q. Very good. And it was on the basis of that that you represented in that suit, under oath, was it not, that you knew personally about it? A. I answered the questions that were asked me there. I do not know what I stated. If you will show me the question, I will tell you.

Q. You cannot tell that from your recollection, without the books? A. Oh, I cannot remember, what is in those 12 volumes there. I cannot recollect all of it.

Q. Now, you spoke yesterday about some trade that you had had sometime with some concern, who had a mine in Arkansas—Western Powder Company, was it? A. Western Coal Mining Company, I think.

Q. I mean Western Coal Company. Who was 2702
the superintendent of that mine with whom you had this interview you have testified to? A. I did not testify to the superintendent—seeing the superintendent.

Q. Some one connected with the mine? A. Mr. D. Simpson, purchasing agent of the company at St. Louis.

Q. Was the interview at St. Louis? A. Yes.

Q. And as I understand the situation, Mr. Simpson put you behind the door somewhere, and you overheard this conversation between Mr. Simpson on the one hand, and your brother, Frederick J. 2703
Waddell and Mr. Spicer, on the other, in regard to making a contract for powder? A. Oh, no, this Mr. Simpson did not put me behind the door. He merely mentioned when the cards were presented, "Your brother has sent in a card; do you want to leave, or will you step in the other room?" I said, "Well, I will go in the other room."

Q. Then what did he say? A. I do not know whether he said anything. I walked in the other room.

Q. Then your statement yesterday was not true, was it, when you said he remarked to you, "These people are here and I want you to hear what they are going to say"? A. I think he made that remark.

Q. Therefore, he did put you somewhere where you could hear the proposal, did he not? A. I think he did, yes.

Q. Where is your brother now, Frederick J. Waddell? A. He is general agent of the Keystone National Powder Company at Huntington, W. Va.

Q. Is he spending his time there? A. I do not know what he is doing. I think he is.

Q. Don't you know whether he is there or not? A. I have not been to Huntington in three years.

2705 Q. May be not. Don't you know where your brother, Frederick J. Waddell, is now? A. No, I do not.

Q. You have not any reason to believe that he is not there? A. No, I should think he is there.

Q. Now, you later, I believe, sold some powder to this same concern. When was that? A. That was during 1907, the fall months of 1907. I sold them about 12,000 kegs—12 carloads.

Q. And at what price? A. $1.08½.

Q. Was that for consumption in their Arkansas
2706 mines? A. No, in Southwest Missouri, in the neighborhood of Pittsburgh, Kansas.

Q. How long previous to that time was it you heard this conversation between Mr. Simpson and your brother? A. I should think it was two years before that time.

Q. 1905? A. Possibly in 1905. I do not recall. I know it was in the spring of the year.

Q. Then it must have been the spring of 1905? A. Simpson's contract expired, as I remember, in June or July each year, and it was just prior to the expiration of his contract. Whether it was in 1905 or 1906, I do not recall.

Q. That is a safe date to put it at, but can you tell us just what month and year it was? A. I cannot tell you the year.

Q. Can you tell us whether it was 1905 or '06? A. No, I do not—I think Fred left the employ of the du Pont Company about 1905 or 1906. I do not recollect the year. I was not interested.

Q. Well, you began to sell them powder in 1907, and it must have been, you think, two years prior to that time? A. I should think it was that much.

Q. That would be 1905, would it not? A. I cannot tell you the year. I know about the period in the year that it occurred, but I cannot give you the 2708
year.

Q. As I understand it, that interview, whenever it was that you heard the agreement actually made, was that the du Pont Company was going to make a written contract with them for 97½ cents? A. That is the figure they named there.

Q. Did you see the contract signed? A. No, I did not.

Y. You heard it agreed that such a contract should be signed? A. No, I do not think I heard that. I merely heard the figures discussed.

Q. Now, I suppose you wished the Court and 2709
jury to understand by your testimony yesterday, that the du Pont Company closed that contract at 97½ cents, did you not? A. No, I do not want to say that I saw a contract made or signed, or anything else.

Q. Possibly not, but you understood that that was what would have been understood by us all, from what you stated, did you not, yesterday? I hope not.

Q. You had no such idea in view? A. I just gave you the figures that I heard discussed, and whether they made the contract or not, I do not know.

Q. Therefore, as a matter of fact—— A. I advised Mr. Simpson to make the contract. I do not know whether he did or not.

Q. Therefore, as a matter of fact, you do not know whether he ever did make it or not? A. No, I do not. Yes, if you will let me tell you why I know, I can give you that.

Q. Very good. Tell us what you know? A. Mr. Simpson told me he had made contracts regularly with the du Pont Company.

Q. How long did they last, yearly contracts? A. They were annual contracts, I think.

2711 Q. You think this is what he told you. What did he say? A. I do not know that he mentioned the terms, but I know I bid on them from term to term. They may have been for two year terms, but I think one year terms, all of them. I know I put——

Q. I am asking you what Mr. Simpson said to you now about these contracts. You say you know about the du Pont Compnay making contracts with the trade. Now, tell us all you know about it? A. Yes, and Excelsior got part of it.

Q. Cannot you stick to one thing at a time? A.
2712 I am telling you who got the trade. Mr. Simpson told me he had made contracts with the Excelsior for a part of his powder, and also contracts with the du Pont Company. Now, I cannot tell you which definite year he made with this or the other company, but I made a bid on his contract at the same time.

Q. That is what he told you at this interview, where you heard the conversation with your brother? A. No, I do not think it was that interview. Sure it was not.

Q. When was that interview? A. I just told you that I cannot give you the year.

Q. You were stating about the interview at which your brother was present. Now, you are telling of a subsequent one. Cannot you tell us when that

was? A. No, sir. I called on Mr. Simpson every time I was in St. Louis, and I think I was there eight or ten times a year, and I never failed to call on him.

Q. Can you tell us how long after this conversation you overheard between your brother and Mr. Simpson it was that Mr. Simpson told you he had a contract with the du Pont Company? A. No, sir; I cannot tell you the time.

Q. Cannot you tell us whether it was within a year? A. No, sir; I do not recall at which particular conversation the question came up. 2714

Q. Do you recall any conversation subsequent to this interview that you had with your brother in which he told you that he had made a contract with the du Pont Company? A. No, sir; I do not.

Q. You do not? A. I do not recall that one.

Q. Then you don't know anything on that subject either directly or from hearsay, as to whether they made a contract? A. Only that Mr. Simpson told me that he had made a contract, at the same time, whether it was that one or a subsequent one I do not know, with the du Pont Company, and he had also contracted with the Excelsior, and I don't know which year it was. 2715

Q. And you cannot tell whether that was a contract previous to this conversation with your brother or subsequent? A. No, sir; I don't know.

Q. Therefore, you know nothing about whether this conversation was effective or not, do you? A. Yes. There was a 97½ cent price came up later. I know enough about it to know that. Mr. Simpson, when he bought those 12,000 kegs of me, kicked like everything at paying $1.08½. He says I am getting my powder at 97½ cents, and I don't feel like paying you $1.08½.

Q. Then you do remember some conversation in

which he said that he had some such contract? A. He didn't say a contract. This was over the wire, long distance phone.

Q. Did he tell you whom he was buying his powder at 97 cents from? A. Getting it from Kansas mills.

Q. Du Pont? A. I don't know whether Excelsior or duPont; he told me he was getting it for 97½ cents, and he didn't like to have his miners hold him up for Buckeye.

2717 Q. Then we can close this incident, can we not, Mr. Waddell, with the conclusion that you did not know anything about whether the duPont Company ever sold that concern powder at 97½ cents or not? A. I only have Mr. Simpson's word that he was paying 97½ cents for the powder, and he did not want to pay me $1.08½.

Q. And you don't know whether it was 97½ cents Excelsior powder or duPont powder or any other powder, do you? A. I don't know what he was getting at that time; I didn't know what he

2718 was getting at that time.

Q. So you did not intend us to draw any inference that the duPont Company was getting the trade away from someone at 97½ cents? A. I don't know whether you did; I know I don't know whether they had that contract or not.

Q. My question was that you didn't want us to draw any inference from your testimony to that effect yesterday, did you? A. I only wanted you to take what I said for exactly what it was worth, and not draw any inferences.

Q. Did you want us to draw that inference yesterday, Mr. Waddell? A. No.

Q. Didn't you know that we would from what you said? A. No; I did not know what you would do.

Q. You did not? A. No.

Q. Have you any idea where any of the correspondence with Mr. Simpson is? A. No, sir. I don't know. I couldn't place it.

Q. You had correspondence with him, did you not? A. Oh, yes. I think with the—at least once a year he would write me asking me if I wanted to bid on his contract.

Q. Didn't you have voluminous correspondence? A. No, sir. The letters—not letters with Mr. Simpson.

Q. Didn't you have quite a good deal of correspondence with him during the periods you were furnishing him powder? 2720 A. We didn't furnish him powder.

Q. Just answer the question? A. Just fifteen days. Yes. I passed a lot of letters with Mr. Simpson then.

Q. Are those among the letters that Mr. Abbott has? A. I believe they are. I think that file is here. I think Mr. Abbott may have that. I will be glad to look them up.

Q. Will you kindly produce it if you can find it? 2721 A. I will be glad to.

Q. Do you recollect a letter in that file in which you said to Mr. Simpson that his business was so far away that the Buckeye Powder Company was not in position to furnish the trade, and you desired to be relieved from it? A. I certainly do remember that letter, but not in those words. If you will let me give you the version of the letter?

Q. Wait a minute. When did you see the letter last? A. Well, I think a year ago; maybe less than that.

Q. Where was it then? A. Mr. Abbott and I were discussing it, but I don't know whether I kept the letter, or whether I gave it to Mr. Abbott. I think he has it.

Q. Then you think you have it now? A. Yes, sir.

Q. The occasion of writing that letter was the fact, was it not, that Mr. Simpson had made many complaints to the effect that your powder was delayed in shipment, and his miners were kept idle? Was that true? A. Mr. Simpson's letter to me and his telephone message to me was different from what you stated.

Q. Then that was not the occasion of it? A.
2723 There were some complaints about ability to furnish powder of one size grade in enormous quantities. He called me and asked how many carloads of 2-F can you ship to-morrow. I said I think I can ship a carload, one thousand kegs of 2-F grade. He said, can't you ship four. I said no; we don't keep in stock four carloads of one size grade. Besides, I said I know you use in the Kansas district nothing but 2-F grade, and we have a very heavy demand for that size grade in Montana. I can furnish you one carload. "How soon,
2724 how quick can you send another?" I said the following day, perhaps. Then he asked, "How fast can you furnish powder?" I said, "What is the press?" He said, "My miners came out on a strike demanding Buckeye powder, and we are shut down in several mines, and I have got to have it. Cannot you give me some powder?" I said, "I don't want the trade, Mr. Simpson, at 64 cents freight rate. I don't want the business. I cannot compete with mills in the Kansas district." I didn't want the business. I took it to help Mr. Simpson out, and I supplied just as little as I could.

Q. Then you make no complaints in regard to losing Mr. Simpson's trade? A. I have not offered any complaint.

Q. Not the slightest? A. Not the slightest.

Q. As a matter of fact, wasn't it true that Mr. Simpson had complained to you about the powder which you had shipped theretofore, and had complained that it had not reached his mines, and that his miners were idle? A. His mines were shut down. His miners struck for Buckeye powder, and I couldn't furnish it in enormous quantities of powder, the 2-F powder, that Mr. Simpson's mines would use.

Q. Were you able to find any of the Simpson correspondence? A. I have had the files searched, 2726
and I hand you (handing counsel) a bunch of letters.

Q. Are these all of the letters? A. All that I can find.

Q. I wish you would mark these for identification only. (Same marked Defendant's Exhibits for Identification, S-1 to S-12, inclusive.) You stated yesterday, Mr. Waddell, that you solicited from time to time all of the business in the State of Illinois and possibly other states. Can you state whether you did that at first, when you first went 2727
into the business? A. Yes; I began slowly, according to the production that I had, and gradually increased.

Q. And among others you solicited the business that was then being furnished by the du Pont Company? A. I solicited the entire trade, yes, sir.

Q. And what states did that cover? A. Ohio, a small portion of West Virginia, the Kanawha coal district; the state of Michigan, Iowa, Illinois, Indiana, Missouri, was as far as I travelled probably the first year or so.

Q. Well, now, did you solicit that business by letter ordinarily, or personal interview? A. By both means.

Q. And in that regard will you have your corre-

spondence here? A. No; I do not think I would have.

Q. None of it? A. Possibly there may be some of it. I do not know.

Q. Did you write those letters yourself, or did your son write them? A. Both of us wrote.

Q. In your first efforts to get this trade, and in writing your letters to these customers, Mr. Waddell, did you make use of these lists of contracts known as Government's Exhibits No. 17 to 24,
2729 sometimes mentioned as Mr. Moxham's list of contracts? A. I occasionally referred to those for my information.

Q. Then you had that document with you at the time you were beginning to introduce your powder to the trade? A. I had that document from the time that Mr. Moxham gave it to me.

Q. I mean, you know that you had it, and you had it in a place where it was accessible? A. I had it with me all the while.

Q. And at some times you did use it for that
2730 purpose? A. Oh, I referred to it to find out what the conditions were.

Q. And by "find out what the conditions were," I take it you mean the names of the customers, the date of the contract and when it would expire, the price that was being charged, and the consumption, did you not? A. And the rebate.

Q. Well, the rebate is involved in the price, I take it, is it not? A. No; there was a price named and then there was another column for rebates, the contracts carried rebates.

Q. I understand, but to get at the price, you simply substracted the rebate from the price, did you not? A. Yes.

Q. These rebates being in a general way governed by the amount of the consumption? Is that not correct? A. Not always.

Q. Well, as a general proposition that is true, is it not, Mr. Waddell? A. Well, in many instances they were governed that way. That was the intention.

Q. What was your business, Mr. Waddell, immediately before you entered the employ of the Hazard Powder Company, in 1882? A. I had several lines. I was private secretary to W. P. Halladay, of the Ohio Valley National Bank at Peru, Ills. Secretary of the Halladay Works and manager of it, which was a large box and saw mill— 2732
box factory and saw mill and other factories. I was secretary of the Cairo City Flour Company, which was owned by Halladay Brothers.

Q. In 1881? A. During the year 1881 I was secretary of the Cairo City Gas Company. I was secretary of the Illinois Coal & Iron Company, all of the interests owned by Halladay Brothers.

Q. These were interests, were they, that were owned by the same individuals? A. The same firm, same brothers.

Q. When was it that you practiced law, Mr. 2733
Waddell? A. I practiced law from about 1877 to 1880—possibly during the lear 1880.

Q. And where was your office while you were practicing? A. The first year I was at Pomeroy, Ohio. I lived in Middleport, adjacent to Pomeroy. I had offices in both cities. I then removed to Gallipolis, Ohio, and became a partner in the firm of Nash & Waddell. I sold out. I dissolved my partnership with Mr. Nash, I believe, in 1879, and worked alone for a little while.

Q. Now, while you were practicing law, you did some legal business for the Hazard Powder Company, did you not? A. They brought to me an account—an old profit and loss account for collection. I never brought any action on it. I never collected any money on it.

2734 *R. S. Waddell—Cross*

Q. They consulted you in reference to certain matters, relating to these Gun Powder Trade Associations, did they not? A. Not prior to my entering their employ.

Q. You did not do any legal work for them in that regard, prior to hiring out to them in a commercial capacity? A. None whatever.

Q. You are sure about that? A. I am very sure, until I was employed by them.

2735 Q. I understand your statement to be that you entered the employ of the Hazard Company on February 1st, 1882, is that correct? A. Yes.

Q. And for a few months, seven or eight or nine, you had general employment and then opened the offices at Cincinnati? A. I had general employment more than a year, I think. I think I was in New York, connected with the New York office from February 1st, 1882, until about May 1st, 1883, over a year. I traveled all that while.

Q. You continued in the employ of the Hazard Company down to the time you quit at Wilming-
2736 ton, March 1st, 1903, did you not? A. No, February 2nd, 1903, was the date I left Wilmington.

Q. Now, when did your employment by the du Pont Company begin, in addition to the Hazard? A. I think that was about 1892. I am not right sure of that, but about that time.

Q. And from that date, down to February 2nd, 1903, you were continuously in the employ of the Hazard and the du Ponts, were you not? A. Yes.

Q. Then the Cincinnati office of which you were at the head so long, was begun in 1883, was it? A. 1883.

Q. There had been no general office of the Hazard Company there previously? A. No, they opened a branch office at that time.

Q. Now, had the du Pont Company had a general

office in Cincinnati, prior to 1892, when you entered their employ? A. Yes.

Q. Who had been in charge of that office? A. The one I succeeded was Mr. George W. Schwartz. The man who preceded him was the one I succeeded, Mr. Donahue. He had a joint agency. It was not a branch office then. It was a joint agency. Under my rule it became a branch office of both companies.

Q. Then you took over the du Pont business from Mr. Schwartz? A. Yes. 2738

Q. And you continued in Cincinnati, until the last nine months of your employment by these interests, did you not? A. Nine or ten months. I have forgotten just the time.

Q. Do you remember the exact date when you went to Wilmington, as general sales agent? A. No, I do not. It was in the spring of 1902.

Q. Now, when you first opened this office in Cincinnati for the Hazard Powder Company, what states were embraced in the territory over which you had jurisdiction? A. At the time I went there, they opened a branch office. Before that it had 2739 been a local agency under Mr. Donahue. They gave me Michigan, Indiana, Ohio, West Virginia, a small part of old Virginia, Kentucy, Tennessee, Mississippi, Alabama, Georgia and a part of Illinois, south of a line running east and west from Terre Haute to Quincy, and east of the Illinois Central Railroad, which is the southeastern section of Illinois.

Q. That was quite an extended territory, was it not, Mr. Waddell? A. Yes, it was large.

Q. Comparatively speaking, a tier of states running from the Great Lakes to the Gulf? A. Yes.

Q. Running east through Georgia and Alabama. Did you get into the Carolinas at all? A. No, that was under the eastern office.

2740 *R. S. Waddell—Cross*

Q. And Virginia partly, and West Virginia entirely? A. I think I had seven counties in old Virginia.

Q. Any part of Pennsylvania at any time? A. No.

Q. Later, was there territory added to your office? A. No, later the territory was divided. The Southern states were given to my brother.

Q. I am coming to that Chattanooga office in a moment, but I wish you would state whether, at
2741 any time, you had more states than those which you have already mentioned? A. Another part of Illinois was given to me, temporarily, by the Hazard Company only. I did not represent the du Pont Company in that.

Q. When the du Pont Company employment came in, in 1892, you were always selling the du Pont and Hazard powder in the same territory, were you not? There was no distinction between their territory, was there? I do not know as you get the question. That is, the Hazard territory
2742 which you had charge of, was the same as the du Pont territory, was it not? A. When I took the du Pont office the territory was made the same.

Q. Now, if you will tell us when this Chattanooga territory was formed? A. I do not remember the date. My brother came with me, I think, in the fall of 1882, as a sub-agent. He was running coal mines in West Virginia.

Q. You were in New York then, weren't you? A. I was in New York, but I was, I established agencies throughout the United States for the Hazard. I put him in as agent at Hartford City, W. Va. He served there awhile on commission, ten per cent commission. Later, when I opened the office in Cincinnati, I sent him to Chattanooga and opened an office there as a sub-agency under my office, all

run in my name, or in the name of the Hazard Company.

Q. Can you tell us the dates approximately during which he was acting as your sub-agent at Chattanooga? A. I cannot give you those dates.

Q. Well, was it in the 80's? A. Yes. It was from 1883, I think, up to possibly 1887 I had charge of the whole territory, it may be longer than that. Then he took charge of it.

Q. That is he took charge of the Chattanooga part? A. Of the southern part. He had Tennessee 2744
and the southern States and I retained my own territory in the North.

Q. What territory was embraced in that which he had charge of? A. He had Tennessee, Mississippi, Alabama, Georgia, and Southwest Virginia, and we mutually exchanged territory. He visited a part of Southeastern Kentucky known as the Jellico coal fields, more easily reached from his office than from mine.

Q. And he had Mississippi, didn't he? A. Yes, sir; Mississippi, Alabama, and Georgia. 2745

Q. Now, he operated as your sub-agent for some years and then he was made a branch office manager for the same territory, with his headquarters at Chattanooga, was he not? A. Yes, sir.

Q. Can you tell us that date? A. I cannot give you the date. He was made manager for the Hazard Powder Company there some time later in the 80's, and he was made manager for the du Pont Company, with a branch office at Chattanooga, before I became general agent of the du Pont Company at Cincinnati.

Q. Cannot you tell us approximately when he was running that branch office? A. I know he was running it in 1890, 1891, and 1892, and how long he continued it after that, then I took it over again.

Q. He had it for two or three years, and then they gave it back to you, did they not? A. Oh, he had it longer than two years. Possibly four.

Q. Well, whatever the period was, they eventually gave it back to you? A. Yes. Consolidated it.

Q. And you brought him to Cincinnati then, did you not? A. Yes, sir.

Q. Into your office? A. Yes, sir. Discontinued the Chattanooga office.

2747 Q. So, with the exception of the period of three or four years, you had entire charge of this large territory, did you not? A. Yes, sir.

Q. Do you know how long the Hazard Powder Company had been selling powder throughout that territory when you took up the business in 1883? A. Only by the statements and what I saw at the office.

Q. You found, did you not, in your experience, in selling that powder, that it was well known throughout that district? A. Yes. Fairly well

2748 known. It was not—they didn't have very much trade when I went in.

Q. You established a large trade? A. I did.

Q. How large a force did you have in establishing that trade, Mr. Waddell? A. Well, that varied. The first year I did all the selling and kept the books, and did all the work with a little office boy in Cincinnati.

Q. You said the first. You mean one year? A. The first year I was there; 1883. The business grew, and then I increased my force.

Q. During that first year you travelled then through all of this territory? A. I had travelled the territory before I went into the Cincinnati office.

Q. I dare say, but you did during that year? A. Yes, sir; made occasional trips. I didn't cover the whole field.

Q. And in that business you found the du Pont powder being largely consumed, did you not? A. In certain sections, certain localities they had good trade, and others they did not have any.

Q. Well, after the first year your trade extended to how many men, how many men did you take on? A. I had one travelling man the first year.

Q. Who was he? A. George L. Rood.

Q. That was in 1883? A. That was in 1883. He had been with Mr. Donohue prior to my going to Cincinnati. 2750

Q. Who was Mr. Donohue? A. He was the local agent in Cincinnati for the Hazard and du Pont companies.

Q. Do you know how long prior to that time Mr. George L. Rood had been selling Hazard powder? A. No, sir; I do not.

Q. Some years? A. I have heard, but he was in the plumbing business in Toledo a good while. He had been in and out of the business.

Q. He remained in your employ continuously until 1897, did he not? A. Yes. I think about sixteen years. 2751

Q. At which time he started out and built the Indiana Powder Company's mill, of which we have heard, did he not? A. Yes.

Q. At that time he had had his experience of eighteen years in your office? A. No, sir; not that long quite. Possibly sixteen.

Q. Well, approximately? A. Yes, sir.

Q. That was in 1884. Then how many men did you have after that? A. I think the greatest number of salesmen I ever employed at Cincinnati was two at one time.

Q. Who was the other one? A. After Mr. Rood left, Mr. Alward.

Q. But Rood was there for a long time. During

the period he was there who else did you have? A. Well, two or three little fellows. I had a local sales agent in Cincinnati, who solicited the city only on rifle powder, a man by the name of Small. I had one other man who travelled a little while, didn't make good, and I released him, and he was succeeded by another one. I never employed more than two.

Q. Didn't you have anybody besides Rood, who was of quite long service with you? A. Myself.

2753 Q. Was a man by the name of Mr. Ermston with you? A. Ermston was with the Chattanooga office. He worked for the Cincinnati office I think one year after we consolidated, late in the 90's.

Q. Did you have a man by the name of Hill at that time? A. Hill, he was one of the men that I spoke of as being with us a little while.

Q. Then there was no other man besides Mr. Rood, who was there for any long period of time? A. No, sir.

Q. Except your brother? A. My brother; yes.

2754 Q. He was there most of the time, was he not, either at Chattanooga or Cincinnati? A. Yes; continuously.

Q. How large an office in a clerical way did you have, Mr. Waddell? A. Part of the time when the business grew to be very large, I had two bookkeepers at Cincinnati; one for the Hazard and one for the du Pont books; and we had one bookkeeper at the Chattanooga office. I had two stenographers part of the time; most of the time one. I had a shipping clerk and magazine keepers, draymen, cartmen.

Q. You did a great deal of selling by correspondence, did you not? A. When we had the trade well fixed, we got the orders by mail, but we travelled pretty generally.

Q. What was the business of most of the consumers of black blasting powder in that territory? A. Coal business. Coal operators.

Q. Largely, almost exclusively, used in coal mines, wasn't it? A. And quarries also.

Q. Quarries? A. Yes. Railroad work, immense quantities.

Q. Well, the railroad work is really the only part of the consumption that was not pretty well fixed, wasn't it? By that I mean there would be a coal mine at one certain locality run by a customer, and 2756
he would be a continuous customer of powder, would he not? A. That is right.

Q. Railroad construction, of course, would last for awhile, and then end, would it not, that consumption? A. Yes, it would vary from different parts of the district.

Q. But the largest part of your trade was fixed in this way at those different points, and was practically the same concerns? A. Yes, sir.

Q. To a large extent? A. Yes.

Q. During that long experience of yours you became pretty well acquainted with most of those 2757
operators in the coal business, didn't you, Mr. Waddell? A. I thought I knew them all.

Q. You had frequent personal interviews with them, and came in close personal contact with them? A. Yes.

Q. Is it not true that in selling them powder you found, when you went there, that both the Hazard and the du Pont powders were powders of good reputation all through that district? A. Isn't that true? A. No.

Q. It is not? A. du Pont powder would have a reputation in one locality; Hazard in another, and they would not use du Pont powder in that locality. And the King would have another trade,

and we couldn't put our powder in against King. Miami had trade that they were getting, and we were not known in, we couldn't reach it.

Q. The difference between the Hazard powder and the du Pont powder was quite largely based on a matter of sizing, wasn't it? A. No, sir. I always thought the Hazard was the best powder.

Q. No; but they made a powder that uniformly was of considerably finer grain, didn't they, as a specialty? A. Equivalent grains were about half
2759 the size, half size smaller, the Hazard than du Pont. There was no regularity.

Q. Wasn't it based upon that fact, that some of those consumers preferred the Hazard to the du Pont? A. There might possibly be a few customers in one locality, but that was not the general rule. I have sold Hazard powder in du Pont territory, and I have returned thousands of kegs of it, because it was unsatisfactory; and the same way with du Pont in Hazard territory. Miners would not have it.

2760 Q. Miners are usually rather whimsical on such subjects, aren't they, Mr. Waddell? A. No. I don't think it might be termed whimsical. They have pretty good reasons.

Q. You don't think that they were arbitrary in their views on that subject? Don't they get accustomed to using a certain brand of powder and aren't they very loath to leave it? A. No. The miners as a body are controlled by a very few members of that body, and the balance follow like sheep.

Q. Well, during all the time that you have mentioned, some twenty years back, the powder was sold directly to the mine operator, was it not, and he re-sold it to the miners? Wasn't that the condition? A. For a part of the time that was.

Q. Well, what part did that condition prevail?

A. When we were fighting the King and the Ohio Powder Company during 1883 to 1886, we retailed powder to the miners.

Q. You helped do it? A. My sub-agents did.

Q. Did you do it? A. Not personally, no, sir.

Q. Did you protest against it? A. I didn't have any control over it.

Q. Did you protest against it? A. I don't know that I did formally.

Q. You said nothing about it to your principals? 2762
A. Oh, yes, the principals knew all about it.

Q. I know, but did you say anything to them about it? A. Often discussed it with them.

Q. Did you protest with them? A. These men were commission agents——

Q. Just answer the question. The question is did you protest to your principals about selling powder to the miners? A. It wouldn't do any good.

Q. When you were fighting, as you say, the Ohio and the King powder? A. I did not protest.

Q. Well, outside of some special periods of that 2763
sort, during this entire time, powder was sold to the operators, was it not? A. Yes.

Q. And they resold it to the miners, did they not? A. I think they did.

Q. At a very substantial advance over what the operator had paid the powder company for it, did they not? A. Well, that varied in the different districts, different sections of the country. Some places they had a good profit, and some places they didn't have much.

Q. Well, with very minor exceptions, is it not true that the operators made a very large profit on that transaction? A. That is true in States that are governed by unions.

Q. Wasn't it true in every State of which you

2764 had jurisdiction out of the Cincinnati office? A. I don't know in every State.

Q. Do you know of any one State in which you sold powder in which it was not true? A. A very large profit? I don't know what the rule would be.

Q. Oh, I will say a profit of from fifty cents to one dollar, twenty-five cents a keg? A. I don't think the profit ever went to one dollar twenty-five cents a keg.

2765 Q. Don't you know of a time when the operators were selling powder to their miners at $2.50 that they were buying at $1.25 extensively? A. No, I don't know that.

Q. You would not say that that was not so in your district, would you? A. I don't know anything about it.

Q. Didn't you know at the time? A. Why, of course I knew at the time what the prices were, but for twenty years I cannot remember all the prices, and variations in different districts.

2766 Q. Well, this proposition of the operator's profit on powder was one that was pretty thoroughly brought to your attention each year, and repeatedly each year during your entire experience in Cincinnati, wasn't it? A. I have always observed that they made a good fair profit.

Q. Wasn't it brought to your attention, too, repeatedly every year while you were in Cincinnati? A. No; I did not have very much to do with consumers when I was selling.

Q. I have not mentioned a union, Mr. Waddell, I am talking of the proposition of selling powder to the operators, and they charging a large profit to the miners. Was not that condition of affairs repeatedly each year brought to your attention while you were running the Cincinnati office? A.

No, it never was brought to my attention what an operator charged a miner for his powder, until they began the agreements between the operators in the unionized states.

Q. What date was that? A. Along in the 90's sometime the unions became of some prominence. I think the first agreement between the operators and miners was perhaps along in the 90's.

Q. Now, while you were working for the Hazard Powder Company, who was the man in authority with that company to whom you reported and 2768
from whom you got your instructions? A. Two.

Q. Well, who were they? A. I got one set of instructions from Mr. William S. Colvin. During the life of Mr. R. L. Wheeler, I think he died about 1889, I got another set of instructions from Mr. Wheeler, who was the head officer.

Q. That is during that period you came in contact with both of those men, did you? A. Yes.

Q. After that? A. After that Mr. Colvin alone of the Hazard.

Q. Down to 1902, when you went to Wilmington? A. Yes, up to the time I went to Wilmington. 2769

Q. Who was the man in authority, with whom you came in contact, so far as the business of the du Pont Powder Company went, from 1892 to 1902? A. One man only.

Q. Who was he? A. Eugene du Pont.

Q. When did he die? A. 1902, in January, I think.

Q. Mr. Colvin retired from the active management of the Hazard Company about 1902, did he not? A. I think about July, 1902.

Q. And at that time both Mr. Eugene du Pont and Mr. Wheeler were dead? A. Yes.

Q. Consequently, the three men with whom you

co-operated, during those twenty years, all antedated the time that Mr. T. C. du Pont and P. F. du Pont came into this business, did they not? A. Well, T. C. du Pont has been in the powder business before that.

Q. He had been running a coal mine down in Kentucky, and had sold a little powder on a commission basis, had he not? A. Yes.

Q. That is what you refer to as his connection with the powder business? A. That is all I know
2771 of.

Q. Barring that incident, is not my statement correct? A. I do not know. I only know that he became active in the business in 1902.

Q. Well, so far as you know, so far as any outward appearance would indicate to you that is true, is it not? A. Yes.

Q. And if that is true, it necessarily follows that you know a great deal more about all of the methods of selling powder, from 1882 to 1902, what was done, what conditions prevailed, and what
2772 the general situation was, than did either of those gentlemen. Is that not true? A. Either of which?

Q. Mr. P. S. or Mr. T. C. du Pont? A. Yes, sir, I think I knew more than they did.

Q. And you were a part of it for twenty years, were you not? A. I was an employee of the company, yes. I never had a dollar interest in the business.

Q. Now, in regard to being an employee, do you mean that you were simply an employee, confined your activities to following literally your instructions and did not occupy any field outside of those specific instructions that were sent to you by one of these three gentlemen whom you have mentioned? Is that what you mean? A. What I mean is that I was a salaried employee, running the busi-

ness of these companies in their names. All of the sales were made for the company, charged on their books. The cash was deposited in the name of the company. I had nothing to do with it, excepting to obey the instructions given me specifically.

Q. Did you confine yourself to obeying the specific instructions that were given you for that twenty years? A. Absolutely.

Q. Did you take any active part in these matters which you have explained for several days on the stand here, in regard to contests against various companies? A. I did what I was instructed to do only. 2774

Q. Nothing else—nothing beyond that? A. Nothing beyond my instructions.

Q. Did you have specific instructions for everything you did in those regards? A. Oh, not for every little detail. My instructions would be often to use my judgment and carry out a line of policy that was given me of what they desired me to do. They checked my books. They checked my accounts and had them audited. 2775

Q. In carrying out the policy, you proved a very effectual instrument, did you not, Mr. Waddell? A. I thought I earned my salary, yes.

Q. And you did what they told you, and did considerable more, did you not? A. No, I always had their approval.

Q. Did they always give you instructions specifically as to what method you should use to accomplish a particular result? A. Well, you will have to be more definite, for I do not understand what you mean by a particular result.

Q. Killing a company? A. How is that.

Q. Killing a competitor, that will hit it? A. Yes, all general instructions when to make a fight.

Q. And you went them one better, did you not,

Mr. Waddell? A. I never violated my instructions.

Q. You went them one better, did you not? A. No.

Q. You did not? You developed into a very suggestive agent during that twenty years, in regard to competition and customers, did you not, Mr. Waddell? A. I was unfortunate enough to be on the firing line all the time where the independent companies were promoted and the fights conducted.

Q. You made many suggestions, did you not to
2777 Mr. Eugene du Pont and Mr. Colvin and Mr. Wheeler, as to what you thought ought to be done in those conditions? A. When they asked my judgment of the condition, I would give it to them.

Q. Only in response to a request from them? A. I think so. I do not recall any other.

Q. During the twenty years, you have no recollection of any voluntary suggestion being made to your principals on these subjects? A. I do not recall any.

Q. Not one? A. No.

2778 Q. Would you be surprised to find such a suggestion from you unasked for? A. I do not know. I do not recall any. I do not know whether I would be surprised or not.

Q. You stated here several days ago when you were examined in reference to your authority, I think it is, page 1736: "Now, Mr. Waddell, during your representation of the du Pont and Hazard interests at Wilmington, did you at any time exercise any independent authority with reference to such matters as had been committed to your hands by Mr. T. C. du Pont, with reference to the Trade Association?" You answered, "No." "Will you explain where you obtained the authority which you exercised, with reference to the duties that were committed into your hands; how did you proceed

2779

to perform those duties?" You answered, "I knew the compendium of rules governing the apportioning of trade under contract. I knew the working of the powder association and thier methods, that contracts were to be awarded and rebates made, according to a specified quantity that consumers would take, and when application was made to the special committee, it was a question of determining according to the rules that had been established by the association what the Committee should do, and I was governed by those rules and followed them. Did you or did you not at any time fix any price or terms in any contract, independent of what had been conferred upon you? No, I had no authority for anything of that kind."

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By that testimony, Mr. Waddell, you intended us to understand, did you not, that while you were at Wilmington as General Sales Agent, for nine months, you were a mere instrument to these people, to do what they had specifically told you to do. Is that what you intended to imply, and had no independent authority whatsoever on any subject? A. I had authority to act within the scope of the duties that were given me, but not specific detailed instructions about every little act I committed.

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Mr. Taylor: The next question and answer is that very thing. Read the next question and answer. It is only fair to the witness.

Q. "I will ask you whether at any time during the time that you represented the Hazard Powder Company at New York, Cincinnati or Wilmington, you ever of your own independent authority made any price or attempted to perform any duty independently? A. Never." I did not read that question, because it refers to this 20 years preceding, and I

2782 *R. S. Waddell—Cross*

was about to follow my inquiry as to Wilmington, with this preceding period. I do not like to mix them up. Now, confine yourself to the 9 months at Wilmington, did you mean to imply that you had no authority, except that that was specifically given to you, for each occasion by some of these gentlemen? A. I had the authority that was embraced in the detail of general sales agent, and in addition to that such other duties as they asked me to perform.

2783 Q. Now then, referring to this other answer which I have just read, in which you say that during these previous periods you never had authority to make any price, or attempted to perform any duty independently, that embraces your entire service at Cincinnati? You intended it to? A. Yes

Q. And did you intend us to understand by that, that during that period you had no independent authority? A. None whatever.

Q. And you intended us to understand that you did not make any suggestion to your principals, as

2784 to what they ought to do in these various matters of competition, but strictly confined yourself to the instructions which they gave? Was not that what you intended us to understand by that testimony? A. Oh, no; I would not say that I have never made suggestions or recommendations, or that I had not conferred with my principals.

Q. Do you remember now that you did make suggestions in regard to the treatment of these competitors? A. No; I do not recall any particular suggestion that I made, but I would not exclude suggestions. If I was asked for an opinion, I gave it.

Q. But only under those circumstances, I understand your testimony. Now, my question was as to whether by this question and answer that I have

read to you here, you intended to imply something different from that? A. I did not intend to imply anything beyond the words I used.

Q. Well, you expected us to understand, did you not, that you were simply there, doing what you were told, as you understood, and the purpose of it was, Mr. Waddell, was it not, to divest yourself of any responsibility for anything that was done in these matters during that twenty years? Was not that what you intended by that answer? A. I did not intend anything but just what I said. 2786

Q. Did you intend to divest yourself of any responsibility for the occurrences of that twenty years by that answer? A. I take the responsibility.

Mr. Taylor: I object to this line of questioning. It is a pure matter of argument. No facts are brought forth at all.

The Court: Oh, well, he is the chief witness for the plaintiff. I am inclined to allow considerable latitude. I think this is within the proper examination. You may proceed. 2787

The Witness: What is the question.

(Question repeated.)

A. I did not have any intention beyond just what I said.

Q. I was trying to find out what you meant by what you said, Mr. Waddell, in that regard? A. I meant this: That during my entire service with the Hazard and du Pont companies up to the time I went to Wilmington, the business was conducted by the companies, not by me. I was a mere agent. The books were in the name of the Hazard Powder Company. The money was in the name of the Hazard Powder Company. The bank account was kept in the name of the Hazard and the du Pont Com-

panies. I signed the checks of the Hazard Powder Company, by R. S. Waddell, agent, for the E. I. du Pont de Nemours & Company, by R. S. Waddell, Agent. I remitted to them. I sent each company every month a trial balance of their books at Cincinnati, an account of sales of every keg of powder or pound of powder I sold. The powder came to me, not billed in dollars and cents, but consigned. It was their stock. Their auditor came from New York every year, with my account of
2789 sales and checked over my books. The books of the Hazard Powder Company and the du Pont Company both of them. He checked the bank balances. He went to the bank to confirm it. He counted my stocks in the magazines, and if there were any shortages in the account of the stock, they were charged off. Every price that was ever made, was made by the Hazard Powder Company or the du Pont Company. It went to them in every trial balance, and in every account of sales that was on their books. They audited the books and they gave me a clean balance. They never charged me with a dollar or
2790 a cent that I had sold powder at, at any price that they did not approve. They would give me sometimes latitude. You may go as low on rifle powder in the fight against King—gave me latitude to go down. I would use that latitude. They would not know it until it was reported to them in their account of sales, and they approved it, and I have never had an accusation from the Hazard Company on an account of sales that I rendered to them, and in my final settlement with them, and I handled over ten millions of dollars for those two companies without a defalcation of a cent.

Q. That is about what I understood you wished to have us understand, Mr. Waddell. In other words, you were a passive agent out there and the

responsibility, as I understand it, was entirely in New York and Wilmington; that is what you intended, was it not? A. That is my intent, to say that I was an employee.

Q. During this period of twenty years in which you had no latitude, no real discretion in regard to fixing prices, they were always fixed by Hazard and du Pont Company, I suppose it also includes the period of some years concerning which you have testified in the Government suit that they threw the doors wide open, and gave you discretion 2792
to meet competition at any price you desired? A. I cannot endorse that statement of yours.

Q. You remember so testifying in the government suit, do you not? A. No.

Q. You do not? A. Not to a statement of that kind.

Q. You do not remember testifying that in some of these periods the Hazard and du Pont Companies, or both of them, gave you open authority to meet any price that was made in your district? A. Yes, sir; they did that. They gave me latitude, 2793
as I have said.

Q. That is what you meant by saying a moment ago—about saying they gave you some latitude? A. Some latitude. I could not go below what they gave me, but I had discretion within those figures.

Q. They did not give you an open price then, to meet any competition you came across at any time? A. I think that authority was given to my brother at Chattanooga.

Q. I ask if they gave you such authority? A. I had this authority from Mr. Wheeler, to make a price of 10 cents a keg below the King price to the Cincinnati trade, on rifle powder, and to give a guarantee that this price, being 10 cents below the price of the King Company, should be permanently

10 cents below any price the King Company might make, and that might come within the scope

Q. Was there any such occasion during the '90s? when you had any open authority? A. I think against the Phoenix, the fight against the Phoenix and the Equitable occurred at the same time.

Q. Right there, there was a fight against the Phoenix and Equitable, was there not? A. There was a vigorous one.

2795 Q. Did you so intend to testify on your direct examination? A. I do not know what the question was.

Q. Well, your answers were somewhat ambiguous, in my judgment. It was your intention, was it not, to convey that impression that there was a fight against the Phoenix and the Equitable? A. I do not know whether I was questioned on that subject or not.

Q. Well, you said now that there was such a fight, did you not? A. There was, between 1892 and 1896.

2796 Q. To get back to the question I asked you a few moments ago, which you have not answered, did you or did you not testify in the Government suit, that sometime during the 90's, that you had open authority to meet any price named on blasting powder? A. I do not remember that question, nor I do not remember my answer to it.

Q. Well, if you did answer that you had such authority, was that correct? A. I do not know that it would be correct or not. You will have to give me the question and answer, and the connection in which it was used. I could not be able to testify now.

Q. Cannot you state now whether or not you did have such authority during the 90's? A. I do not remember any special authority during the

90's. That was after Mr. Wheeler's death and they were a little more—I was a little more restricted than I had been prior to that time. There may have been such an instruction. I do not know.

Q. Well, then, you are not entirely sure of the correctness of the statement that you made a few minutes ago, that you submitted every price to Wilmington and New York during your incumbency of that office, and never made one until after you got permission back? A. I never made a price outside of the bounds within which I was author- 2798
ized to go.

Q. I do not think that is an answer to the question. As I recollect, about five minutes ago you testified, giving a resume of your conduct of the Cincinnati office, that there was no occasion upon which you ever had authority to make a price of any sort, except on permission from Wilmington or New York, except also that on one or two occasions they had given you a limit below which you could not go. That is as I understood your testimony. Then that statement is not entirely correct, 2799
is it, Mr. Waddell?

Mr. Taylor: I object to the statement as not embodying the witness's statement a few minutes ago.

The Court. It is in substance, I think, Mr. Waddell did in that answer fix a limit beyond which he had no authority to go, but above that he had authority and he could exercise it without reporting until after it was consummated.

Q. Now, I understand Mr. Waddell to testify he cannot remember whether he had open instructions during 1890, to meet any price named? A. No, I have not said that. I may have had.

Q. Consequently you are not sure of the correctness of your former statement, that you never had authority, except to go down to a certain limit. Is not that correct? A. I never had authority to give powder away or make——

Mr. Button: I move that the answer be stricken out.

The Witness: I never had authority in which I could sell a good rifle powder for
2801 6¼ cents or 5 cents, or anything of that description. There was a reasonable view to take of it. I was in business, selling powder for profit.

Q. You were given instructions to go down to a certain minimum, or you were given some other kind of instructions, Mr. Waddell, and there was a great difference between them. Now, which was it, to go down to a minimum price, or to meet any price you saw fit, which was made by competitors?
2802 A. They varied. I think on one or two occasions I had an open price.

Q. You do think so now? A. I know in the Chattanooga field my brother at Chattanooga who was reporting to me, or was associated with me in the fight against Chattanooga and Birmingham, had authority to meet any price—not to make any price he pleased, but to meet any price made by others and hold his trade.

Q. Then your statement was not correct, that you made a while ago, that you never had authority, except upon permission, and except to go down to a certain minimum? A. There were exceptions. There may have been. I do not recall the circumstances of individual cases. I do not remember.

Q. You organized the Buckeye Powder Company

in 1903, Mr. Waddell? You caused it to be organized yourself, didn't you? A. I did.

Q. You became its president? A. Yes.

Q. And are now? A. Yes, sir.

Q. Continuously have been? A. Yes, sir.

Q. You became its general manager, managed its affairs? A. Head of all of it; yes.

Q. And you still are managing the affairs of this concern? A. Yes, sir.

Q. It does no business now except such as is incident to the settlement of its affairs? A. That is all. 2804

Q. And has not since it sold its plant in 1908? A. That is all. Liquidating.

Q. Who are the other officers? A. R. S. Waddell, Jr., Secretary-Treasurer. The only ones we had.

Q. Wasn't M. C. Waddell an officer at one time? A. Not an officer. He was superintendent of the mills.

Q. Who were the directors? A. The board of directors were R. S. Waddell, R. S. Waddell, Jr., J. C. Hooven, superintendent of the Hooven, Owens, Rensselaer Company, Corliss Engine Works, Hamilton, Ohio; Mr. A. B. Voorhees, Vice-President of the Trust Company of Cincinnati; and Mr. John P. Neals was the local director in Delaware. 2805

Q. Organized under the laws of Delaware? A. Delaware.

Q. Are those gentlemen still the directors? A. Four of them. Mr. Neals has resigned, the local director.

Q. Are they all stockholders? A. All stockholders except Mr. Neals.

Q. Have you stock books and minute books of the corporation in Trenton? A. Yes, sir.

Q. In the adjoining room? A. Yes. I think they are. I am pretty sure they are.

9355

Q. Have you any objection to producing them? A. I have none. It is with the attorneys.

Q. Will you do so? A. Yes.

Q. In the course of your management of this corporation, you assisted your attorneys in preparing the complaint that has been filed in this litigation? A. No; I did not assist in preparing it. I talked the case to them and left it to the lawyers to prepare it.

2807 Q. You gave them the information upon which the complaint is based? A. I furnished them the record in the Government case, which I had, and talked with my attorneys.

Q. Did you read the complaint over after it was formulated and before it was filed and give it your approval? A. No. I was in Europe at the time and it was filed while I was abroad.

Q. You say you never saw it before it was filed? A. No; not the original paper.

2808 Q. Did you see any complaint that was substantially complete before it was filed? A. I saw the amended petition or bill, whatever it is called, before it was filed. You are speaking now of the case we are in here?

Q. Well, did you prepare any of the declarations in any one of these three suits? A. I did not prepare any myself.

Q. Did you see any one of the three before it was filed? A. I should say I think I saw the Hazard bill and probably the Laflin & Rand; I don't remember as to those.

Q. You gave those your approval, I take it? A. I gave the Hazard, I know.

Q. And you saw that prior to the time it was filed, did you not? A. I would not be able to tell. I don't know the date of filing. I don't remember whether it was filed before or after I saw it. I saw the printed copy when it was handed to me by the attorneys, and I don't know the date of it.

Q. Did you answer in your previous testimony that you saw it prior to the time it was filed? A. Really, I don't know the date of the filing.

Q. You so testified? A. I thought I did, and still think so, but maybe I am wrong.

Q. You further said you furnished the data and talked with your attorneys and they made the preparation? A. Yes; that is right.

Q. During the two months—you began to sell powder, as I recollect it, about the last part of October or the first part of November, 1903? A. 2810
Yes, sir.

Q. And you sold some seven or eight thousand kegs, during 1903, and some one hundred eight thousand, wasn't it, during 1904? A. I have forgotten the exact figures.

Q. Something over one hundred thousand? A. Yes; approximately.

Q. During which portion of the year 1904 was the most of that powder sold, Mr. Waddell? A. Most of it was sold between I should think most of it was sold in the Fall of the year when the 2811
trade was the most active.

Q. Could you tell how much, approximately, of that amount you sold in the Spring months and Summer months of 1904? A. No, sir; I could not.

Q. Can you tell us where you sold most of the powder that you sold during that earlier period? A. I think most of it was sold in Illinois, Iowa and Missouri.

Q. You sold out in October, 1908, did you not? A. September.

Q. September or October? A. September 18th, I think.

Q. I show you an exhibit that has been marked for identification and numbered—it is marked Defendant's Exhibit 1242 for Identification. Are

those the signatures of yourself, as president of the Buckeye Powder Company, and your son as treasurer? (Paper was handed to the witness.) A. Yes, sir.

Q. And this is the seal of the corporation, of the Buckeye Company? A. Yes, sir.

Q. What was the original capitalization of the Buckeye Powder Company? A. Seventy-five thousand.

2813 Q. That was paid in at one time? A. Paid in on calls of the board of directors.

Q. In cash? A. In cash.

Q. And when was the rest of that, the last of that seventy-five thousand paid in, can you recollect? A. I don't remember the date. It was during the summer of 1903.

Q. And the capital stock was increased somewhat at a later period? A. Yes; almost immediately.

Q. How much was that increased? A. Twenty-five thousand.

Q. Making $100,000 altogether? A. Yes.

2814 Q. Was it ever increased again? A. We passed a resolution to increase it, but we never issued it.

Q. To what point? A. To two hundred thousand.

Q. When was that? A. I don't remember the date. The resolution in the minute book would show.

Q. Haven't you any approximate recollection on that? A. I should think it was along in 1906, in the Fall of 1906, or early in 1907, would be my judgment about it.

Q. What did you do for working capital, Mr. Waddell? Where did you get that? A. Well, we formed a syndicate of the stockholders at Cincinnati; I joined the syndicate and I did not have the collateral to put up to the bank for borrowing

money from the bank direct. I put up my stock with the syndicate members and they furnished the collateral, the bonds, whatever it required, to get our credit. We borrowed I think, $52,000 from the bank in cash.

Q. When was that borrowed? A. That was borrowed at the time we increased our capital stock from seventy-five to one hundred thousand. We had to provide working capital, and we arranged for $75,000 working capital.

Q. Was $52,000 the outside limit of your borrowings? A. We may have exceeded that some times, temporarily. 2816

Q. You have testified, I believe, that $117,000 was the cost of your plant? A. That is the original cost.

Q. Well, that $17,000 was borrowed in the manner you suggested, was it not? A. No.

Q. Where did you get that $17,000 above your capital stock? A. My recollection is that we made a profit the first year of something like $12,000 in the business, and we never paid it out. We used it, it went into our plant and we had a current indebtedness additional to the direct loans, permanent loans from banks. Sometimes our indebtedness would run $25,000 or $30,000. We were using that capital. 2817

Q. Didn't you testify in New York, or somewhere, that you got that $17,000 in the exact manner that you have mentioned, by putting up your stock with your associates and depositing it in some bank, and thereby raising the $17,000 extra cost of your plant? A. I don't know what $52,000 was paid in for. We borrowed it as we needed it, $5,000 at a time.

Q. I didn't ask you that. I asked you if you did not testify in New York some few weeks ago

that you procured that $17,000 by forming a pool of your stockholders, you putting up your stock and they providing that $17,000 from some bank, I believe it was in Cincinnati, didn't you so testify? A. I may have done so; I don't recollect. It was a part of what we had in the business. I don't know a particular dollar that it was applied to.

Q. If you did so testify it was, when you were uncertain as to whether you got it in that way or
2819 some other, is that what you mean? A. No. I mean that we borrowed $52,000 for working capital, and we had earned some money in the business, we had some, and probably when we had our entire plant completed we may have been in debt for $17,000 or $20,000, I don't know what, on the completion of the plant. It went into the general run of the business. I would not be able to identify what particular loan or from what particular source the $17,000 came out.

Q. Well, you are just as able to identify it now
2820 as you were six or eight weeks ago, aren't you, Mr. Waddell? A. Yes; I think so.

Q. Well, I will call that to your attention later. You have testified that the capacity of your mill was 250,000 kegs a year. Is that correct, on a conservative basis? A. That is correct on a conservative basis.

Q. That would be about eight hundred kegs a day? A. Depends on the number of days you would run.

Q. Well, you would run from 280 to 300 days, wouldn't you, if you were running full? A. I can give you the capacity more definitely, and then you can figure the days. We run 22 kegs under the wheels at a charge; we had four wheels, that would make 38 kegs to a run; 12 charges a day, in 24

hours, two hours to the charge. That would be twelve times eighty-eight, that would be 1056 kegs that would go in under the wheels. Now, in that would be, 72 per cent of that would be white, would be nitrate of soda, which contains varying degrees of moisture, from two per cent down to one-half of one per cent. And that moisture would dry out in the glaze going around and perfecting the powder. There would be a loss of perhaps on that 1056, a loss of twenty-five kegs by weight in the powder. And then there would be some dust from 2822
the separator, that would go back and be worked over under the wheels, ground in with the green charges. We would get out about one thousand kegs, packed out of 1056 kegs, about 1,000 kegs; and if we would run 250 days we would run 250,000 kegs in a year. If we were to run 300 days, there would be ultimately 300,000.

Q. Well, you say approximately 1,000 kegs a day. That is 25,000 pounds, 25 pound kegs, aren't they? A. The most I ever made was 26,200 kegs in twenty-five running days, consecutive running days. 2823

Q. Well, they are 25 pound kegs, are they not? A. Yes.

Q. Do you remember the East Cuba Coal Company? A. Yes.

Q. Did you sell them some of your powder? A. Yes.

Q. Were you selling them in June, 1906, do you recollect? A. I don't remember the date.

Q. Is this the letter that you signed to that company, dated June 4, 19106? A. (Examines paper) That is my signature.

(The document was marked Defendant's Exhibit T and read to the jury as follows):

2824 *R. S. Waddell—Cross*

East Cuba Coal Mining Co.,
Cuba, Ill.

Gentlemen:—

To provide a liberal working capital to care for the increased business of its enlarged plant, Buckeye Powder Co., has doubled its Capital Stock to Two Hundred Thousand Dollars. The Mills now have a
2825 daily capacity of 40,000 lbs. and the superior quality of the Buckeye powder is recognized in all markets.

Every buyer appreciates the advantages that result from maintaining competition.

Let us quote and serve you? Our powder is guaranteed in all respects.

Truly yours

Buckeye Powder Company,

2826 R. S. Waddell,
President.

Q. Mr. Waddell, the statement in that letter that you had increased your capital stock to $200,000 was not true, was it? A. Yes, we had increased it.

Q. Had you changed your charter? A. We had amended our charter.

Q. Oh, you had amended the charter? A. Yes, sir.

Q. Is your statement that you had a plant with a capacity of 40,000 pounds true? A. 40,000 pounds that would be——

Q. 1,600 kegs a day? A. Well, that is pretty extreme. I have made 1,400 kegs a day, but I do not believe I ever made sixteen.

Q. In selling powder, Mr. Waddell, one of the chief desires on the part of the consumer is to have prompt deliveries and quick service, is it not? A. Of course, if a man orders, he may order it shipped in thirty days, or shipped in sixty days, or he may order it shipped immediately.

Q. Well, it is a commodity he must have immediately, or else his whole force will be tied up, wouldn't it? A. It depends upon his requirements.

Q. Now from your experience of now something 2828
over twenty years as a salesman, do you think that it helps a concern who is selling goods to deceive customers as to those matters in relation to its plant that make for a quick service and immediate deliveries and so forth? Would you say that as a salesman? A. I don't think any business concern is bound by the advertising it gives out. There is a lot of buncombe in it.

Q. Therefore, any printed matter that you ever circulated in reference to the Buckeye Powder Company, we are at liberty to consider untrue if we so desire, are we? A. Let me have that ques- 2829
tion.

(The question was read by the reporter.)

A. No, sir.

Q. You do not guarantee its truth, do you, from your present statement, even though you signed it? A. Very generally, yes. There may have been some exaggerated statements.

Q. You call this statement, which amount to 1,600 kegs a day an exaggeration which comes within this category, that is proper and all right as a matter of salesmanship and advertising, is that your idea? A. I could have made sixteen hundred kegs a day. I could have done that. I had the glaze capacity. I would not do it all the while.

Q. Well, I understood you to testify this morn-

ing that Mr. Coyne's statement about your capa ity was incorrect; he had it too much; 300,000 kegs; it was really only 250,000 kegs? A. No.

Q. Didn't you so testify this morning? A. I don't want to be understood in that way. I said that 250,000 was a conservative regular production that I could supply all the while. We had a possible capacity of 300,000 kegs. Mr. Coyne was right in that respect.

2831 Q. You say in this letter you have a possible capacity of 480,000 kegs? A. Yes; that is for a day.

Q. You have testified, Mr. Waddell, about having some salesmen employed by the Buckeye Powder Company. How many salesmen did you employ? A. I never had but one salesman direct from Peoria who might be considered a salesman; that was Peter P. Laughlin. I had a salesman in Chicago that I gave a net price to, and he made what he could above that. I had another—that was Mr. Miller, of Chicago. I had Mr. E. C. Bur-

2832 roughs at St. Louis, in that territory near St. Louis, and he was a net price agent. And I had some little fellows who were demonstrators that tried to sell, usually one of them at a time.

Q. Did those agents send you written reports of the sales they made? A. If they made a sale they would send in an order.

Q. Did they send you letters commenting on the trade conditions in the territory in which they were traveling, or trying to sell powder? A. They wrote me the work they were doing on the road.

Q. Did they ever tell you anything about competitors' business, who was selling the powder to certain customers that you were trying to sell to? A. Yes, I think so.

Q. They told you what prices were being charged,

so far as they could gather them, didn't they? A. If they would hear of a price they would mention it, not always.

Q. They would tell you what company was selling that powder at the time, wouldn't they? A. They might have mentioned what powder was being used.

Q. If they got any information as to what price it would take to interest a man as a customer that fact would be mentioned to you also, wouldn't it? A. No, sir; I don't think they would take that up. They had the price that I gave them. 2834

Q. They would not tell you anything about how low a price you had to make in order to get that particular business? A. No, sir; I don't think so.

Q. Are you sure they never wrote you anything of that sort? A. They might have done so. I don't know. I don't recall any instance of that kind.

Q. You have mentioned this Trade Bureau in your complaint, and testified about it, Mr. Waddell, which you say was maintained by the du Pont Company. I believe you referred to an investigation that you made of it at one time at the request of Mr. Eugene du Pont? A. Mr. Eugene du Pont, and Dr. Alexis I. du Pont. 2835

Q. They are both dead? A. Yes; I think so.

Q. And the investigation you made was by going to see Mr. Kerr, who was a witness who has been on the stand here? A. Yes; I went to their Repauno office.

Q. Where was this trade bureau located at that time you referred to? A. Oh, about four miles from the duPont office.

Q. At Wilmington? A. The trade bureau was in Wilmington and the duPont office was out on a farm.

2836 *R. S. Waddell—Cross*

Q. Well, you testified you did investigate it, didn't you? A. Yes.

Q. And you testified here the other day about it. Do you know whether, Mr. Waddell, there was a system—that don't matter. "Do you know anything about the system known as the trade report system, Mr. Waddell? A. Yes, sir. Q. In use by the defendants? A. Yes. Q. State what you know—describe your knowledge of the system, how it originated and what the purpose of it was?" And
2837 you answered: "A. The system was originated in the dynamite branch of the Powder Trust, and I was sent by Eugene duPont and Dr. Alexis I. duPont, who was vice president of the dynamite interstate, to investigate the trade reports system introduced by Mr. Haskell in the dynamite interests for the purpose of ascertaining whether it was suitable to use and whether I would recommend it for the black powder interests. I was sent to Mr. Kerr." Do you know how long that one had been used at that time? A. No.

2838 Q. You don't know how long that was in use? A. No.

Q. (Reading) "Q. When was this that you were sent on this mission? A. I should think about 1899 or 1900; I have forgotten the exact date. Q. Now, did you investigate their system at that time? A. Mr. Kerr had been instructed by Mr. Alexis I. duPont, vice president of his company, to give me the fullest information in regard to it. He showed me the system of reporting, and the reports they gathered in, the nature of the reports. How they obtained information from their agents and travellers—salesmen—and then disseminated the information to the branch offices or their salesmen who might be interested in other information that had come to them through other sources. Q. State

how they disseminated this information. A. It was sent out by the trade bureau. Information that would come in from one salesman that would interest another department or another office would be sent to that office, giving the nature of the information. I reported to Mr. duPont, after I had examined the system thoroughly, that I would not recommend a spying system of that description for use in the black powder business, and we did not adopt it." That was your report to Mr. duPont? A. Yes. 2840

Q. Then, after some discussion on various matters, you are again asked, on page 2077, by Mr. Abbott: "Q. During the time that you were in the employ of these interests, before you went out to establish the Buckeye Company, had the trade report system become an established system in connection with any of these interests? A. Never was used in the black powder interests until after I left, until after Mr. Haskell came over from the Laflin and Rand." Then I asked you: "Q. Can you fix the date? A. Well, it was about February, February 1, 1903, I left." Now, by that testimony you intended us to understand, Mr. Waddell, did you not, that this was such a bad system that it shocked your moral sensibilities; is that what you meant? A. No; not altogether that. I was familiar with the trade bureau system before I ever went to Wilmington and before I made this investigation. 2841

Q. I am talking about your testimony here as to the reports you made to Mr. Eugene duPont? A. I thought it was unreliable.

Q. Oh, then, you didn't think there was anything bad about it, except it might not be certain, might not give accurate information; is that what you mean? A. Yes; too many opportunities for false

statements by irresponsible men who gathered this information.

Q. But you said that you reported to him that you did not approve of such a "spying system as that"? A. Yes.

Q. That was what you objected to, wasn't it? A. Yes; I objected to that prying into men's business.

Q. That struck you at the time you made your investigation as a very undesirable and illegitimate
2843 method, did it not? A. I saw a good many objections to it and I expressed myself further to these gentlemen on it.

Q. What did you say further? A. I told Dr. Alexis I. duPont of the calls that his men had made—the dynamite men had made at my office in Cincinnati. They would come into the office and say that "We are required to visit the magazines of the dynamite companies and make a specific report. Now, Mr. Waddell, I want to go to the ball game this afternoon and I want you to tell me all about the magazines. It is six miles from
2844 here out to your magazines?" "Yes; I have a dynamite magazine under my care." "Where is that located?" "Well, it is on a hillside just below the Hazard." He would stay in the office and what he could get from me and from Mr. Brokaw, our magazine keeper, he would give a voluminous report, giving distances to all the surrounding residences, and then would go to the ball game; and those kind of reports went into the Wilmington office; and I told Alexis I thought they were unreliable and that he had better depend on a service that was superior to that. We discussed it very fully. Q. There is a difference between reliability and the superiority of a service and its propriety. I had understood that you were endeavoring to show that

it was an improper arrangement, Mr. Waddell, and in that regard I would ask you if you did not say in New York, in this testimony, page 132: "And I studied the system pretty closely with a view to recommending it if it was desirable, but it was so obnoxious to me that I refused to be a party to putting it in; I thought it was beneath the dignity of the duPont Company to ever be a party to a business like that." That is the report you made, isn't it? A. That is my judgment of it; yes.

Q. Now, Mr. Waddell, do you recall this testi- 2846
mony that you gave in the Government suit on this subject, Volume 1, page 248, being questioned by Mr. Scarlett: "Q. What do you know of the bureau of information? What was it? A. I know of this bureau of information, that it was invented and perfected by Mr. Haskell as president of the dynamite companies for fighting the dynamite competition. I investigated it and its methods of work. By Mr. Graham: Q. When was that? A. That was in 1902. We used and adopted it in the black powder business." Did you so testify? A. Yes; that was adopted in the black powder business; 2847
that is, I think it was.

Q. Did you so testify? A. I don't know what I testified.

Q. Will you look at the book if you have any doubt about it? A. (Examining book.) Where? I don't find it here.

Q. Right here (indicating). A. When was that; that was 1902?

Q. 1902. In that you say "we"; do you remember saying that you used that in the black powder business? A. I used the word "we"; I say "we," meaning the duPont Company.

Q. Did you use the word "we" or didn't you? A. The word "we" was in there; I suppose I used it. I always speak of myself as being one of them.

Q. You were under oath upon this occasion in October, 1908, weren't you, Mr. Waddell? A. How is that?

Q. You were under oath in 1908 on this occasion when you gave that testimony? A. Yes, sir; I certainly was.

Q. On which of these occasions now in your opinion are you telling the truth, if on either? A. Both.

2849 Q. To whom did you sell the Buckeye Powder Company plant? A. To F. W. Olin.

Q. Did you go to work for him for a year? A. One year for the Western Powder Company.

Q. Now, in this suit, you have testified at some length about the internal affairs of the Western Powder Company, during the year that you worked for that concern, have you not, Mr. Waddell, telling who they sold their powder to, and how they packed it in various kegs of other companies and so forth? A. I have answered the questions put to me, yes.

2850 Q. The information you have testified to here on that subject, you gained while you were in the employ of the Western Powder Company, did you not? A. Yes.

Q. Do you recollect that you were asked in the Government suit, in October, 1908, to testify to those things? A. Not in 1908.

Q. In October, 1908, about a month after you sold out? A. I think that question was asked me —some question in relation to who the Western Powder Company was selling its powder. At that time I was in the employ of the Western, and I think that I refused to give the information.

Q. On the ground that it was improper for you to disclose the business of that Western Powder Company, was it not? A. I think I put it on the ground

that the Western Powder Manufacturing Company was not a party to the dissolution proceedings.

Q. Are they a party to this suit? A. Indirectly, I think they are. Yes, I judge they are.

Q. Is this the way you testified, Mr. Scarlet questioning you: "You may state, if you know from whom the American Powder Mills is now purchasing its blasting powder, and what price it pays for it? A. I do not know all its sources of supply nor what price it pays. Q. You may state of you know this, whether the successor of the Buckeye Powder 2852
Company sells the American Powder Mills any powder, and if so, what price is charged for the same. Mr. Graham: How can he tell that, except by hearl say? The Western Powder Company, you mean. Q. The Western Powder Company, successor to the Buckeye Powder Company? A. I must decline to answer that question. Q. Why? A. I am serving those people and they are not parties to this suit, and I do not think I ought to be required to give away their private business." Did you testify? A. I think I did.

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Q. Whereupon Mr. Mahaffey made this statement, do you recall? "That question is sufficiently connected with the suit in this case to require an answer. I have no power to compel you to answer that question, but if you can answer that question you ought to answer it if counsel desires it"; whereupon the question was re-read, and you said you declined to answer that question, did you not? A. I think I did.

Q. Whereupon Mr. Scarlet said: "I hope you will see your way clear to answer that question. I would not have asked it if I had not thought it material." You declined to answer it, for the reason you gave. "Yes, that is giving away a private matter of people that are not interested here as

clients, or parties to this case, and I do not think I should be called upon to answer that." There was a time, Mr. Waddell, when you had some loyalty to your employers, was there? A. Yes, I had the assurance of Mr. Olin that the du Ponts did not have a thing to do with the Western Powder Manufacturing Co. That it was wholly independent. I was working for the Western Company. It was not a party to the Government suit, and I felt that I ought not to be required to give
2855 that testimony.

Q. When did you discover your mistake and come to the conclusion they did have something to do with it? A. A very few weeks after that. I furnished a lot of powder to the du Ponts from those mills.

Q. You continued to collect for your services from that company, did you not? A. Oh, yes.

Q. Does not your feeling of that sort usually end when you get off the pay roll, Mr. Waddell? A. I am not a slave. I am not hired for life. My ser-
2856 vices end when I quit.

Q. In regard to this powder which you say was packed in the various kegs of various companies, I believe you testified that there was a thousand kegs of powder that had been manufactured by the Buckeye concern, did you not? A. Part of it was kegs and part on the way around the line; yes.

Q. You said that part of that powder was transferred from Buckeye kegs into du Pont kegs, as I recall your testimony? A. Yes.

Q. And it was sold by the du Pont Company, as you understand? A. Yes, that particular shipment.

Q. How many kegs of that? A. 400 kegs.

Q. How many? A. 400.

Q. You have a distinct recollection of that fact? A. That is my recollection of it.

Q. Now, you realize the importance of that testimony in this suit, I dare say, Mr. Waddell, as showing the quality of Buckeye powder and that it was good enough for the du Pont Company to ship out? A. Yes, sir.

Q. You realized it was an important subject? A. I do.

Q. What did you say about it in the Government case? A. In the Government case I do not think I was asked that. I do not recollect it.

2858

Q. After you stopped drawing a salary from Mr. Olin, you soon unbosomed yourself about the business of the Western Powder Company. Don't you recollect that in 1910? A. I did learn a great deal more than I knew.

Q. You did testify then, when you were recalled for the rebuttal two years later, and after you had ceased to draw money from them on the subject of what they had done during the years you had received pay, did you not? A. Yes, I learned they were a unit.

Q. You did so testify? A. Yes.

2859

Q. Do you recall on July 14, 1910, testifying as follows, pages 1088 and 1089 of the rebuttal record: "Who were the purchasers of the Buckeye Powder Company? A. F. W. Olin, President of the Equitable Powder Company and Almon Lent, President of the Austin Powder Company. Q. Who marketed the powder, if you know, which was on hand after you had sold out to the Equitable and the Austin? A. I was manager for the company for a year and looked after that end of the business. The sales business, I suppose that the Austin marketed a certain amount, the Equitable marketed a certain amount and the American marketed a certain amount, did they? A. They all marketed their several brands individually. I marketed the

Buckeye and the Western. Q. Do you know whether the du Pont marketed any of the powder? A. They sold about 20,000 kegs. Q. How do you know it? A. I saw it packed in their kegs. We packed it in all the kegs, all the powder companies, American, du Pont, Western, Buckeye, Equitable and Egyptian. Q. Was the powder which was on hand and which was Buckeye powder at the time the Buckeye Powder Company was sold, marketed
2861 or put up in the different kegs of these companies for these purchasers, under their brands and sold as theirs? A. No, sir, that is a mistake. Q. What was the fact? A. The powder that was on hand at the time was in Buckeye kegs. At the time of the sale, about 5,000 kegs on hand that went into the sale of Buckeye or that were sold in Buckeye kegs. Powder that was made by the Western Manufacturing Company was sold in kegs of these other companies." Did you so testify at that time? A. Yes, but I went to the magazines personally and transferred 400 kegs from Buckeye
2862 kegs into du Pont kegs, and it went to the Norris Coal Mining Company of Norris City, Ills., on a du Pont order, and my reason for following it personally was that I had had Buckeye powder returned by the Norris Coal Company, 10 kegs, I think, that they could not us. I wanted to know whether it was the fault of the powder or whether it was prejudice. I transferred that, or stood by and saw it transferred. Now, I do not know whether that was the powder that was packed in Buckeye kegs at the time of the sale to Olin, or whether it was the powder that came around the line, later, and was put into Buckeye kegs, but a part of it, that 400 kegs was transferred. I was not asked in regard to that.

Q. Then your testimony in this Government rec-

ord was not correct, was it, Mr. Waddell, to the effect that there was a mistake, and that it was only the Western powder that was shipped in those kegs? That was what you said here. Had you forgotten this incident and your particular purpose in going through that operation in 1910? A. My attention was not called to it.

Q. You had forgotten it in 1910? A. I do not know that I had forgotten it.

Q. Would you have testified in this way, with that incident in your mind, in 1910? A. It did 2864 not occur to me. No one asked me the question.

Q. You were asked the question specifically that I have just read to you: "So that the Buckeye powder which was on hand and which was Buckeye powder at the time the Buckeye Company was sold, was marketed, or put up in the different kegs of these companies, for those purchasers and under their brands was sold as theirs. A. No, sir. That is a mistake. Q. What was the fact? A. The powder that was on hand at the time was in Buckeye kegs. At the time of the sale there were about, 2865 say, 5,000 kegs on hand that went into the sale of the Buckeye, or that were sold in Buckeye kegs. The powder that was made by the Western Powder Manufacturing Company was sold in the kegs of these other companies." A. There is one mistake there that I want to call you attention to. We did not have any 5,000 kegs on hand.

Q. I know that. Did you not so testify at that time? A. No, sir, I think that is a mistake in the print. I knew I had the invoice of what we sold. We only had $5,500 worth of stuff, all told, in the plant.

Q. We are not discussing that part of the statement. A. You are calling my attention and asking me to approve it. I cannot do it.

Q. I am not calling your attention to that part of the statement. You stated a minute ago you were not asked on this subject as to selling Buckeye powder in du Pont kegs. A. I was not asked as to the transfer of those 400 kegs. I had reference to the general proposition that the Buckeye powder and the Western powder was sold in their own kegs, and that the powder that was made by the Western Powder Manufacturing Company was sold in the kegs of the other company, and it was
2867 some little time before we received those kegs—the blanks, the empty kegs.

Q. And that testimony that was given within a year and a half after the time of this incident, where you went to the storehouse and personally superintended the transfer of this powder from Buckeye kegs into du Pont kegs, is that true? A. I recall the circumstances.

Q. Was it within a year and a half of the time you gave this testimony? A. Yes. I would like to say in further explanation of that, that Mr. Olin
2868 had, before I gave this testimony—had furnished a letter to the Government, giving a full statement of all the powder that was shipped from the Western Powder Company's mills, packed in the kegs of these other companies, and that released me entirely.

Q. Released you from what? A. From any obligation not to give this information.

Q. Did it release you from telling the truth as to the transfer of powder from Buckeye kegs to du Pont kegs? A. That question was never asked me.

Q. You say that in the face of this record, that the question was never asked you as to whether Buckeye powder was transferred into du Pont kegs from Buckeye kegs? A. No; the subject never came up.

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Q. That is all the explanation that you have, is it? Have you any other explanation? A. No other.

Q. Just one more question. You yourself, when you were operating the Buckeye Powder Company, when you sold powder to other parties, took their kegs and stamped their names on them, didn't you, Cerberite and Egyptian? A. The Egyptian furnished their own kegs. Mr. Olin furnished the Egyptian kegs.

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Q. You stamped the company to whom you were selling the powder—the name on the keg? A. I did not do it.

Q. It was done in your shop, and you knew it? A. It was not done in our shop. We bought our kegs outside.

Q. Did you not so testify the other day here on the stand? A. No, I think not.

Q. Did you not say we furnished their kegs, but we had a die made for them, and stamped them Cerberite—sold them in that way? Did you not so say the other day? A. Yes.

2871

Q. Page 3643? A. We bought their kegs from Stuber & Koch Company in Peoria, and had a die made for them. Instead of stamping them with Buckeye, we put them with Cerberite on. The Egyptian furnished their own kegs.

Q. Put out at your factory, so that when they left your shop, they had the mark of the Cerberite Company or Egyptian Company on them? A. Those shipped out from Peoria, and we filled them at the plant.

The defendant's exhibits for identification marked S-1 to S-12, inclusive, the same being letters written by D. Simpson, Purchasing Agent of the Western Coal and Mining Company of St.

Louis, Mo., to R. S. Waddell, President of the Buckeye Powder Company, Peoria, Illinois, were offered in evidence by Mr. Button, without objection.

Defendant's Exhibit S-10 was read to the jury as follows:

St. Louis, Mo., June 6, 1904.

Buckeye Powder Co.,
Peoria, Ill.

2873

Gentlemen:

Referring to your recent visit here when the matter of the Powder contract of this company was discussed. I understood you expected to submit a proposition covering our supply within a few days.

I have heard nothing further from you in regard to the matter and before taking definite action I would be glad to have you advise me whether or not you feel disposed to make us a proposition.

Kindly give this matter your early attention.

2874

Yours truly,

D. Simpson,
Purchasing Agent.

Defendant's Exhibit S-1 was read to the jury as follows:

St. Louis, May 7, 1905.

Mr. E. C. Burroughs,
G. S. A. Buckeye Powder Co.,
717 N. Fourth St., City.

Dear Sir:

I desire to inform you it will not be possible for me to accept, on the part of this Company, the

proposition submitted by you on our powder business for the ensuing year.

Will you kindly convey to your President, Mr. Waddell, and accept for yourself, my thanks for the interest which you have taken in this business. I hope your efforts in securing this business may be more successful at some later time.

Yours truly,

(Signed) D. Simpson,
Purchasing Agent. 2876

(Contracted at 95c. Burrows.)

Q. Can you tell us, Mr. Waddell, what was the proposition that you submitted in May, 1905, that Mr. Simpson refers to in this letter? A. I did not submit any. Mr. Burroughs may have submitted one.

Q. Then you don't know? A. I don't know.

Q. I desire at this time to call your attention to the contract which has already been introduced in evidence as Plaintiff's Exhibit 1027, being a contract between the Explosives Supplies Company and the Western Coal and Mining Company under date of June 20, 1904: It states: "This contract is for a period of two years from July 7, 1904, to July 7, 1905, at the following prices: $1.10 per keg, f. o. b. cars at their mines in Missouri; $1.12½ per keg f. o. b. cars at their mines in Kansas; or $1.10 per keg if delivered from local mills; $1.15 per keg f. o. b. cars at their mines in Arkansas and $1.25 f. o. b. cars at their mines in Indian Territory." And this further states that it is for 50 per cent. of the black blasting powder in kegs of 25 pounds each required for use in the mines owned, leased or controlled of the second party. There- 2877

fore, when this letter I last read was written by Mr. Simpson to Mr. Burrows in May, 1905, the duPont Company already had a contract with this concern for 50 per cent. of its requirements. Did you know that fact, Mr. Waddell? A. I was talking about the Consolidated Coal Mining Company of St. Louis, and you are talking about the Western Coal Mining Company. They are seperate institutions, I believe.

2879 Q. Very good, but the Western Coal Mining Company, however, was under contract to take 50 percent of its supply from the du Pont Company at that time. Did you know of that fact? A. I do not think I did. I do not think I knew anything about the Western.

Q. Then that was one of the contracts the du Pont Company had that you did not keep track of, Mr. Waddell? A. I don't think I knew of that contract.

Defendant's Exhibit S-5 was read to the jury as follows:

2880

St. Louis, Mo., Oct. 9, 1907.

Mr. R. S. Waddell, Pres.,
Buckeye Powder Co.,
Peoria, Ill.

Dear Sir:

I have your letter of the 8th, with reference to our order No. 6541 for two carloads of powder.

I find that including this order you will now have requisitions from me for four carloads of powder. The situation in our Kansas Field has been desperate. The miners where your powder is wanted refused to use any other and in the absence of your powder our mines were closed down for

three days during the past week. The miners realizing the fact that we were in no wise to blame for this shortage have resumed work using du Pont Powder. I give you this information so that you will see the necessity of immediately making shipment of some more powder on our orders. . . .

I would like you to consider the order for the two cars which you have just received as being our monthly order for powder, and would ask that you ship the other two cars just as quickly as you possibly can. The last car, which you shipped to us, has, of course, not yet reached there. I wish on receipt of this letter, you would advise me on what dates you expect to be able to make shipments. 2882

Yours truly,

D. Simpson,
Purchasing Agent.

Q. Now, at this date, October 9, 1907, was during the time you were furnishing the 12,000 kegs at a price of $1.08½ that you testified to on Friday, was it not? A. Yes. 2883

Q. And refreshing your recollection by this letter, it was true, was it not, that your powder was very slow in coming that the mills of Mr. Simpson had been closed down for three days on that account; is that true? A. That is the statement in that letter.

Q. Have you any doubt of it from your knowledge of Mr. Simpson and the conditions down there? A. What is that?

Q. I say, have you any doubt of it from what you knew of the trade? A. No; I have no doubt of it.

Q. The next letter is S-9, dated October 15, 1907, addressed—to begin with, this is a carbon copy,

but the original of it is signed by you as president, is that right, Mr. Waddell? A. I presume it was; it was with the first ones.

Defendant's Exhibit S. 9 was read to the jury as follows:

October 15th, 1907.

Mr. D. Simpson, Purchasing Agent,
Western Coal & Mining Co.,
2885 Dolph Building,
St. Louis, Mo.

Dear Sir:—

I have just returned from Chicago, where we had a conference regarding the Kansas business. I also have letters from the miners, one of them requesting copies of letters that we have writtn your Company. I had only one under date of the 10th of September, which was a circular letter calling attention to the car shortage that was beginning to manifest itself and suggesting that orders be placed in advance.

2886

There seemed to be a disposition to criticise your company or a suspicion that there might not be good faith and I thought it best to remove all cause of this kind. I enclose you copy of our letter to the Secretary of the Local Union. I have also written Mr. Howat suggesting the better plan would be to let us serve your two mines and drop the balance of the Kansas business for the present. To this I think Mr. Howat will agree and he seems to suggest this course. We only have two other orders for Kansas and those can be laid aside. Our slate is about clear of FF and we could very readily take care of all the demand for our brand at your two

mines. I hope to have another carload ready to forward to you by Thursday of this week This seems to me the better course to pursue and I hope it meets with your approval.

Truly yours,

Buckeye Powder Co.,
President.

Q. Now, then, therefore, on October 15, 1907, you 2888
were suggesting to Mr. Simpson that you drop part of his business, Mr. Waddell, because you could not fill his orders, were you not? A. Yes; that is the letter.

Q. Therefore, in putting the Western Coal & Mining Company among the list of consumers whom you approached with a desire to make contracts and failed, that was hardly the list that he should have been put in, was it, Mr. Waddell; you already had his business and voluntarily gave it up as I understand it now? It should not have been on that list, should it? A. I did not voluntarily 2889
give it up. I could not fill orders that came to me; that I was crowded with orders for FF, Montana, and many other points. The trade came unsolicited by me, came over the long distance phone, and there was an order for a big bunch of carloads immediately for one special sized grain. It took me by surprise and I could not supply that one, in addition to the other orders.

Q. Do you know where the letter is that you wrote to some officer of the local union that you referred to in this Exhibit S-9? A. I suppose that officer has it.

Q. Did you keep a copy of it? A. I may have done so: my attention was called to it, and I do

not know the officer's name. I may have some letters to Howat. I will search for them and see if I have.

Q. I was going to ask you who Mr. Howat is? A. Mr. Howat I understand, is the sub-district president of the Miners' Union of Southwest Missouri.

Q. So that you were personally corresponding on this subject with various officers of the union? A. I answered their letters when they wrote to me.

2891

Defendant's Exhibit S. 6 was read to the jury as follows:

St. Louis, Mo., Oct. 16, 1907.

Mr. R. S. Waddell, President,
Buckeye Powder Co.,
Peoria, Ill.

Dear Sir:

2892 I beg to acknowledge receipt of your letter of October 15th, with reference to the situation regarding the powder at our Kansas mines.

I note your suggestion with reference to the feeling regarding good faith on the part of our Company, and I am perfectly free to confess, that this feeling has been evidenced all along since we agreed to furnish Buckeye Powder. You know, as well as I, that there is absolutely no ground for such a feeling on the part of the men, so far as either of us are concerned. We immediately placed orders with you for your powder, and as you know have done everything in our power to secure prompt filling of them, knowing that this feeling existed, based, I am at a loss to know, just upon what grounds, and further that a statement had been

made that information had been received in that locality that your Company had increased its capacity 1,500 kegs per day. I did everything that I could to remove this feeling, going so far as to furnish our superintendent with copies of our correspondence. This was insufficient for the officials of the miners as is evidenced by the fact that they had the matter up directly with you and solicited copies of the correspondence between our Companies, evidently doubting the accuracy of those which I had furnished. I am very sorry to note 2894
that you were unable at the writing of your letter of the 15th to Mr. Wells to find your letter to me of Sept. 25th, as this letter was one of those, copy of which I forwarded to our superintendent, and I now inclose herewith copy of that letter to you, and I would esteem it a favor if you would, upon receipt of this, write Mr. Wells as indicated in your letter you would do upon finding the letter.

I note your desire as evidenced in the last paragraph of your letter to remove any feeling that our Company has acted in any other but good faith.

I realized when we offered this business to your 2895
Company that you had other contracts of a prior date, which naturally and very properly you would have to take care of, and which would take precedence over ours. This is only a business proposition and had the cases been reversed, I should certainly have expected you to give our Company's orders preference over others taken subsequently, so that so far as your position is concerned in my opinion it is absolutely correct.

The miners are not sufficiently versed in the manner of the production of powder and the necessity for taking from an available output a certain percentage of other sizes, as perhaps they look upon the production of a size of powder in about the

same way as they look upon the production of coal, and assume that because a mill may have a capacity of 1,500 kegs per day that that entire amount is available for their orders.

However, I believe, with the light which you have thrown upon this matter, they will realize the difficulty under which we are both working, and I hope that between us we may be able to have this business conducted smoothly from now on. The results so far have certainly proven very disastrous
2897 to our Company for the reason that these mines have been idle a considerable portion of the time from lack of powder supplies.

Yours truly,

D. Simpson,
Purchasing Agent.

Q. Now, somebody told them down there, both men and Mr. Simpson, that you had a capacity of 1,500 kegs a day, Mr. Waddell? A. I do not know
2898 anything about that.

Q. You don't know anything about that; you hadn't written them any letter similar to the one you wrote the East Cuba, had you? A. I had not solicited the trade in Southwest Missouri.

Q. Had you sent copies of these circulars down there, this advertisement which you got up? A. No.

Q. This is one of your advertisements, isn't it (showing witness)? A. Yes.

Q. In which you state you had a capacity of 35,000 pounds a day, or 1400 kegs; do you remember stating that? A. Yes; we made 1400 kegs a day.

Q. Right along? A. Yes, sir; several days in succession.

Q. That is what you meant when you said the Buckeye mills had a capacity of over 35,000 pounds of high quality powder per day? A. *Yes.*

Q. You were talking about a couple of days? A. No, several days; I was talking about capacity and not output.

Q. Both the miners and Mr. Simpson subsequently found out that you had only 800 or 1,000 kegs a day, and upon that statement as a salesman, would you say that would tend to foster your business and increase it? A. You would have to understand 2900
the conditions under which we were laboring at that particular time. A sudden call for one specific grain out of six—a keg of powder is broken up into six sizes, and there may be an unusual demand for one size and no demand for the other. My magazine may have been half full of powder or full of powder.

Q. Now, I am not talking about the difficulties you had, Mr. Waddell. I am talking about this representation you made to the trade. I am asking you, as a salesman, if it would not tend to de- 2901
moralize your business to make statements of that sort to your customers, they relying on them, to get supplies of powder, and subsequently to find them to be untrue? As a salesman, wouldn't you say that? A. The Western Coal Mining Company was not a customer of mine.

Q. Won't you answer the question, Mr. Waddell? A. No——

Q. It wasn't——

Mr. Abbott: He wanted to make a statement. I think he is entitled to make it.

The Court: He was not responding. He was not responsive.

The Witness: Of course, I would like to explain that answer.

2902 *R. S. Waddell—Cross*

The Court: You will have an opportunity.

Mr. Button: He will have an opportunity on re-direct to make an explanation.

Q. The next one, Exhibit S-7, September 25, 1907, which is the letter that Mr. Simpson enclosed to you, or a copy of it, which you have been unable to find, addressed to the local union, was as follows:

2903 Peoria, Ill. Sep. 25, 1907.

Mr. D. Simpson, Purchasing Agent,

Western Coal & Mining Co.,

Dolph Building,

St. Louis, Mo.

Dear Sir:

2904 We have your order #6516 for one carload of powder to be shipped to Yale, Kansas. We expect to forward another car to you the latter part of this week. We note your request that we book you for 2000 kegs per month for Mines No. 11 and 13.

We think after the 30th inst. the demands of our regular contract trade will have been satisfied and we will be in better position to take care of this trade. The difficulty in obtaining cars, combined with the excessive demand of our regular trade has been taxing us to our utmost capacity, and while we carry a large stock of powder at all times, this stock is graduated through the various sizes of grain, together with special or intermediate sizes which we manufacture for special trade. Contract trade which has been regu-

larly calling upon us for two carloads per month, have with the increased activity in business, been specifying four and five carloads a month and we have felt obligated to take care of this trade in preference to all other. However, we will do our best to take care of you to the extent of 2000 kegs per month as per request.

Thanking you for this order, we remain,

Very truly yours,

2906

Buckeye Powder Company,
R. S. Waddell Jr.
Treasurer.

Q. On September 25th, 1907, business was pretty good with the Buckeye Company, wasn't it, Mr. Waddell? A. With our contract trade at that particular time, it was.

Q. And this letter was written within a month of the time you wrote Mr. Coyne a statement to the effect that it had been the policy of your company for the year past to run it only 40% capacity 2907 for the purpose of filling unsolicited orders, was it not? A. Yes, we were running about forty per cent.

Q. And both that letter and this letter are absolutely true? A. Yes, both of them.

Q. The next Exhibit S-8, October 17th, 1907: "We have your favor of the 16th inst. and enclose herewith carbon copy of our letter this date to Mr. Oscar Wells, Yale, Kansas, which fully explains itself." But the letter to Mr. Wells seems to be missing. Do you know where that is? A. No, I do not.

Q. Have you any knowledge why these files are not complete, Mr. Waddell? A. Yes, there is about 90 per cent of them in Peoria.

2908 *R. S. Waddell—Cross*

Q. Under your filing system, you have all the correspondence on this subject in one file, wouldn't you? A. We had them in books.

Q. Wouldn't you have them all in one file? A. Well, they would have been under one letter. That "W" would be under "Wells," in our system of filing.

Q. Are you sure you haven't seen any of that correspondence between yourself and this labor union lately? A. No; I have not.

2909 Q. The next is S-11, December 2nd, 1907, from Mr. Simpson to the Buckeye Powder Company, Peoria, Illinois: "I desire to acknowledge receipt of your letter of Nov. 30th, and note that you expect to forward us a carload of Buckeye Powder about Dec. 6th or 7th, and to follow this with another car in four or five days later. It is not my wish to cancel any orders, which you have, it being understood that you will continue to ship us a minimum of two carloads, or 2000 kegs per month until further advised. The only reason I

2910 had for asking for specific information regarding those orders was so that I would be in a position to advise our men in the Kansas District just what to expect. We want to use your powder, but we must get more prompt shipments, as otherwise depending upon getting Buckeye Powder our mines are liable to be idle on account of not receiving it. I would like, therefore, that you should make a special effort to make the shipments at the times mentioned." Were you selling nitrate on December 2nd, 1907? A. No; not at that time.

Q. The next one is S-12, dated January 6, 1908, from Mr. Simpson to yourself: "I am receipt of your letter of Jan. 4th, and note the reasons given therein for delay in shipment of our powder orders." I note that that letter from him to you is

missing. You don't know where that is, the one in which you give the reasons why you delayed the powder? Haven't you seen that lately? A. Is that a carbon letter?

Q. Yes. A. No, I have not.

Q. (Reading): "I hope that you will be able to make a very early shipment of at least the carload, which you had expected to start on the 25th ult. Our men in the Kansas district are getting very restless on account of not being able to get any Buckeye powder, and I fear that the delays occa- 2912
sioned and the necessity for using substitutes will result in their finally determining not to use any more of your product. Will you kindly do everything possible to make an early shipment?"

Q. The next one is S-2, June 15th, 1908, from Mr. Simpson to yourself: "Under date of June 10th, I wrote you as per copy of letter transmitted herewith. I had expected to have had some reply ere this, but not having heard, I think possibly my communication may have been missent. Will you please favor me with a reply at your earliest con- 2913
venience?"

Q. And the copy of his letter of June 10th to which you have not replied, is S-3, June 10th, 1908, as follows: "Our present commitments in the way of powder contracts, covering our supplies for Kansas, will expire within the next two or three weeks. It has occurred to me that possibly you would like to secure that business and my object in writing you now is to suggest that if my surmise is correct, I would be very glad to receive from you a proposition covering our requirements in that field for the next year. You furnished us during the year ending March 31st, 11,000 kegs and our annual requirements for that field will approximate 55,000

2914 *R. S. Waddell—Cross*

kegs in all. It is almost unnecessary for me to say to you that this business was taken away from the Du Pont Company two years ago and was awarded to the Excelsior Powder Mfg. Co. The Du Pont Co. have ever since that time made persistent efforts to secure the re-introduction in that field of their product, and if we could arrange matters so that you could make me a price, which would prove attractive, I know of no reason why your Company should not secure this business. All
2915 we are required to do under our contract with our men is to furnish them with a standard quality of powder of the size known as FF. Will you kindly give this matter your early consideration and if you deem it necessary, I would be very glad to see you personally to go over this matter more in detail."

Q. Now, from that letter, Mr. Waddell, you will observe that the Excelsior Powder Manufacturing Company had been supplying this concern ever since the expiration of the contract with the Ex-
2916 plosives Supplies Company, that I called your attention to a moment ago, did you not, is that correct? A. 1906 to 1908?

Q. Yes. You will recollect that the contract with the Explosives Supply Company was for two years, from July 7th, 1904. Therefore, it expired July 7, 1906. Therefore, it is true, is it not, that from July 7th, 1906, to June 10th, 1908, the Excelsior people were furnishing that powder upon a contract which was about to expire after that date? A. Yes sir, but it does not appear it was all. The Explosives Supply Company only had fifty per cent interest in the business.

Q. Very good. A. And it does not appear who had the other fifty per cent. Neither does it appear what proportion the Excelsior Company had.

Q. The Excelsior Powder Manufacturing Company was located where? A. Holmes Park, Missouri.

Q. You have not yet claimed the du Ponts had anything to do with that, have you? A. Well, I cannot prove it—I pretty nearly know it.

Q. That would not prevent you from claiming it, Mr. Waddell. Now, before that I will read this last letter which seems to be unimportant. (Defendant's S-4 was thereupon read to the jury as follows:) 2918

"Upon my return to the office on yesterday, I found your communication of the 3rd. I am leaving again today for an absence of some weeks and will not have an opportunity to do anything along the line suggested in your communication until my return, when, if matters are at that time in the same shape as at present with both of us, I will be glad to go into the matter more fully."

Q. You stated on Friday that you did not know whether the du Pont had a contract for this powder during those two years, and you did 2919 not want any such inference drawn from what you had said on your direct examination. You also testified that when you came to make your deal with Mr. Simpson to sell him powder at $1.08½ in 1907, he kicked a good deal because he stated he was getting his powder at 97½ cents. Do you recollect detailing the conversation you had with Mr. Simpson over the long distance telephone the other day? A. Yes, sir, that was in 1908—1907.

Q. 1907. While you were furnishing this $1.08½ cents powder? A. Just prior to that.

Q. As I recollect your statement it was that you furnished him 12,000 kegs? A. Approximately 12,000 kegs.

Q. Approximately, 12,000. Now, in answer to certain questions on your direct examination, in reference to this trade, page 3896, you testified as follows in answer to questions of Mr. Abbott in regard to this concern, having stated that your deals with Mr. Simpson, that is, general purchasing agent, and Mr. Keyes, who was the president of the Central Coal & Coke Company, of Kansas City, you said: "Q. Now, proceed and state within the ruling of the Court the facts in connection with
2921 that matter. A. I offered to contract with them and they stated they were already under contract. Q. Did you at any time offer to contract with them when they were not under contract? A. I never knew them when they were not under contract except the Western, when I bid on their proposition. Q. About what time was it that this occurred, this bidding on the Western business? A. They gave opportunities, solicited bids once a year. They renewed their contract yearly. Q. Can you state at this time what you offered to furnish your powder
2922 for? A. The prices varied according to the delivery points. I quoted as low as 98 cents delivered in Illinois and $1.20 delivered in Arkansas. Q. You mean delivered to their mines in Illinois? A. Delivered to their mines in carload lots. Q. Illinois and Arkansas? A. Illinois and Arkansas. The freight rates to their Western mines were heavier. They contracted at 97½ cents and I sold them at $1.08. Mr. Katzenbach: I object. By the Court: Q. (To the witness): Contracted with you? A. No, sir. The Court: Strike it out. By Mr. Abbott: Q. Do you know anything about this matter of whom they contracted with, of your own personal knowledge? A. Yes, sir. Q. State what the source of that knowledge is. A. I sat in an

adjoining room in Mr. Simpson's office when my brother called on him, representing the DuPont Company, with Mr. Spicer, and I conferred with Mr. Simpson in one room while my brother was conferring with him in the other, and I knew the proposition. Q. Was it at this time that peace contracts were made that you indicated? A. Yes. One of them. Q. Do you know what the price was which was made by the duPont Company, as represented by your brother and Mr. Spicer? 2924

That is the testimony, Mr. Waddell, concerning which you stated on Friday that you did not care to let us draw any inference to the effect that the du Pont Company made any contract with Mr. Simpson at 97½ cents. A. That refers to the consolidated trade in Southern Illinois. I don't want you to draw any inference except what I said there.

Q. You were talking about the proposition you made the Western Company, Mr. Waddell, which was the only trade open and not under contract, which you stated, as I have read, did you not? A. Mr. Simpson was general purchasing agent of both 2925 the Consolidated and Western, the same office.

Q. Won't you answer the question? Didn't you state that was the only open trade, that the rest was under contract. Haven't I just read that and didn't you so state? A. I do not think that was what I meant, the language you have just used.

"Q. Did you at any time try to contract with them when they were not under contract? A. I never knew them when they were not under contract, except the Western, when I bid on their proposition." Did you so testify? A. I bid on the Western proposition.

Q. Did you so testify? A. I think I did. I bid on the Western, and I also bid on the Consolidated.

Q. Then, further, in reference to this matter, Mr. Waddell, have you any recollection at all as to what you said about it in the Government case? A. No, I haven't.

Q. Did you testify in 1910 as follows: "The Western Coal Mining Company of St. Louis, with mines in Southwest Missouri and Southeast Kansas took 20,000 kegs approximately from us during 1908 at $1.12½ as against 97½ cents under con-
2927 tract with the du Ponts." Did you so testify? A. I do not know what I testified to then.

Q. Will you look at that record and state whether you so testified in 1910? A. My testimony was given I think in the east somewhere. I was away from my books and I was giving my best recollection on what it was at that time.

Q. Did you so testify? A. I presume I did if it is in the book.

Q. In this statement there seem to be four things that were not true. You did not sell them anything in 1908, did you? A. Yes.

2928 Q. When and where? A. I sold them continuously along through, I think the last was in June, 1908. The books will show what it is.

Q. Do your books show it? A. I presume they do, yes, sir; I am pretty sure of it.

Q. You say you did sell some in 1908. The next thing that is not true in here, Mr. Waddell, is that you sold them 20,000 kegs approximately. That is inaccurate? A. That was my recollection. I did not have my books with me. My books were in Peoria.

Q. No matter where you were, that was inaccurate? A. I was giving my recollection, what I thought.

Q. Was that inaccurate? A. I do not know

whether it was inaccurate or not. I haven't looked at the books here, or looked them over.

Q. So you don't know now what you sold, although you have testified here for three days. Is that what you mean? A. I said we sold approximately 20,000 kegs. That is my recollection, but it has been refreshed a great deal since I testified there.

Q. This was in 1910, within two years of the time? A. Yes, but I have been going over these books in the last few months very many times. 2930

Q. Do you know anything about what you sold; whether it was 12,000 kegs or 20,000 kegs? A. It was nearer to 12,000 kegs than 20,000; approximately 12,000 kegs.

Q. This is inaccurate, that you sold 20,000 kegs? A. I say that was my recollection at the time.

Q. But it is inaccurate? A. I think it is inaccurate.

Q. Your next statement here is that you sold at $1.12½ cents? A. Yes, sir.

Q. Now, your statement is that you sold at $1.08½? A. $1.08½. 2931

Q. Therefore, this is inaccurate? A. That was my memory only.

Q. That was inaccurate? A. That was inaccurate.

Q. Then your statement here as against 97½ cents under contract to the du Ponts was inaccurate, was it not? A. I do not know whether it was or not.

Q. Don't you know it from the letter here, to Mr. Simpson, here, that you have had in your possession all the time, so that you well knew that powder was under contract to the du Ponts, had been taken away from the du Ponts by the Ex-

celsior Powder Company two years before, didn't you know that fact? A. I knew Simpson's statement, but I also knew from their reports that they were furnishing them powder under contract.

Q. From what reports? A. The ones you furnished here, I have been looking over them this morning.

Q. When were we furnishing them under contract? A. Yes; you were under contract several times.

2933

Q. When did you discover we were under contract, this morning? A. No, not the first time; I knew you were furnishing the trade; there was a division of it between the Equitable, the du Pont and the Excelsior. Part of the time du Pont and Equitable had it alone.

Q. So now you do know that we had a contract at this time? A. I do not know about the time; I would not give you the date.

Q. Didn't you testify here on Friday that you didn't know anything about it, as to whether we

2934 had a contract with the du Pont Company at the time of this conversation, either before or afterwards, that you detailed, between your brother and Mr. Simpson? A. You asked me if I knew that that contract was made at that time and I don't know yet.

Q. And you further—— A. I don't know yet that it was.

Q. You further stated you did not know they ever made a contract after that conversation, didn't you? A. No.

Q. On Friday? A. I do not think I stated that.

Q. You did not state that? A. I do not think so.

Q. Now, let us see. (Reading): "Did you see the contract signed? A. No, I did not. Q. You

heard it agreed that such a contract should be signed? A. No, I do not think I heard that. I merely heard the figures discussed. Q. Now, I suppose you wished the Court and jury to understand by your testimony yesterday, that the du Pont Company closed that contract at 97½ cents, did you not? A. No, I do not want to say that I saw a contract made or signed, or anything else. I don't know whether they made that or not. Q. Possibly not, but you understood that that was what would have been understood by us all, from 2936 what you stated, did you not, yesterday? A. I hope not. Q. You had no such idea in view? A. I just gave you the figures that I heard discussed, and whether they made the contract or not, I do not know. Q. Therefore, as a matter of fact you don't know whether he ever did make that contract or not. A. No, I do not—yes, if you will let me tell you what I do know I can give you that?" Is that what you said here on Friday? A. That is what I said, but I did not say they never made a future contract.

2937

Q. Then, on page 4059, didn't you say: "Q. Then you don't know anything on that subject either directly or indirectly or from hearsay, as to whether they made a contract? A. Only that Mr. Simpson told me that he had made a contract, at some time; whether it was that one or a subsequent one I do not know, with the du Pont Company, and he had also contracted with the Excelsior, and I don't know which year it was. Q. And you cannot tell whether that was a contract previous to this conversation with your brother or subsequent? A. No, sir; I don't." Didn't you testify on Friday you did not know that we ever had a subsequent contract at all? A. Is that what I say there?

Q. It is. A. I could not understand that.

Q. You just say here that you did not know anything about it and then you said you had a conversation with Mr. Simpson and then you admitted you did not know whether it referred to a previous or subsequent contract? A. Only that Mr. Simpson told me that he had made a contract at some time.

Q. Yes, and you state—— A. Whether it was that one or a subsequent one, I do not know. He told me in that letter that the du Pont Company
2939 and he had made a contract with the Excelsior, and I do not know which year it was. That is exactly what I am saying here today.

Q. The point I am trying to bring out is that when you testified in the government suit that the du Pont Company had a contract at 97½, you did not know anything about it, did you? A. I do not know that I specified any time that they had it. I testified in New York to my best recollection of matters that were in Peoria and that I had looked at for years.

2940 Q. You will at least admit that you are a little reckless in your testimony when you are on the stand, won't you, Mr. Waddell? A. No.

Q. You won't. You well understood in this Government proceeding that that would be a rather startling statement, that you got a contract with the Western Coal Company, or furnished them powder at $1.12½ as against the du Pont Company, who were furnishing them under a contract at 97½ cents. You knew that was a startling statement, didn't you? A. No, it is not a startling statement, that price netted me, $1.08½ netted me at the mills no more than the du Ponts were getting for theirs at the Kansas Mills. The freight made up that difference between 97½ cents and $1.08½.

Q. But that did not make any difference to the

consumer. The startling part of the statement was that that concern was willing to pay you $1.08½ for powder when they could get it from the du Ponts for 97½ cents, wasn't it? Didn't that strike you at the time as a startling statement? A. No.

Q. It didn't. I suppose you were selling powder right along at some 11 cents to 12 cents above what the du Ponts were charging, didn't you, Mr. Waddell? A. I have testified previously, and there was a great deal of testimony on the fact that my mills were at Peoria, Illinois, and the du Pont mills were 2942
at Pittsburg and Kansas right where these mines were located, within six or eight hundred miles away.

Q. I am willing that you make any statement that is pertinent, but what difference did it make to the customers where the mines were in that regard, I am questioning you about. They paid you, according to your story, $1.12½ when they were getting it at the time at 97½ cents, 15 cents advance on your powder. You thought that that was reasonable at that time, did you? A. The 2943
customer did not buy of me because he wanted to. He bought of me because he was compelled to. The miners held him up.

Q. They didn't want your powder at all as a matter of fact? A. And I did not want the business in Kansas. I did not desire it at that time. I did want the business on an open contract basis.

Q. Now, as a matter of fact, don't you know that after this correspondence, within a month or two, the du Ponts came along again and got a contract at $1.10, $1.15, $1.20, $1.25, depending on the location of the mines in 1908, and that was the only contract they had since the Excelsior got the business away from them in 1906? A. No; I do not know that.

Q. I call your attention to a contract produced

2944 *R. S. Waddell—Cross*

in evidence, 962, dated July 24, 1908, between the Western Coal & Mining Company and the du Pont Company, which seems to provide that the du Pont Company sells all future requirements of coal mines located in the states of Missouri, Kansas, Arkansas and Oklahoma at the following places:

Kansas operation, price seems to be $1.15 for 25 pound kegs, and 65 cents for 12½ pound kegs; the agreement being that the du Pont Company shall make an allowance of five cents each to the party
2945 of the second part for empty kegs of its own manufacture. That is for the Kansas operation.

For the Missouri operation: In 800 keg lots, 25 pounds each, at $1.15; for the Arkansas operation, in 800 keg lots, at 25 pounds each, $1.25; and for the Oklahoma operations, in 900 keg lots, 25 pounds each, $1.25. That appears to be the fact, doesn't it, Mr. Waddell? A. I will accept your reading of it; they ought to get that.

Q. On Friday I questioned you about where you obtained $17,000 above the amount of your capital stock, which you say went into the cost of your
2946 plant, and you testified as follows: "Q. Where did you get that $17,000 above your capital stock? A. My recollection is that we made a profit the first year of something like $12,000 in the business, and we never paid it out. We used it; it went into our plant and we had a current indebtedness additional to the direct loans, permanent loans from banks. Sometimes our indebtedness would run $25,000 or $30,000. We were using that capital." And then I stated that I would call your attention to what you had stated on that subject in your testimony in New York. Did not you testify as follows, in New York: "Q. Where did you get the balance of the money, was there a mortgage? A. No; no mortgage. Some of our stockholders were wealthy men and bankers, and we thought we could increase our

capital from $55,000 to $100,000. It was known that all of it was to go into the plant. It rated our capacity at about 1,000 kegs per day and it would require all of that capital. Then there was a question as to whether we should increase our capital to $200,000, to give us a working capital, or whether the stockholders should supply that working capital. Our people at Cincinnati were officers of very large banks, and they were of the opinion that it would be better to keep our capital down to $100,000 than to take the money from the banks at 2948
Cincinnati," etc. Did you so testify? A. Yes; that is that permanent loan that we made for $52,000.

Q. Therefore, you did get $17,000 from a loan? A. I testified the other day that we made a permanent loan of $52,000. Now, whether any particular one dollar bill out of the earnings or not, or whether it was out of the current business, I do not know what made up the $17,000.

Q. Well, you testified that you made $12,000 the first year. You recollect testifying as follows in New York at page 88: "Q. Did the company ever 2949
make any money, Mr. Waddell, from the beginning? A. Yes; we made a dividend the first year, but did not pay any. I think we earned, to my recollection, about $16,000 of the $100,000." Did you so testify? A. That is my recollection at the time, and I have looked at the books since.

Q. This was on the 12th or 13th of September, and there is a difference by some 25 per cent between your recollection then and now, is there not? A. I testified that my books were then in Peoria.

Q. Where were your books in February, 1909? A. I think they were in a storage warehouse at Peoria, February, 1909.

Q. Do you recall on that date while you were testifying to a number of things, making the fol-

lowing statement, according to the record, at page 889: "A. No. The Buckeye Powder Company never made any profit. There was no profit in the business, in our mill, not one cent a keg. We never declared any dividends." Did you so testify? A. Yes; we never declared a dividend.

Q. Did you testify there was no profit in the business of your mill, and that the Buckeye Powder Company never made any profit? A. Yes.

2951 Q. And I ask you if all three of those statements are true, if they are likewise true; are they not? A. Yes; they were all true.

Q. You testified on your direct examination as to a certain amount, I believe, approximately, thirty cents, that you considered to be a fair profit that any manufacturer of powder should receive on each keg of powder; it was so long ago—possibly I had better refer to just what you said in that regard. Page 1945. The question was: "Now, what in your judgment, is a reasonable and fair profit, or was a reasonable and fair profit, for you

2952 to have made from such powder as you sold while you were manufacturing black blasting powder during the years 1903 to 1908, inclusive?" To which, after some discussion with counsel, you answered: "A. Approximately, thirty cents, but it would be impossible to make a great variety of prices in a given locality with the addition to thirty cents of the freights, so that it has always been the custom to fix prices for a district, so I have followed the same procedure to fix prices of $1.20 for the State of Illinois, which would approximately make thirty cents in every particular, and the average would be thirty cents." Now, by that testimony I suppose you mean that would be a fair and reasonable profit on each keg of powder under normal

conditions, do you not? A. In ordinary business conditions, yes.

Q. Ordinary, free and open business conditions? A. Yes, sir.

Q. Is that correct? A. Yes.

Q. That is, under those conditions, in the absence of anything which you, possibly, or the Sherman Law are pleased to designate as restraints of trade? A. Yes, sir.

Q. Now, that estimate on your part is a pure estimate and guess, is it not, Mr. Waddell? A. 2954
No; that is based on my judgment of the business—it is based on my recommendation to the du Pont Company, to the Associated Powder Companies—it is based on your price list to-day.

Q. Is it based on any actual experience? A. Yes, sir, experience of years.

Q. When has there been a time, Mr. Waddell, in which, according to your claim, the conditions have prevailed under which that profit is fair and reasonable, namely, conditions that were not restrained? A. There never was a time, according to 2955
my knowledge of the business, when the profits were not——

Q. Wait a minute. I asked you when the conditions prevailed such as you have applied this estimate to when there were no restraints of trade, as you claim; when was it? A. When there were no restraints of trade?

Q. As you claim? A. When there were no independent mills, and no disturbed districts.

Q. When was that? A. In 1886 to 1892, excepting the little district in Pennsylvania. There were no disturbed districts, and the prices were higher. During 1892 to 1896, during the competitive times the prices were low.

Q. During what times? A. During 1892 when

the Equitable was built, to July 1, 1896. After July 1st, 1896, up to the building of the Indiana plant in 1898, the prices were high, went up 25 cents a keg in one day on a telegram.

Q. I simply asked you—— A. When the independents are in the field and there is a disturbed district, then these conditions prevail. When there is not, harmony rules and the prices are high and always have been.

2957 Q. Which of those conditions is the normal condition to which you referred when you estimated thirty cents a keg profit? To which of these two, when there was competition or when there was not? A. I should say the normal condition in the history of the powder association clear down has been when the prices were high.

Q. So therefore, your understanding of normal conditions is when they all got together and made some price agreement and fixed prices? A. Yes, sir.

2958 Q. And it was under those conditions that you expected to reap thirty cents profit? A. No; I expected to compete in the open market, and I thought it was as low as it would go.

Q. Well, you expected, when you built your mill, that on account of what you had supposed was the fact, that these companies had gotten together in December, 1902, as a result of the efforts of yourself, among others, and raised prices on powder which would be maintained, you could go out and make thirty cents profit under what you now describe as normal conditions; was that not what you were relying on at that time? A. No, I relied on the fact that I did not believe that the powder associates would cut the prices on three millions or four millions of kegs of powder in a centralized district and drive me out of business.

Q. And they never did, did they? A. Yes, sir, they did.

Q. You swear they did? A. Yes, they did.

Q. I do not yet understand about these normal conditions in which there was no restraint of trade during this period. I understood you to say that there has never been a time since 1871 when conditions were not restrained. Did you not so testify? A. There has never been a time since 1871.

Q. When there was not an association or contract or something else which you say was em- 2960
ployed in restraint of trade? A. Yes, sir. They had their breaks among themselves; they were not always a unit.

Q. There has never been a time when something of that sort has not been in existence, according to your claim? A. Yes, sir, there has been a time.

Q. When? A. During 1883 to 1886, on rifle powder, particularly. During 1883—1882 to 1886, on blasting powder. There was in a little disturbed district central in Ohio as against King's mills, the Ohio Powder Company; there was a district, a dis- 2961
turbed district, and open prices, but outside of that the entire United States held the price at $6.25 up to $7.50, on rifle powder, when I was selling it at $2.15.

Q. Now, in that little locality, in the district disturbed, where there were independents, there was an open market.

Q. You call that normal, do you? A. No, that was a fight against Ohio and King to drive them out of business.

Q. How about the period from 1892 to 1896? A. That was the crushing out of the Equitable, Phoenix and Chattanooga.

Q. Was that a normal period? A. No, that was vicious.

2962 Q. That was a contest by this association under this agreement of 1889, against the Chattanooga, the Phoenix and the Southern? A. Yes; they were invading the trade and trying to sell their powder on the market, and they drove them out.

Q. That was not a normal condition then? A. No, nothing normal in the trust.

Q. Then there was nothing normal since 1871? A. No; rule or ruin.

2963 Q. Then your estimate of 30 cents a keg under normal conditions must be entirely assumed and not founded upon any experience, is that right? A. No. I gave Mr. Moxham my judgment when he asked it as to what was most fair in the way of price for the central district, that is, Illinois, Indiana and Ohio, and I named $1.25.

Q. Any such price as 30 cents profit under normal conditions, that was your statement? Now, what experience did you ever have in such conditions that led to any such price? A. Just after the 1st of July, 1896, and prior to the building of

2964 the Indiana plant, possibly two years, or a year and a half; certainly six months before the Indiana Company was formed, the price of $1.25 prevailed through the Central States, and I thought that was a fair price.

Q. I did not ask you what you thought.

The Court: It is with reference to normal conditions.

Q. Was that a normal condition as you claim it? A. No; I should say it was abnormal; the trust was in power.

Q. Very good; now you have answered my question. A. I am talking about the normal price.

Q. I am talking about normal conditions, and I think you know it, Mr. Waddell. A. There has

never been a normal condition since the organization of the powder association in 1872.

Q. Very good; then will you state whether or not your estimate of thirty cents could have been based upon any actual experience in the trade, in view of the fact that there never was any normal condition, as you claim? A. Actual experience and judgment of what is——

Q. Where is the actual experience when you say in the next breath that there never have been any normal conditions? A. Well, I think there were 2966
conditions that in my judgment were fair conditions.

Q. When were they? A. One that I have named you, when the prices were fair.

Q. That is from 1896 to 1897? A. July, 1896; at the time the pool was formed.

Q. Then you think it was fair? A. I think the prices were fair.

Q. But they weren't normal, were they? A. I don't know what you mean by normal prices; we have been talking about normal conditions.

2967

Q. Now, using it in the same significance that you have used it? A. It is a normal price under an abnormal condition.

Q. Yes; and you base that judgment upon nothing except your judgment and upon no experience? A. Upon my business judgment and experience of many years.

Q. Very good; if you will limit yourself to it being simply a matter of your estimate, we can cut this short, Mr. Waddell, instead of being something based on actual experience. A. Experience and my judgment.

Q. Where is the experience; now we want it all, because it is an important matter.

The Court: Do you mean personal ex-

perience, being conversant with the trade, or do you mean experience with trade conditions?

A. Experience in the sale of powder and my knowledge of what are reasonable and fair profits in the powder business, my knowledge of the cost of making powder and of the conditions under which it is sold—in my judgment based on my opinion, based upon experience, that is, upon study
2969 of the question for years, that a dollar twenty-five is not an excessive price for powder in the middle states.

Q. I understand what your judgment is, Mr. Waddell. A. And that judgment grows out of an experience; it doesn't grow out of the fact that I sold powder when I went into the business at three forty, the same powder—I think that was excessive.

Q. But won't you admit that it does not grow out of any actual experience under normal conditions, Mr. Waddell? A. Well, I have never seen
2970 what you call a normal condition in the United States since 1872.

Q. Well, I haven't called it either one way or the other; I think I have possibly, but I have not seen what you call normal conditions; that is the trouble. I understand you testified on many occasions that there never has been any such condition since 1871, haven't you? A. Excepting when the associates were fighting among ourselves; then we got down——

Q. Then it was normal? A. It was normal; yes.

Q. Very good; that was, we will say, from 1890 or thereabouts to 1896—one period, wasn't it? A. No; during that period they were fighting Equitable and Phoenix—1892 to 1896; between 1890 and

1892, I should say, there might have been districts where they were competing with each other.

Q. Now, you spent a good many days on the stand, Mr. Waddel, and made a number of complaints about conditions as you found them from 1903 to 1907 in the powder business, which you think prevented you from making a success. Now, as I understand it, you would have had no reason to complain if certain other conditions had prevailed, but you said very little about what those conditions were, and we would like to ask a few 2972 questions on that subject. As I understand it, you would have had no complaint, assuming that there was no bond, contractual or otherwise, between the duPont Powder Company and these old associates in the black powder business, such as the Austin and the Equitable and the American and so on. If that was eliminated, which you claim to have existed; further, if there had been no corporation formed, like the Phoenix and the Chattanooga and the Laflin & Rand and the duPont Company into the E. I. duPont de Nemours Powder Company, 2973 and that each of the corporations which you now claim are bound together either by understandings or by corporate bonds, had been free and trading under its own name and running its own plant, as I understand you, under those conditions the Buckeye Powder Company would have had nothing to complain of; is that correct? A. Yes; the chief thing that it would have to complain of—the one thing that put the Buckeye Powder Company out of business more than the cut in prices.

Q. Now, one moment; you have answered the question; is this part of your answer or is it on some other subject? A. No; you are asking me as to whether or not there was a condition.

Q. Oh, no; then you misunderstand the question, Mr. Waddell.

The Court: Your contention is that he misunderstood it; I think the question was involved; it was to me, any how.

Mr. Button: I will waive it and try again.

Q. You have said much about conditions as they ought to have been, Mr. Waddell, during this period. Now, as I understand you, there should have been no relationship between the duPont Company and the old associates, for instance, the Equitable
2975 and the American, and the Miami, which possibly you claim actually existed; is that correct? A. I don't know that I—I have not made any statement in regard to that.

Q. I know you haven't but I want you to; you have complained of conditions as they were. Now, I want to know what the conditions should have been. You say first there should have been no relationship between those companies. Should there? A. No; I have not said that there should be no relationship between those companies. I did
2976 not care anything about the relationship; it was the acts of the company that I complained of.

Q. That would grow out of some relationship between them, wouldn't it? A. I should think so; they were a unit.

Q. That is the Equitable and the Aetna and the American? A. Their wrongful acts is what I complained of.

Q. And their relations to the duPont Company? A. Yes.

Q. Then the next thing is, you, I suppose, claim that the duPont Company should not have bought out the Laflin & Rand and combined those interests? A. I think that was an evil to the company.

Q. Of course, there should have been no price understandings, or agreements? A. No; I would not say that; I think reasonable understandings

conducted along just lines and within the limits of the law are proper.

Q. Can you tell us what those limits are, Mr. Waddell? A. That is what the court is trying to find out now.

Q. Well, then you have testified that the territory that you sold powder in was the western part of West Virginia, Ohio, Indiana, Northern Kentucky, Illinois, Iowa, Missouri, a part of Kansas, Nebraska, Colorado, Wyoming, Montana, Wisconsin, Minnesota and Michigan; now, under the conditions that would have existed as we have been mentioning, you would have been competing with the following concerns in some part of that territory, each one running an independent plant, would you not: the Senior, the Burton—if I name any that you say you weren't competing with, you stop me—the Senior—you understand the question, Mr. Waddell? A. Yes; very little with Burton. 2978

Q. But somewhat? A. Very little.

Q. The Rand—didn't they sell a lot of powder in Illinois? A. I never knew but one sale the Burton made while I was in business. 2979

Q. Haven't they got an office in Chicago now? A. They have now; yes.

Q. Didn't they have during some of this period that you were selling powder? A. No; not while I was in business.

Q. They find no difficulty in selling powder there now, do they? A. Prices are high now.

Q. Well, they are selling there now? A. Yes.

Q. Well, the Senior would have been an independent company, running an independent plant, would it not? A. Yes; but it was at Cincinnati, and its trade ran into West Virginia chiefly. I knew the Cincinnati trade thoroughly.

Q. It would have competed with you? A. Well, at a disadvantage, yes.

Q. The Burton—that was an independent company, and the Rand of Fairchance was an independent concern? A. All of those companies were in existence only a small part of the time.

Q. Well, during a portion of the period? A. During a portion of it.

Q. The Oriental, Fairchance? A. I don't think Oriental could reach my territory where I sold.

Q. The Rand of Knoxville? A. Certainly not.

Q. The Egyptian? A. Part of the time.

2981 Q. The Excelsior? A. In the extreme western section.

Q. And the United States? A. The United States; yes.

Q. Well, there would have been six independent companies, each with a plant? A. Not all independent.

Q. I say, they would have been under the conditiont that you call ideal, no bond between any of them? A. If they hadn't been bought out.

Q. Very good; that is what we are talking about.

2982 There would have also been these numbers of the association; the Kings would have been an independent company, with a plant where? A. That was the King Mercantile Company.

Q. I am talking about the King Powder Company; they have a blasting powder plant, haven't they? A. Well, the Laflin & Rand have sold their output for twenty-five years.

Q. I move to strike the answer out. A. You are asking me if they were competitors. They were not.

Q. I am not asking you that; I am asking you if they would have been under these conditions which you claim didn't exist; I want to find out what would have been the conditions: the King would have been an independent company with a plant near Cincinnati, wouldn't it? A. Yes.

Q. And would have been competing as an independent concern, wouldn't it? A. Yes.

Q. Likewise, the Miami, with two plants, where? A. Golds Station, Iowa, and for a small portion at Thebes, Illinois.

Q. And the Equitable with a plant at East Alton would have been an independent company competing for this business? A. At East Alton.

Q. And the Austin, an old established company, with a plant where? A. Cleveland, Ohio.

Q. That would have been competing as an independent concern, would it not, under the condition we refer to? A. Not much in Illinois. 2984

Q. Isn't the Austin always selling powder in Illinois? A. I only know one customer.

Q. Who? A. Well, that is a small concern near Danville, Illinois.

Q. Don't you know well enough that you got Brechnitz trade away from the Austin Powder Company by cutting the price from $1.35 to $1.15? A. I certainly didn't.

Q. You didn't? You didn't know it, or isn't it a fact? A. It is not a fact; no; they were the agents of the Oriental Powder Mills. 2985

Q. Well, the Austin sold powder in Indiana, didn't it? A. I don't know what they sold in Indiana; most of their trade was in northern Ohio, western Pennsylvania, and in——

Q. Didn't they sell powder in Ohio, Indiana, Kentucky, Tennessee, West Virginia and Missouri; don't you know that from your experience of twenty years in this business, Mr. Waddell? A. I know that—no, I don't know a customer the Austin Powder Company has in the State of Kentucky. I never did know. I know they have got one down in Texas.

Q. Don't you know from your experience? A.

They don't scatter out much; trade is concentrated in northern Ohio, and the richest coal field in the world around Pittsburgh.

Q. So you don't know from your experience in this business that they spread their powder all over the middle west for fifteen years? A. I know they have in rifle powder.

Q. In blasting; I am talking about that. A. No; I don't know that.

Q. You don't know that as a fact; don't you
2987 know you came in contact with it in competition for fully twenty years that you were in Cincinnati all through the middle west—blasting powder? A. I didn't go to the extreme west.

Q. Well, the middle west? A. Central Powder Mill of Illinois and only a small part of the trade; they didn't have much trade in Indiana. I never knew a customer——

Q. Well, confine your answer to what is in that territory; don't you know that they sold their powder all through that territory for twenty years?
2988 A. I knew of one customer on the Baltimore & Ohio Railroad west of Cincinnati and they had one down near Evansville—two customers in the State of Illinois is all I know of.

Q. Outside of Illinois? A. I only knew of two customers of the Austin Powder Company.

Q. During your twenty years' experience? A. In Indiana; yes.

Q. Did they have agencies and offices at St. Louis and Chicago? A. I don't know whether they had or not.

Q. If they did have, would that be for the purpose of selling powder in northern Ohio? A. Well, they might have sold rifle powder; they might have sold Austin shells.

Q. At the present time you don't know quite so

much about the general powder conditions as you did on your direct examination, do you, Mr. Waddell? A. Yes; I do.

Q. However, the American Powder Company could have been competing through this district under the conditions we are discussing, could it not? A. Under normal conditions?

Q. Yes. A. No, no; they didn't own any powder mills making black powder.

Q. Do you think it would have been improper for them, for one concern to buy powder from various people and market it through that district? A. Yes; with a five per cent. in a pool——

Q. I am talking about a condition without any pool, Mr. Waddell; I want to know what the conditions would have been when you were going to get this thirty cents a keg. A. I don't think at a fair normal price that there would have been a chance for a middle man like the American Powder Mills—not an inside dealer.

Q. Well, the thirty cent profit would have put the price up to a reasonably high point so that there would have been a chance for a middle man, wouldn't it, Mr. Waddell? A. No; the profits would have been very heavy at $1.20.

Q. About thirty cents? A. No; that would have been all profit.

Q. Then, under these conditions, the Phoenix Powder Company would have been an independent concern with three mills, wouldn't it? Where would they have been? If they hadn't been owned by the others, If they had never been amalgamated in any way—kept along as they started out—this is one that you say we killed off, the Phoenix? A. Yes.

Q. That would have been an independent company, and where would its mills have been? A. At Phoenix, Illinois.

2992 *R. S. Waddell—Cross*

Q. That is near Belleville? A. Yes.

Q. Another mill at Kellogg, West Virginia? A. Yes.

Q. Reaching some part of the territory that you sold in, wouldn't it? A. No; I think not.

Q. You gave West Virginia, a part of it, as part of your territory? A. A very small part of it.

Q. But some part of it? A. They might have reached a few customers.

2993 Q. Where is Kellogg, West Virginia? A. It is reached near Huntington.

Q. Well, which part of the state? A. The western part.

Q. The extreme part of it, isn't it? A. On the Ohio River; yes.

Q. Therefore, it is in the part of West Virginia that you would have reached if you ever reached any part of it, isn't it? A. Well, that is almost inaccessible; it would at $1.20 be inaccessible.

Q. Well, you sold powder there, however, didn't you? A. I think I sold one carload; maybe two—

2994 two carloads.

Q. Then there would have been the New Jersey mill of the same concern, the Phoenix; they had one in New Jersey, didn't they? A. Yes; they had one.

Q. They had three mills? A. Yes.

Q. The company would have been operating those three mills as an independent concern and competing? A. Not with me; no.

Q. Well, their Illinois mill would have competed with you, wouldn't it, at Belleville? A. Yes.

Q. Brechnitz was living within ten miles of Belleville, wasn't he? A. Yes.

Q. Now, the Ohio Powder Company concern would have had a mill at Youngstown, Ohio, and it would have been an independent concern and

competing for this business, wouldn't it? A. Yes; in the eastern section.

Q. And the Chattanooga Powder Company would have had a mill in Tennessee and would have been shipping powder through Tennessee and Kentucky, and possibly West Virginia, wouldn't it? A. No; it couldn't reach it.

Q. Missouri? A. No.

Q. It did, didn't it? A. No; it didn't.

Q. Never did? A. Well, there might have been during the year when they were driving it out; he may have sought foreign markets; freight rates were against them. 2996

Q. One of their chief strongholds was in West Virginia? A. No.

Q. Didn't they capture a large portion of the trade in West Virginia? A. No.

Q. They didn't ever? A. They had a little trade in old Virginia.

Q. But none in West? A. No.

Q. The Birmingham Powder Company would have been an independent concern with a mill at Alabama? A. Yes. 2997

Q. And that would have reached of the states that you mention? A. Not many of them.

Q. Not Missouri? A. No.

Q. West Virginia? A. No.

Q. Why couldn't it ship to Missouri? A. The freights were prohibitive, and anything like a fair cost——

Q. Didn't you sell in Alabama, Mississippi and those southern states yourself? A. Yes; and paid $1.40 freight and sold at 85 cents a keg.

Q. They did occupy a territory that you sold a little powder in then, didn't they, Mr. Waddell, and they would have been independent; is that right? A. I am speaking now of the Hazard Com-

pany. If I sold down there, I never sold a keg of Buckeye powder.

Q. Oh, well, I am speaking of the Buckeye. A. No; I never sold any Buckeye down there.

Q. Now, the Lake Superior Powder Company would have been an independent concern with mills in the Marquette District, with plants there competing, wouldn't it? A. In a small section, yes. They could not reach out far from the northern peninsular of Michigan.

2999 Q. Then, during the entire period until they blew up in 1907 the Indiana Powder Company would have had an important mill at Fontanet, and would have been operating as an independent concern, wouldn't it? A. Yes; but if Indiana discontinued, the United States would not have been built. That was built by the same parties.

Q. Oh, that was built by the same people? A. Yes.

Q. I suppose conditions would have been so prosperous that they would have built more than one, 3000 Mr. Waddell? A. They were coal operators and they wanted a mill for their own use.

Q. Now the Northwestern would have had a mill there and been an independent company, wouldn't it—gone on and competed in the market of your district under the conditions we mention? A. They were very near Terre Haute, yes; they would have made powder for their own stockholders.

Q. Then the Southern Powder Company would have been in existence as an independent concern, would that have reached your territory? A. No, they have bought those mills and torn them down.

Q. Would it have reached the territory you trade in? A. Oh, no.

Q. It would have shipped rifle powder all through the territory, wouldn't it? A. No.

Q. Didn't it? A. No, they reached Cincinnati

once to their own stockholders, but it was a failure.

Q. Then under these conditions the du Pont Company would have been an independent concern with a plant at Moor, Iowa, a large plant in the middle of your district, wouldn't it? A. Yes.

Q. And another one at Nemours, West Virginia? A. That was out of my district.

Q. It would reach this West Virginia end of your trade, wouldn't it? A. No, that is at the extreme eastern end of the Norfolk Q Western road 3002
in the coal fields; it would reach Kanawha.

Q. And the du Pont plant at Fairchance; it would have had a plant there competing, wouldn't it? A. No, that is the Oriental Powder Mills.

Q. They would have had a plant at Paterson, Oklahoma, that would have competed in Kansas and Nebraska, wouldn't it? A. Kansas and Nebraska, no; they wouldn't go to Nebraska; they would have taken in some trade in Oklahoma; they couldn't have gone into southern Kansas against the mills located there; they couldn't have gone into Arkansas with the Equitable Mills at 3003
Fort Smith; they would have had a local trade in Oklahoma.

Q. And then there would have been the Brandywine plants that could have been used as emergency plants, shipping powder west, would there not, owned by the du Pont Company? A. No.

Q. But they did ship west occasionally, didn't they? A. Yes, but that is out of date, the Brandywine mills of the du Ponts is entirely out of date.

Q. Then there would have been the Laflin & Rand Company operating as an independent concern with a mill at Pleasant Prairie, wouldn't there? A. Yes, until it blew up.

Q. And two in Kansas, one at Turk and the other at Columbus? A. Yes, sir.

Q. And also their eastern plants? A. Also which?

Q. Their eastern plants? A. Their eastern plants could not compete.

Q. Now, you state in your declaration that "during all of said period its business was interstate and conducted in the states of Illinois, Iowa, Indiana, Ohio, Michigan, Minnesota, Missouri, Montana, Nebraska, Colorado, Wyoming, West
3005 Virginia and Indian Territory, did you not? A. I don't know what the declaration states; I read it, but I don't recollect.

Q. Don't know; well, who is responsible for that statement as to where you sold powder, do you know? A. Well, I presume I was in the main. In the territory in which I made the general statement, one point you omitted there in that declaration where I have sold a good deal of powder is Texas—El Paso. I went down into Mexico

Q. I may have omitted it; I don't think it is mentioned there. It may have been an omission. Just
3006 now I want to ask you, Mr. Waddell, whether in your judgment, under the conditions you have outlined, with these numerous companies competing, one with the other in this district, each having its independent plants, with no arrangement between any of them whatsoever, all after the trade—I wish you would state whether, in your judgment, there would have been a profit of thirty cents a keg on blasting powder at any time during 1903 to 1908? A. I think there would; I don't mean doing business the way you describe.

Q. You think they would have made a trade agreement; is that what you mean? A. No, there are understandings as between two merchants in any city; they are not reckless if they are business men.

Q. They respect each other's trade, is that what you mean they would have done—you mean they would have respected each other's trade? A. No, I think they would have known about what the price was that would have given them a fair profit, and neither of them would have cut, and the tendency of business men is to discuss those questions frankly with each other, not necessarily making a pool.

Q. Therefore, your conclusion is, Mr. Waddell, that they would have talked it over and it would 3008
have been a great deal better situation with all those companies competing that you would with only a part of them, is that your judgment, as the greatest living expert in the powder business? A. I deny being the greatest living expert in the powder business.

Q. I think your counsel so denominate you here one day. A. I am not claiming anything like that.

(Question repeated.) A. I don't know what they would have done; I know what my duty would have been in the matter and I know it would have 3009
been just exactly the same as you have today, with the independent dynamite and powder companies in the United States; somebody would set a price and the others would follow; you don't find competition today in black powder or dynamite and there are a lot of so-called independents.

Q. Then you think that unlimited competition without some understanding or some following together by the other side is a very disastrous thing, don't you, Mr. Waddell, from a business standpoint? A. Well, a man uses his judgment in—as a rule a man who has a standing in the community enough to be selected as the head of a black powder works ought to have sense enough to not recklessly destroy prices.

Q. That is how you feel about the subject? A. He should be satisfied with a fair and just profit and treating the community justly as well as himself.

Q. He ought to have sense enough not to cut prices, you think? A. Yes.

Q. Then if it should happen to appear to be a fact, that the Buckeye Powder Company when it began to do business, went into the open market and cut under five or ten cents, you would think
3011 that was an unwise thing for them to have done, don't you? A. The Buckeye Powder Company never cut a price.

Q. I am not asking you whether it did or not, Mr. Waddell, but is not that the fact? A. If they had done it, it would have been, and it would have meant a sacrifice for them.

Q. I suppose it would have been unwise for the other man to cut back under those conditions, wouldn't it? A. Yes, I think so.

Q. And if he had not cut back the other con-
3012 sumers would have lost all of its profits there through it, wouldn't they? A. No.

Q. It would not? A. No.

Q. It would have lost that which you got away by the cut in price? A. There was ample new trade in my territory every year to more than absorb the entire output of my plant.

Q. You mean there was an additional consumption each year of 250,000 kegs of powder? A. Yes.

Q. In Illinois? A. Yes—Not specially in Illinois, but in my district.

Q. You said somewhere in these depositions that you have given, that it was in Illinois, didn't you? A. Yes, I think there was mention of it in Illinois, in that field.

Q. You said I think in each year, didn't you, in

your direct examination? A. I don't think I said "in each year." I don't think I said that; I think I said in one year.

Q. I think you did, but we will get to that. Well, then, I take it that it is your judgment that under the conditions that we have been discussing there would have been a profit of thirty cents a keg, is that it? A. I think there were.

Q. You think there were? A. I think it would be so.

Q. But never having experienced any such conditions then, of course, Mr. Waddell, it is a mere estimate, isn't it? A. I never knew when we didn't make thirty cents a keg excepting when we were in a fight to destroy some independent company. 3014

Q. Now, how much profit would you have gotten each year if you got 30 cents a keg, Mr. Waddell? A. I don't know.

Q. You were marketing under conditions there where you were marketing your total output? A. I should have thought that plant, taking in the exigencies of the business, considering the exigencies of the business, the dangers of the plant being entirely wiped out in a moment, as the Indiana plant was, capital entirely destroyed, I should say that a profit of $50,000 would not be excessive. 3015

Q. Then you are not willing to subscribe to a profit of 30 cents a keg straight through on your total capacity? A. Well, you would not get 30 cents.

Q. Well, you have so stated in your papers here, haven't you, Mr. Waddell? A. Well, there are a great many ways that 30 cents would go besides clear net, for instance, at the end of the year——

Q. Nevertheless, you carried it, into all those exhibits which you have been trying to get in evidence here, didn't you? A. No, I did not.

Q. Well, you had somebody do it for you then, didn't you? A. I cut that 30 cents idea when I fixed the prices.

Q. When did you do that? A. When I fixed the prices for a distance, for instance for a place in Illinois, $1.20——

Q. Then you don't think you ought to have 30 cents on 250,000 kegs, which would be $75,000 a year profit? A. I think a part of that would be used in the exigencies of the business, the demands
3017 that would come upon it.

Q. And you don't think you ought to have $90,000, which would be 30 cents profit on 300,000, which is one of the capacities which has been mentioned here of your mill, and that would be unreasonable? A. I should think that would be an excessive claim; I should be satisfied with a more moderate amount.

Q. About $50,000 on your plant which cost you $117,000, per year, you think is about right, don't you? A. That does not represent the working
3018 capital. If you are operating your plant at full capacity, making its output 250,000 kegs, you would require more than $200,000, probably $225,000. It requires very large amount of operating capital to handle that quantity of powder.

Q. In that event you would be willing to operate—you would have been unable to operate because of a lack of working capital as you have already testified you had put in all of your own moneys and had used them up? A. I had made arrangements for an amount ample for all of our requirements; and our policy was to run the plant —and by "policy" I mean you have to anticipate what you are going to do for this plant of yours months ahead. In the powder business you have got to let the contracts for your soda six months, or at least four months, you have got to allow it to

come from Chili. You have got to map out a policy of what you are going to do.

Q. We are talking about working capital now; you said you had made arrangements for $200,000 working, is that so? A. We increased our capital stock but we never issued.

Q. Did you have arrangements as to who was to buy it and who was to put up the money for it? A. Yes, sir.

Q. Who was going to take care of that? A. The understanding was that it should be largely taken 3020
up by people in Cincinnati.

Q. When was that conclusion arrived at? A. At the time that the increase in the capital stock was authorized; I don't recall the date.

Q. When? A. I don't recall the date.

Q. Well, your increase was authorized about the first of 1906, wasn't it? Your Cuba letter referring to it was in 1905? A. I don't recollect the dates; whatever it may have been it was in Cincinnati when it was arranged.

Q. It was then in 1906 and provided for a work- 3021
ing capital for an increase based on an enlarged plant, double the capital stock that you had formerly had and it must have been about the first of 1906, wasn't it? A. I should think probably about that time.

Q. Then at about that time business was pretty good; you expected to have plenty of extra work and capital also to take care of it with? A. It was good for what we were producing, in 1905, that was our busy year.

Q. Is not this the date, July 2d, 1906, when you made that increase from one hundred to two hundred thousand dollars in your charter? A. I don't recall the date.

Q. You have got a certified copy in here some-

3022 *R. S. Waddell—Cross*

where; I think that may show it; my information is that that is the date; if it is the date this statement in your letter of June 4th that you had already done it is not quite correct, is it, Mr. Waddell? A. How is that?

Q. If it was July 2d that you did that, your statement in this letter of June 4th to the Cuba Company that you already had done it is not quite correct? A. Well, I presume we had passed a resolution two or three or four months ahead so as
3023 to buy our raw material and time to put it through.

Q. Preceding this increase, there was something in business conditions in the early part of 1906 that made you think that your business was going to be increased and enlarged, wasn't there, you were encouraged? A. Well, it may have been that or it may have been some other reason for increasing it; I don't know what it was now that we did it on.

Q. It was so definite that you made arrangement —went so far as to arrange who should pay for
3024 the extra $100,000? A. That possibly arose out of the fact that the bank may have——

Q. Well, did you? A. ——that the bank may have called for their money or we wanted to get it in some other companies; I don't recall just now what caused it.

Q. Didn't you state a few moments ago that you had an arrangement with someone to buy most of this new capital stock, and take this extra capital stock—you said some definite arrangement had been made? A. We did not have any positive arrangement.

Q. You did not? A. Not positive; no; we had a tentative arrangement we thought could go through, but it didn't.

Q. Now, you have spoken of these various con-

tents; among others you mentioned one against the King and Ohio Powder Company. Now, that was about thirty years ago, was it in the early eighties? A. 1882 or 1886.

Q. Then you next refer to this Fundamental Agreement, so-called, of December 19, 1889, and I believe you said that you recollected having seen that somewhere. Do you know where that was? A. I saw it after it was put in evidence.

Q. Where did you see it? A. I think it was in New York; I don't know. 3026

Q. Government's Exhibit No. 6—and you undertook to identify some of the signatures to the document, didn't you (handing book to witness)? A. To my recollection, I think I said I knew the du Pont signatures.

Q. Well, now, what was the general appearance of that contract, Mr. Waddell? A. I did not examine it through.

Q. Was it on paper like this, legal size (indicating)? A. I don't know; I don't recall what it was.

Q. Do you remember what kind of a cover there was on it? A. No. 3027

Q. However, under that agreement you understood that these six or eight people being the du Pont Company, the Hazard, the Laflin & Rand, the Oriental, the King, the Sycamore, the Marcellus, which are the ones whose signatures you identified, unless I forget, with three or four others, got together and made some trade arrangement, is that your understanding, about December 19, 1889? A. I know a trade arrangement was made at that time—about that time.

Q. And subsequently thereto, shortly after that arrangement went into effect, these new companies sprang up: The Chattanooga, the Phoenix and the Southern, did they not? A. Yes, the Chattanooga——

3028 *R. S. Waddell—Cross*

Q. And then ensued what you have described as the vicious contest? A. Yes.

Q. Do you mean to be understood that there was a contest by this association on the one hand which has been formed under this agreement, and these new companies on the other? A. Yes; I knew that the contest was not between those companies, it was between those companies as a unit and the others.

Q. It was between them as a unit? A. Yes; I
3029 never could get a price to meet another price in the district, I never could get it if I stated in my letter that an associate had made a price. My companies always said, and instructed me "don't mention an associate, always put it on to an independent; if you will name an independent you can get the price"—and I got it.

Q. Ah, ha. A. Yes, I got it.

Q. And it was under those circumstances where you got permission to make prices? A. That was a general rule all through the history of the busi-
3030 ness.

Q. Where was the headquarters of this association which was conducting these contests? A. New York.

Q. And what did they do to these new companies? A. To the independent companies?

Q. Yes. A. Each company named a price to the agents and the agents would ask for a price; I wrote hundreds of letters asking a price, lower price, to get the trade from the independents, and I got it.

Q. And the association granted such permissions to you and in that way and killed off these three companies, did you? A. I don't know what the association granted, I was not present; but I inferred they did; they cut prices.

Q. Those three companies were killed off then

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by or through the cuts on the part of the allied companies? A. A concentrated fight for the entire district.

Q. And a fight was concentrated and I suppose confined to the territory that you have described as "disturbed district"; is that correct? A. Yes, sir.

Q. That is right? A. Yes, sir.

Q. That fight extended from early nineties until 1896, when some arrangement was made between the various concerns? A. When all the independents were rounded up, though.

3032

Q. Oh! A. All that were in existence then.

Q. Can you remember just how high the price of blasting powder got in your district or in this district, this disturbed district, just before this contest? A. My recollection is that in Ohio our price was $1.50 a keg for blasting powder, that is, after the pool was formed. The price went down as low as eight cents part of the time.

Q. How much did it go up after? A. And there were a few sales at 75 cents.

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Q. How much did it go up after that, after the fight? A. The day after the pool of 1896 was formed it went up to $1.25 throughout the district.

Q. Now, who were your competitors, you were representing then the Hazard and du Pont Company in Cincinnati, who were your competitors in that district? A. Our competitors were of two kinds. We let alone King; we didn't bother a King customer any more than we had to when they would ask us for prices. When they asked us for prices we had to quote them; we respected the trade of the other associated powder companies as far as we could; we had to make a showing of doing business.

Q. Did they also respect your trade? A. Yes, sir; very largely; they had to make a show of do-

ing business and if they were asked for prices they had to quote and we had to quote.

Q. No real effort to get the trade assigned to other associates? A. No real effort unless it grew out of some trouble in our selling work, we didn't make any real struggle.

Q. Who were your real competitors during that period? A. Our real fight was against the independents that were in the locality. The Phoenix and the Equitable got so much; the Equitable and
3035 the Phoenix had plants near the Phoenix, two plants at Conover and Kellogg, West Virginia, and an Illinois plant; and in competition with both of them; and in the southern states at Chattanooga.

Q. Now, you stated in the Government case, in regard to the Chattanooga Company, that Hazard and du Pont Company lowered their prices whereever it was necessary to hold the trade and shut out the new companies. That is correct, is it? A. Yes.

Q. And how did you know? That district was in charge of your brother, largely? A. Well, I was
3036 kept pretty well informed in regard to it. We interlapped in my territory and his, so I had to know.

Q. And you had frequent conferences and interviews with him on the subject? A. I had interviews with him and I got correspondence frequently from our New York office, his letters.

Q. And that territory is the territory that was covered by the Southern Powder Company? A. Yes, sir.

Q. A concern in Georgia? A. The Southern was an exceedingly small concern down there.

Q. But your knowledge, it came through your brother, largely, in regard to that? A. No, not altogether; partly your Major Lewis of Sycamore

Powder Company; I sold powder to the Sycamore Mills; my brother and I kept in touch with conditions as they were going on.

Q. In regard to figures, you said in the Government case you received a telegram to meet the price and hold your trade. Is that correct? A. Yes.

Q. You did do so? A. Yes.

Q. As against the Phoenix? A. Yes, I followed instructions.

Q. You also stated that prices were maintained elsewhere until the Phoenix Company came in, re- 3038
ferring to the northern and western states? A. Yes.

Q. You remember that statement? A. Yes.

Q. That would indicate that Chattanooga Company started in first, would it not, and that the disturbed district, as you called, it was confined to the territory of the Chattanooga; outside of that prices were maintained, is that what you mean? A. They did not conflict at all; the Chattanooga was in the southern states entirely, independent and away from the Phoenix, the Phoenix
was in the northern states; and I don't know which 3039
was the first in the field. We met the competition when it came in.

Q. Then that statement—you don't know whether this statement of yours in the Government record is correct or not, which was as follows: "Up until the introduction of the Phoenix powder, which, I believe, was the next brand on the market, the list prices of the associated companies was maintained throughout the northern, eastern and western states, excepting Central Pennsylvania, where a very low price was always obtained." You so testified, didn't you? A. Yes, that is so.

Q. And that was for the purpose of showing that these companies segregated the district and

cut the prices around the competitor, was it not? A. Yes.

Q. Now, when the Indiana Powder Company came in in 1897, the date when Mr. Rood referred to the contract system—is it not true that the powder companies had always made contracts for the furnishing of powder, blasting powder, to its consumers? A. I sold 70 per cent. of the Hazard output and I never made a contract.

3041 Q. Well, don't you know that the various powder companies all sold it under contract? A. No, the system was originated at that time.

Q. Did they have contracts for the furnishing of powder? A. They may have had it, they may have had them, I never had any contracts.

Q. Why, don't you know, Mr. Waddell, you have spent twenty years of your life in most intimate association with this particular line of business, don't you know that each company sold its products that way? A. I know it was prohibited by the rules to make a contract for more than sixty days —the rules of the association.

3042 Q. Do you say they did not have contracts for their products all the time? A. Well, they may have had them, and there may have been exceptions by the Association, but the rules of the Association prohibited the making of contracts for the supply of explosives, as I stated.

Q. You spoke of, I think, the Indiana contest against Mr. Rood, you spoke of the organization of the Great Northern Supplies Company, which sold supplies to the miners. Some ambiguity in your testimony as to when that was. Don't you recollect that that didn't occur until after Mr. Rood had run for two years or two and one-half years? A. About two years, I think.

Q. What were the prices? You stated that the

prices after or during that contest came down to as low as ninety cents, is that correct? A. I don't recollect the exact price, it is in the neighborhood of that, it went down very rapidly.

Q. And that was a contest by the associated companies against him, I take it? A. Yes, it was.

Q. With whom did this contract system begin, do you recollect? A. With whom did it begin?

Q. Yes, A. The first contract that I ever knew anything about was with—was a contract that I made with Charles F. Keeler by instruction of the 3044
du Pont Company.

Q. Whereabouts—in Chicago? A. I wrote the contract in Chicago.

Q. That was the same Keeler that testified, made a deposition in this case? A. He later became a stockholder in my company.

Q. Same man whose deposition has been read? A. Same man.

Q. You stated on your direct examination that these new companies were always in disturbed districts. I suppose by that you simply mean that 3045
after they built their mills the districts became disturbed? A. Yes, sir.

Q. Is that what you mean? A. Yes.

Q. Can you tell us in what other district that was that the price was maintained during these times you testify that the rest of the prices was maintained, where was it maintained? A. Yes. The price was maintained when I was in business, as I spread out. I always gave up the local trade when it got so low that I could not make a profit on it.

Q. Yes, but what district was it where the prices were maintained outside of these disturbed districts? A. In Montana, for instance, I made a good price when I went into Montana.

3046 *R. S. Waddell—Cross*

Q. I am not talking about Buckeye Powder now, Mr. Waddell, not at all about the Buckeye, I am talking about this period in the nineties, when this fight was made against the Chattanooga, Phoenix and the Southern, I want to know what districts during that time the price was maintained in outside of those disturbed districts? A. In what districts?

Q. Yes, where was it that they were maintained? A. In all the districts outside of the disturbed dis-
3047 trict.

Q. Where were they, what states, give me what particular states from 1890 to 1896, we will say, during this contest against the Southern, Chattanooga and Phoenix? A. That fight extended as far east, it took in——

Q. Don't put it that way, just give us the states in which this high price prevailed. A. All of the states—I can except it better than otherwise.

Q. All right. A. I would have to name a good many states.

3048 Q. Go at it that way. A. The Western Pennsylvania, Western New York, west of Buffalo, and south of Buffalo, the whole of West Virginia and about three counties in Old Virginia tributary to it; Tennessee, Southwest Virginia, Georgia, Alabama, Mississippi, Kentucky, Ohio, Indiana, Michigan, Illinois, Iowa, Missouri were the disturbed districts; outside of that, with the possible exception of the competition that arose from another company——

Q. What was that? A. That was Pittsburgh mills; your Turk mills.

Q. What company was that? A. The Pittsburgh country went in, out there——

Q. What company was that, I say? A. I don't recall the name of the company; it was a small

one, it was not a very large one, and it was not out long; it was bought up by Laflin & Rand. That company that caused the disturbance in that section, and beyond that there was no cut in price in that section.

Q. Now, just one thing more in that connection, Mr. Waddell, how did you know that those prices were maintained in those places? A. I know they were maintained as far as I came in contact with them.

Q. How did you know—how far was that? A. 3050
Well, I came in contact with the prices, I was asked to quote prices outside of my territory and it was prohibited.

Q. California—were you asked to quote prices in California? A. Yes, I had a proposition to buy a carload of rifle powder that was sold at $2.15, at a price of $1.15.

Q. Let us confine ourselves to blasting powder for the moment, Mr. Waddell. A. How is that?

Q. Let us confine ourselves to blasting powder, which is all we are talking about up to date. A. 3051
All right. I had opportunities to sell blasting powder to the trade outside of the district. Trade would hear that the prices were very low in our district and they would write to us to get quotations.

Q. Did you sell any powder to trade in New England or New York yourself? A. No, but I knew of the sales there at that time. I talked to Mr. Kritchnitz of the Hazard mills as to the conditions around his mills, and he was selling all over New England.

Q. Now, Mr. Waddell, you were very familiar with this trade during this period, and don't you know that that particular impression you created regarding that period from 1890 to 1896 is incorrect; and that those concerns never made an at-

tack on Chattanooga or Phoenix or the Southern; don't you know that to be a fact? A. No, I don't.

Q. Don't you know it to be a fact that those concerns came into business, cutting way under the prices of the older companies, the du Pont and Hazard—don't you know that to be a fact? A. In some cases they did.

Q. Don't you know it to be the universal fact? A. No, not the universal fact; no.

Q. Don't you know that the older companies did
3053 nothing whatever for two years, not even meeting those prices, went on losing trade all through that district, don't you know that for a fact? A. I know I gave them some trade, I did.

Q. Don't you know it is a universal fact to your knowledge? A. No.

Q. You took no aggressive tactics against these other concerns, didn't you know that, for a long time? A. No, I didn't.

Q. Don't you know for a fact, Mr. Waddell, this further fact that they never did any more than to meet the prices made by the Phoenix, the Chatta-
3054 nooga and the Southern during that period? A. Meet them only?

Q. That is all, didn't you know that? A. Certainly not.

Q. How much did they cut then? A. Cut whatever was necessary to take the trade, take the customer.

Q. How much was that? A. We had the ability, the powder companies had the ability——

Q. How much was that cut, I don't care what the ability was? A. Cut so—whatever it was necessary to get the trade.

Q. What did you say that was, how many dollars or how many cents? A. Five cents to ten cents a keg, whatever was necessary to get the trade.

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Q. Now, that cutting began on the part of the older companies when? A. It began about the time the powder was put on the market; sometimes a little in advance.

Q. That would be in 1892, so far as the Chattanooga case was concerned, wasn't it? A. I don't recall the dates.

Q. Approximately? A. Ninety to ninety-four.

Q. It would be 1891, as that was the time the Phoenix Company came in? A. I think that is the time that they came in.

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Q. And the Southern about the same time? A. They are ninety-two, we will say, or about in there, something like that.

Q. They immediately began to cut away under these prices, I suppose you intended to say? A. Well, we went after the trade, all right.

Q. And, as you have expressed it, you shut them out? A. Yes.

Q. Is that your signature, Mr. Waddell (handing paper to witness)? A. That is my name, I don't know whether that is my signature or not.

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Q. Look at the letter. A. Where is it from, Cincinnati? A. (Examining paper). Cincinnati, yes, that is my signature.

Q. A letter you wrote the Hazard Powder Company? A. I presume so, yes, sir.

> Q. (Reading): "Cincinnati, February 20, 1891, the Hazard Powder Company, 63 Pine St., New York. Dear Sirs: I enclose you copy of a letter from Mr. Rood relating to J. D. Sourwine, Agent, for Phoenix Company, Brazil, Indiana,"——

Q. Well there, that shows that the Phoenix Company was selling powder in February, 1891, doesn't it, Mr. Waddell? A. Yes.

Q. "I also enclose Mr. S.' business card, which states: 'We are independent of the combination.' Mr. Sourwine has sold Brazil Block Coal Company three cars; Nickel Plate one car; Bryson one car and for general distribution, one car. That is some 5,000 kegs displaced at Brazil in favor of Phoenix." Whose powder was it that was displaced in place of Phoenix? A. Sourwine was——

Q. He was the Phoenix agent, Mr. Waddell? A. He was the Phoenix agent.

3059 Q. This says so and he had displaced five carloads of powder by some Phoenix to those customers? A. I should judge that as I recollect prior to that time he had been an agent of the du Ponts, I don't know, but I should say so.

Q. Can you state what powder these five customers—those customers had been buying before they bought this Phoenix? A. No, sir.

Q. (Reading): "The Bob Andrews that Mr. Rood refers to, is a particular friend of ours, Manager of Lancaster Block Coal
3060 Company. The people who are discussing the new powder mill, referred to by Mr. Rood, are the same gentlemen that mentioned it to me a few days ago. I think it will be built about Terre Haute on capital of $100,000. Would you like to have Mr. Rood attend the meeting and get the particulars? Do you desire to take any action regarding Phoenix? I presume with all the companies and their representatives in an antagonistic position to each other, there is no means of concentrating defense against any one; however, you may have determined upon some plan and are prepared to instruct me.

Yours truly,
R. S. Waddell, Agent."

3061

Q. Now then can you tell what powder had been displaced by these 5,000 kegs of Phoenix Powder at Brazil? A. No, I don't know; I didn't know the trade in Brazil for Hazard, I did not at that time represent du Pont, du Pont I think it was and his letter——

Q. Mr. Rood was travelling for you, wasn't he? A. He was travelling for the Hazard, yes.

Q. And it was on account of his report to you that you made this communication, wasn't it? A. (No answer.)

3062

Mr. Button: Possibly I had better read Mr. Rood's letter. This is from "Louisville, Kentucky, February 19, 1891, R. S. Waddell, Agent.

Dear Sir: Enclosed you will find J. D. Sourwine, Brazil, Indiana, card which explains for itself. Sourwine is trying to cut up a furor at Brazil, Indiana. Has sold Brazil Block Coal Company three cars—Nickel Plate Coal Company one car—John Bryson, Hardware Merchant, one car of powder, and is selling a car out by small quantities. He sold to Perry 100 kegs at $1.48, so Perry says, and Perry sold it to the Shelbourne Coal Company at $1.48 per keg. I saw Sourwine at Terre Haute on Wednesday and he was feeling splendidly, yes, good. Said he was going south to sell powder, meaning Southern Indiana. I put Bob Andrews on to him and he wanted to sell Andrews and said if he would give him an order for a carload, he, Sourwine, would make it a few cents less than $1.48, but not much, but intimated 2 per cent. for cash and three cents. This information is correct and can be relied upon, and I feel that

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Sourwine must be stopped or we will have to meet him. It matters very little about our mills not having the powder to ship, and there may be a stiffness felt at the mills, but now is no time to feel unconcerned in regard to keeping our trade, for our refusing to meet his figure is equivalent to our saying to our customers, 'Go and buy of Phoenix' when we cannot say we will meet his figures. Bryson is now going for the

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miner's trade in the same way that Ingle is being antagonized and the operators are working up to a high standing. I was asked if I would go in on a powder mill. I asked, with whom—they said that five parties had had a meeting and that there would be a larger meeting in the future, some time within two weeks. When the meeting is called I will be telegraphed a day or so ahead so I can be at the meeting, and in this way can stand on the inside and know what is done.

3066

Very respectfully,

(Signed) GEORGE L. ROOD."

Q. Now then this was Hazard trade, was it not, Mr. Sourwine had displaced with 5,000 kegs of the Phoenix powder? A. No, not the kegs, no sir.

Q. This trade was it, whose was it? A. Well, I should say that that trade belonged to King, a little of it to Equitable, and a good deal of it to du Pont; but I don't think Hazard had a customer on the list you have read.

Q. He was going to Southern Indiana and you haven't any doubt about what he was going down

there to cut in your Hazard trade in that territory at that time, had you? A. That was Rood's statement.

Q. Was not this in that statement? A. He had been advising me.

Q. Wasn't it your own judgment in 1891 that that was what he was going to do? A. These letters we got constantly and I wrote to New York some of the same type trying to get better prices.

Q. Was not it your judgment in 1891 that Sourwine was going to travel in your territory and cut 3068
your prices with Phoenix Powder? A. No, I never feared Sourwine.

Q. You never had any fear of him and yet you sent a copy of this letter to the home office in New York, didn't you? A. That is my duty, to inform my principals and ask for instructions and I got them.

Q. What company had this trade, the Equitable? A. I think the Equitable had part of the trade of the Brazil Block, he mentioned the Brazil Block?

Q. Organized in 1892, the Equitable was, wasn't 3069
it? A. Yes, that is right.

Q. It could not have had it in '91, could it? A. Yes, sir, it was organized in 1892, I thought we were ahead of that.

Q. This is 1891, February. A. Not the Equitable, but the Equitable took a part of the trade of the Brazil Block Company when it came into existence.

Q. That has nothing to do with this passage. A. Prior to that, the trade of the Brazil Block Company had been divided about equally between King and Ohio; Ohio had taken the trade during 1886, prior to 1886 campaign, and held it. McClellan I think was in there, one of those that took part. What were the names of those other people?

3070 *R. S. Waddell—Cross*

Q. Brazil Block, the Nickel Plate and Bryson. A. I never sold them.

Q. It had something to do with the Hazard trade, Mr. Waddell, because you state as follows in that letter: "I presume with all the companies and their representatives in an antagonistic position to each other, there is no means of concentrating defense against any one; however, you may have determined upon some plan and are prepared to instruct me." At that date you thought that this something
3071 that the Hazard might do, it had something to do with you, didn't you? A. I thought they were part of the pool.

Q. It was something that you thought the Hazard might want to take some action about? A. Yes.

Q. It was true at that time, that all the companies and their representatives were in an antagonistic position to each other in February, 1891, were they not, referring to all the pool companies? A. They may have been, I don't know what their conditions were then.

3072 Q. You did know at the time you wrote this letter? A. I must have known something.

Q. That must be true.

Mr. Button: Possibly you had better mark as a separate exhibit the enclosures here from Mr. Rood and also the card.

(Same marked Defendants' Exhibit X and Defendants' Exhibit Y.)

Q. Did you write this letter, Mr. Waddell (handing paper to witness)? A. Yes.

Mr. Button: Mark it.

(Same received in evidence and marked Defendants' Exhibit Z.)

"June 3, 1891.

The Hazard Powder Co.,
63 Pine Street, New York.

Dear Sirs:

In reply to your message, I confirm our t.d. to you reading:

'No. Rosedale reluctant buyer. Advance 'delivery would offend. Indiana trade rest- 3074 'less.'

Considerable urging brought us this order. Indiana consumers all know a better price than $1.48. This trade must be handled carefully or all of it will be lost. We are out now about 10 carloads in Indiana since Jan. 1st.

Truly yours,

R. S. Waddell, Agt."

Q. These ten carloads had been captured by the 3075 Phoenix Company at a cut price, hadn't they, Mr. Waddell? A. I don't know.

Q. Have you any doubt about that matter from that letter? A. I don't know what their price was, evidently our price at that time was $1.48, that sounds familiar to me.

Q. Won't you look at that letter and see whether you can not say your price was considerably more than $1.48? A. Oh, no, I cannot recall about that, specifying a particular price on a particular date so long ago.

Q. There is nothing about that letter which would indicate to you that those were cut prices under your price. What was meant, would you say by the expression "They all knew a better price

3076 than $1.48." Better than your price? A. I presume that $1.48 was our price.

Q. Then they all knew a price better than that, didn't they? A. They may, from some associate.

Q. You would not have written anything to your home company that was not correct at that time, would you?

Q. Mr. Waddell, did you write this letter, dated July 10th, 1891 (handing letter to witness)? A. Yes.

3077 (Letter and enclosures marked A-1, A-2 and A-3 in evidence.)

Mr. Button: I will read the letter (reading): "Cincinnati, July 10, 1891. The Hazard Powder Company, 62 Pine Street, New York. Dear Sirs: Phoenix adds a few more nails to our box, as you will note by Mr. Rood's letter 8th. Presume there is no redress. It is consoling to reflect that 'whom the Lord loveth, He chaseneth,' and that we are the chosen vessels of so much affection, but we hope Lord Kellogg will control his sentimental inclination and leave us enough trade to pay expenses.

3078

Truly yours,

R. S. Waddell, Agent."

Q. Mr. Kellogg was the man who was at the head of the Phoenix Powder Company, was he not, Mr. Waddell? A. Yes.

Q. Now, at that time, July 10, 1891, you were considerably disturbed lest he would get all of your trade for the Hazard, were you not? A. No, I probably put it a little strong there, a little enthusiastic; I didn't think he could take it all; I knew he couldn't.

Q. In your letter did you enclose those two enclosures? A. There doesn't seem to be any mark indicating that; there is only one enclosure here.

Q. This slip (indicating)? A. No, that is Mr. Colvin's, I think, of New York; the other is a letter from Mr. Rood; I don't know whether I enclosed it or not; it is not marked as an enclosure.

Q. This letter states that "Phoenix adds a few more nails to our box," which you will note by Mr. Rood's letter of the 8th; is not that (indicating) Mr. Rood's letter of the 8th that you refer 3080
to in your letter? A. I presume it is, yes.

Mr. Abbott: If your Honor please, I notice that the letter isn't signed; it seems to be a copy of something; the witness says he cannot recall whether he sent it or not. I haven't any objection to the letter, so far as its contents are concerned, but I don't think that this witness ought to be held responsible for it unless he knows something about it, as having been sent as an enclosure.

3081

Q. This appears to be a copy signed in typewriting, George L. Rood.

Mr. Abbott: Do you contend that that is the original signature of Mr. Rood?

Mr. Button: Why, not at all.

Mr. Abbott: Also let me look at that letter (indicating).

Mr. Button: Mr. Waddell's letter refers to a letter of Mr. Rood's of the 8th, enclosed, and if there is any doubt about it, I would like to have Mr. Waddell read the enclosure.

Mr. Abbott: I think that will be the best way.

3082 *R. S. Waddell—Cross*

Q. Will you not read the enclosure, Mr. Waddell, yourself, and then state whether it is not the letter, a copy of Mr. Rood's letter of the 8th instant that you referred to?

(Witness reads copy of letter.)

A. I think this is the letter—I have not read it through. I constantly forwarded Mr. Rood's letters to the office for their information.

3083 Q. And is not this the original memorandum that Mr. Rood refers to? A. No, I think that memorandum was made in the New York office by Mr. Colvin; it looks like his handwriting.

Mr. Button: This enclosure is dated Terre Haute, Indiana, July 8, 1891 (reading): "Mr. R. S. Waddell, Agent, 45 West Second Street, Cincinnati, Ohio. Dear Sir: I went into Cooper Morris and Company's store this morning and in front of the store stood Mr. Morris and J. D. Souerwine, of Brazil,

3084 Phoenix Powder Company agent. He had about seven bottles of samples of Phoenix Powder Company powder; a small box each of du Pont, Hazard and Laflin and Rand powders. Mr. Morris said 'Good morning' to me, not speaking my name. Souerwine did not recognize me. I stood a moment, when Mr. Morris said, 'Here are powder samples, you are a judge of powder?' I said not much of a judge, and stepped up and began to handle the samples. Souerwine took great pains to show me the powder as well as Hazard and du Pont powders. I said I was better acquainted with Hazard brand than any other; he said, 'yes,' Rood sells, or has been selling, most of the powder in this district, Hazard brand. Then he

pulled out of his pocket a bunch of papers and took out bills for powder as follows (that he has sold and delivered since June 1st): Sherburne Coal Co., Brazil; John Bryson, Brazil; Otter Creek Coal Co., Brazil; Brazil Block Coal Co., Brazil; Nickle Plate Coal Co., Brazil; Zellers & Zigler, Brazil; Jackson Hill Coal Co., Brazil. And he said he had just sold Mr. Rippetoe of Talley's Company a car this morning. Souerwine then commenced to urge Morris 3086
to buy a carload. He said, 'You can buy a car at a dollar forty-five, sixty days, and sell to outside parties in one hundred keg lots at a dollar fifty-eight, and make a good thing out of it.' Souerwine elongated on being du Pont's agent for nine years, and talked not fast enough to suit himself. After he left the store I followed him out in front of the store, and said to him, 'What will you sell Parke County Coal Co. a car of powder?' He said, 'That is Martin's mine, 3087
is it not?' I said, 'Yes, but he is in Europe now.' He said, 'When will they need the powder?' I said, 'In thirty to forty days.' He said, 'Rood sells them Hazard. I wish I could get a car to them, it would do me so much good to beat Rood.' I said, 'Well, what price can you make them a car?' He said, 'I will sell them a carload at a dollar forty-five, sixty days, or 2 per cent. off, $1.45 for cash, 10 days. I said, 'I am going up there this afternoon and would talk to the bookkeeper and I wished he would put the prices down on paper for me.' He wrote in his little memorandum book and tore it out and gave it to me. It was, J. D. Souer-

wine, Agent, Phoenix Powder Company, Brazil, Indiana. $1.45, sixty days, $1.42 ten days. He then said, 'If he could get in on them he would shave it to a dollar forty-two, as a dollar forty-five less two per cent. is $1.42 10/100; he would make it even $1.42. He then asked me my name. I said, 'Call me Jones.' He said, 'First name?' I said, 'J. D. Jones.' He said, 'Now, Mr. Jones, if you could only help me in at Rosedale, I
3089 would be so much obliged to you, Mr. Jones.' I excused myself and went into Cooper Morris & Company and in about five minutes he came in and said: 'Mr. Jones, I wonder if it would not be good for me to run up and see them tomorrow, you will be there today, and if I go up tomorrow, it probably would fix it up all right.' I said, 'I thought I could manage them,' and this ended the interview.

The written evidence I will keep until I get to see you as I do not want it to get
3090 out of our possession. The exact copy reads as follows, in Souerwine's own handwriting:

J. D. Souerwine, Agent, Brazil, Indiana, Phoenix Powder Co. $1.45, 60 days; $1.42, cash 10 days.

This is only what I have been certain of for many days and it is a serious question, and we can either come to the front or lose all our trade that has cost me nine years' hard work to get and maintain, even the thought of it makes me sick. Very respectfully." Signed in typewriting "Geo. L. Rood." Post Script. 'Wire me, Marshall, Ill., by 10 A. M. Thursday, or Greenup, by 3 P. M. if you desire anything further. I have decided to enclose the memorandum.

G. L. R."

Q. Now, don't you think that is the original Souerwine memorandum in view of that? A. It may be; I don't know whose it is; it is not mine.

Q. Now, then, at that time this price that was being made according to this correspondence was considerably under the Hazard price, was it not, Mr. Waddell? A. I should judge the Hazard price was $1.48.

Q. Well, you have no doubt but what that was a Phoenix cut, have you? A. Oh, the Phoenix Powder Company may not have had anything to 3092
do with it at all; it may have been a division of commissions.

Q. You have no doubt that it was a cut by Mr. Souerwine on Phoenix Powder, have you? A. He may have divided his commissions; ten per cent. commissions they usually got.

Q. Did you write this letter, July 27, 1902, to the du Pont Powder Company, or rather the E. I. du Pont de Nemours and Company (handing paper to witness)? A. Yes, sir.

Q. I ask you if, by that time, then, July, 1902, 3093
you had taken on the business of the du Pont Company in Cincinnati? A. I think it was about the time

> Mr. Button (reading): "E. I. du Pont de Nemours and Company, Wilmington, Delaware, July 27, 1892. Dear Sirs: We are making some progress investigating the Illinois district. In regard to Duquoin, I asked Mr. Rood to report on the trade if he found it influenced or was associated with other markets, but to refer buyers to Mr. Meacham.
>
> I append some of Mr. Rood's reports which throw light on the situation.
>
> From Tamaron, Ill., July 25, D. C. Bar-

1031

ber & Son have a mine, work about 20 to 25 men, do not ship much coal and are quite slow business men, but are good financially. Have been using Miami powder, did at one time use Kings, but they sent them a poor lot of powder and they had to return it to them, and about four years ago they bought Miami until last week, July 22, they bought of French (King's agent) 400 kegs powder guaranteed in price and quality, and Mr.
3095 Barber would not give me the price he paid, but inferred it was less than $1.30. He also said that French said he had sold Horn at Duquoin, Ill., a large buyer and coal dealer at Duquoin. I will see Horn and see what I can find out from him.

Duquoin, Ill., July 25, 1892.

Mr. Horn said he did not buy of French as French had said to Barber at Tamaron. Said he had du Pont Powder and used 250
3096 to 300 kegs per month. That he could buy powder at $1.25 per keg, of several companies and mentioned Phoenix Company as one, but he said he was satisfied, and Meacham cannot be beaten.

St. John, July 25, 1892.

I. C. C. & Salt Co., Haliday Mine. They bought of Laflin and Rand Co. before the decline at in the neighborhood of $1.40, and after had it scaled to $1.30, have a quantity to last them until Dec. 1, 1892, and will write us before purchasing.

J. M. Browning has a mine here and has associated with him C. McKinley, who op-

erates a mine at Wilderman and one at Renschler, at Duquoin, they have been buying powder of du Pont for several years, through Meacham, St. Louis. J. M. Browning, Duquoin Coal & Mining Co., consume about 400 kegs per month.

They sell Egyptian Mine 75 kegs per month; Excelsior Mine, 125 kegs per month; Superior Mine, 50 kegs per month; Greenwood Mine, 75 kegs per month, and have no trouble so far in holding at 4 or 5 cents 3098
per keg profit and are willing to continue to sell them at small profit. They did sell Enterprise Coal Co., Mr. Wall, Jr., is superintendent and manager of the Enterprise Company and is a nephew to Mr. Nettleton, who is bookkeeper for the Duquoin Coal Company and stand together. Enterprise Co. continued to buy of Duquoin Co. until a few days ago. Chattanooga Powder Co. came and fixed up what they call an agency. Selling them a carload at $1.30 per 3099
keg, delivered at Duquoin, giving them ten cents per keg. Commission, also a written guarantee guaranteeing them against decline. Enterprise Coal Co. to receive the powder, sell it, and pay at $1.20 per keg each month as their consumption may be, some 4 to 5 months on a carload, and in the event of the powder is poor and does not satisfy the miners, Enterprise Coal Co. are to ship it back and pay for what they have sold or consumed. This takes one of du Pont's customers.

Joe French called at Duquoin Coal Co. office on last Friday and made them, Mr. Nettleton, the bookkeeper, a price for a car

3100 *R. S. Waddell—Cross*

at $1.22 and ½ per keg delivered at Duquoin. They knew of the Chattanooga price and tendered him an offer of $1.20 for a car, saying they had to have a carload of 1,000 kegs by Aug. 10. The reason why they tendered him the $1.20 was that they could not get it of du Pont (Meacham) and they were compelled to get $1.20 powder to hold other mines that they now supply. I said to them that I did not have any instructions to treat
3101 with them, but I would write the situation fully and the company could do as they saw fit. French did not accept at $1.20, but said he would take the order at $1.22½, 60 days time, which means $1.25 less 2 per cent., and they wait 60 days for their pay; finally French said he would take in the order at $1.20 and would let them accept it or not and they are to wire Duquoin Coal Co. by Tuesday. I have succeeded in getting them to wait this week and not place an order until we have a chance at them, either through
3102 Meecham or us at Cinti., Ohio.

Jupiter Coal Co. French went to them, they want powder in 60 days and to get the order he said that probably the price would take it at $1.30 and give him a guarantee to make it any price that was quoted him and succeeded in getting the order by so doing. Both S. B. Eaton and French knowing that Chattanooga had a price out at $1.20. If this is not accepting orders at a $1.20 in every sense of the word, I do not know much about business. I will go to Muddy Valley and Carbondale tomorrow afternoon and come back here in the evening.

3103

George Nye is traveling for Phoenix Powder Company and was in this section last week. Rood. Truly yours, R. S. Waddell, Agent."

Q. Now, then, Mr. Waddell, in July, 1892, the King Company got down to $1.20 for blasting powder, had it not? A. Yes, they see-sawed down, all of them, first one and then the other.

Q. And the Chattanooga Powder Company had gotten down to $1.20 in Illinois, had it not? A. 3104
It seems so from that letter.

Q. Therefore, you were mistaken this morning in saying that the Chattanooga territory did not extend as far north as Illinois, were you not? A. That is the extreme lower point of Illinois; I didn't remember that they ever had a customer in the state.

Q. As a matter of fact, they did get into the state? A. They appeared to have a customer there.

Q. Now, that was down to $1.20 from what point? It had been $1.48 previously? A. $1.48, yes. 3105

Q. Now, that price had not been pounded down there by the Hazard or the du Pont Company, had it by those two, Mr. Waddell? A. Well, they took their part in it in different sections; you are just reading letters at intervals; you don't read the whole correspondence.

Q. I can read only one letter at a time. A. Take the whole file and we will find——

Q. How about this one of July 27, 1902 (handing paper to witness)? A. Yes, that is my signature.

Mr. Button (reading): "Cincinnati, July 27, 1892, du Pont Company. Dear Sirs: We have wired you two messages this date reading:

1st. 'French of Kings offered Duquoin Coal Co. last Friday, at $1.22½ and said Peters would write meeting Chattanooga $1.20. Duquoin Co. promised to wait your advices. We suggest you instruct Meacham or us to sell them quickly at $1.20.

2nd. 'We can sell Centralia Mining Co. car at one twenty if desired. Kings took them from you May twenty-third.'

Mr. Rood's letter reporting from Duquoin
3107 the work of French of King Powder Co. enclosed you today fully explains No. 1.

The Centralia M. & Mfg. Co. were your agents and I wrote you of Kings having taken them at $1.39 2/10. Mr. Rood wrote they would take a car at $1.20 and feeling the competition was not strong and that Mr. Rood was using our Kentucky price as one that might probably be made in Illinois. I asked him to return to Centralia and try to do better. His later reports of the acts of Kings and Chattanooga impressed me with
3108 the necessity of submitting the question to you as I have done in T/D No. 2. When all the correspondence. When all of the correspondence is assembled, I trust that this will be clear. Truly yours, R. S. Waddell, Agent."

Q. Now, in sending those telegrams you were asking permission merely to meet these prices that had been reported to you that were made by other companies, were you not, Mr. Waddell, to your customers? A. Just what it states in the letter; I don't recollect.

Q. Well, that is the effect of it; Kings had taken one of your customers and the Chattanooga an-

other and you had put the situation up to the du Ponts with a request for permission to meet the price, isn't that what it amounts to? A. But it states there Rood was using our $1.20 price against the $1.39 over there; I don't understand that part of it.

Q. Is this your letter dated July 20, 1892 (handing paper to witness)? A. Yes, that is my signature.

(Letter marked A-6 in evidence.)

Mr. Button: 3110

"Cincinnati, O., July 20, 1892.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

Taylor Coal Co., very good customers of ours for two or three years and with mines located near McHenry, have been quoted by Chattanooga Co., the same prices given Mr. 3111
Henry, with an offer of two years contract. We can close with them for 3,200 kegs to be taken within one year, on the same terms. Please wire on receipt of this if it meets your approval. Closing with Taylor Coal Co., would shut Chattanooga out of the bulk of trade in southwestern Kentucky.

Truly yours,

R. S. Waddell, Agt."

Q. Now that shows you, doesn't it, Mr. Waddell, that the Chattanooga Company had cut under the price that you had had with the McHenry Coal Com-

pany previously, for two or three years? A. I should think so.

Q. And that you were asking permission to make a contract with them at the same prices? A. To meet the Chattanooga, yes.

Q. And it shows that you were making contracts for the delivery of powder for this date, doesn't it? A. No.

Q. Or wanting to? A. It don't show that we were making them; it shows they are submitting
3113 the same proposition the Chattanooga had submitted.

Q. Here is another letter of the same date, is that your signature (handing paper to witness)? A. Is it dated Cincinnati?

Q. Yes. A. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibit A-7.)

Mr. Button: This is a letter to the du Pont Company under date of July 20, 1892:

3114 "Dear Sirs: I have had three or four conferences with the Mermet Company regarding another car of powder. They asked our price and I quoted $1.30. Mr. Trum B. P., stated this was too high and requested that we name better figures. I called to see him again and told him that $1.30 was the best price we would quote, and I did not believe any powder company would offer for less. He told me I was mistaken, that he had better offers and would buy if we do not do as well. He further stated that he was guaranteed protection against any decline in price and the offer of the lower figure coupled with this guarantee was sufficient to command his trade. I tried very hard to

learn what the price was. He is a shrewd buyer and would not give me the slightest hint, but said he would give us $1.15 for three cars. I told him that was entirely too low a figure and I did not think it would be considered. They prefer du Pont powder. I do not believe they can buy any brand at the price named.

Herewith is a letter from them of this date which speaks for itself. They ask a 3116
reply not later than Monday and would like it earlier if we can give it. The protection clause is objectionable and I suggest that this might be met by delivering in four hundred keg lots, provided a satisfactory price can be agreed upon. The price might then be guaranteed up to the date of shipment and their risk would not be great on half car loads. I told Mr. Trum that I didn't think any powder had been sold in Kanawha below list $1.30 2 per cent off. He told me he knew of several sales below this 3117
price.

Truly yours,
R. S. Waddell, Agt."

Q. Do you recall where the Marmet Company was? A. Yes, it was about fifteen miles below Charleston on Kanawha River.

Q. In West Virginia? A. Yes, sir.

Q. Do you know of what company it was that was giving that price, cutting under prices there? A. No.

Q. At this time you were convinced that some concern had, were not you? A. I should say it was the Phoenix, but I don't know. I know that the letter stated that the price was $1.15, but I do not believe I had any such figure.

3118 *R. S. Waddell—Cross*

Q. You were well convinced at that time that he had a lower figure than the $1.30 which you quoted, were you not? A. You cannot always depend upon the buyers to tell you the truth.

Q. Well right there then, that is pretty difficult then to find out what your competitors are doing, isn't it, Mr. Waddell? A. Yes, sir.

Q. And it is very possible that the concern might cut the price of a competitor without really intending to do so simply from the lack of facili-
3119 ties of finding out a competitive price, is not that true? A. That is true where they did not understand each others prices.

Q. Now will you state whether that is your letter with the enclosures in it (handing letters to witness)? A. There are three letters here.

Q. Three right here? A. Three of mine.

Q. There is another one, is not that also one that was enclosed? A. It don't appear to be signed; I don't know what it is.

Q. I call your attention to that letter (indicat-
3120 ing)? A. It seems to be from a letter book.

Mr. Button: Here are three letters of Mr. Waddell's (handing same to counsel).

Please mark these.

(Same received in evidence and marked Defendant's Exhibits 8, 9, 10, 11 and 12 respectively.)

Q. Is this your signature (handing witness paper)? A. That is my signature.

Q. I see that I have two or three of a previous date, and I will refer to them first, and while you are looking at them I will read this one which is dated July 11, 1892.

Mr. Waddell, of the du Pont Company, Exhibit A-8:

Dear Sirs: We received orders from St. Bernard Coal Co., Erlington, Kentucky, for four carloads du Pont powder, one car Hazard to be shipped August 1st, October 1st, December 1st, January 1st and February 1st. Price $1.30, to be guaranteed up to date of shipment. In the event of change of price the superintendent of St. Bernard is to notify us naming parties who offer better price 3122 and show us bona fide quotations at less. It would then be optional with us whether to ship or cancel order. I did not have time to submit the delayed orders to you before receiving a letter from St. Bernard Coal Company of which enclosed is a copy. Have wired Mr. J. R. Rash, Superintendent of Sycamore, that Mr. Rood would see him Wednesday morning. I am quite anxious to corner this trade for the pay is good and it is a first class market for Chattanooga P. 3123 Company product via Nashville, while we can get it from Moor, Iowa. Please wire me, or if you can reach us by letter Wednesday, instruct whether the long time orders meet your approval. With the option clause, the time cuts no figure unless prices go above $1.30, and it might suit you in that event to have the trade secured. We have the inside on the deal and will hold or release it as you desire.

Truly yours,

R. S. Waddell, Agt."

3124 That was enclosing a letter from Mr. Rash to the Hazard Powder Company, at Erlington, Kentucky:

"July 9, 1892.

Dear Sirs:

I am quite confident now that I will be able to make a much more satisfactory powder arrangement than you offer. On consequence of which it will be useless to further con-
3125 sider our proposed deal. I am able to make contracts for a year at $1.25 per keg, but I want to make it two years at least and maybe three years.

(Signed) Your friends,

Jas. R. Rash."

Q. Now, Mr. Waddell, you sold him some powder, had taken an order for $1.30, quite a number of shipments of Hazard Powder, hadn't you,
3126 and then lost that on a quotation from Chattanooga at $1.25? A. Conditional order.

Q. That was in July, 1892, and then you come on with this correspondence of July 13, 1892, one of your letters to the du Pont Company:

"Dear Sirs:

I received a letter from W. G. Duncan, Superintendent McHenry Coal Company, McHenry Kentucky. Copy enclosed. Mr. Rood was en route to Erlington on the St. Bernard Coal Company field, and I stopped him at McHenry. This morning I had his wire reading: 'Chattanooga quotes $1.25 less 2. Wire Erlington what to do with Mc-

Henry Co.' I submitted the question to the Hazard Powder Company and just have their reply reading: 'McHenry Coal Co., proposition declined. This trade is quite important. Their mines are about three miles from Central City (T. C. du Pont), and we have sold them about all the powder they have used for three years. Mr. Duncan is a fast friend of ours, reliable in his statements and will not ask more than he is offered by others. I do not attach much importance 3128
to his desire for the written contract for two years. What concerns us most now is to place a carload. If you will accept the order at the price named, I think I can arrange for him to take du Pont powder and will hold Mr. Rood at Erlington until we have your wire tomorrow.

Truly yours,

R. S. Waddell, Agt."

And the enclosures from Mr. Duncan seems to be dated July 11, 1892. "R. S. 3129
Waddell, Agent, Cincinnati, Ohio.

Dear Sir:

Please quote us a price on one car load of FF Hazard powder for immediate delivery. Can there be an arrangement made with your company to have a written contract for powder at a price for two years? Please answer this by return mail, giving me a price on a carload right away, and letting me know whether or not a contract could be made for two years and at what price.

Yours very truly,

W. G. Duncan, Superintendent."

3130 Now, then, on this business, the Chattanooga had cut under your price, you had wired to Hazard Powder Company asking if they would make the same price and they had declined, is not that true, Mr. Waddell? A. Yes, the freights were very heavy in there.

Q. In July, 1892, the price had not yet come where they were meeting the prices or cutting them to shut out the Chattanooga and keep all of their trade, had it, Mr. Waddell? A. Yes, you are only
3131 reading our complaints of the others; you are not reading the others complaining of us, other companies. This is one sided, every other powder company was making complaints too.

Q. Complaints were made to whom, whom do you mean? A. Agents of the other companies, the Hazard Powder Company, the du Pont Powder Company.

Q. They were making complaints too? A. Making complaints of other companies to the Hazard and du Pont.

Q. You were getting them too? A. Yes, sir.
3132 Q. From other companies? A. Yes, sir.

Q. The last letter of July 14, 1892, written to the du Pont Company is as follows:

"Dear Sirs:

Supplementing what we wrote you yesterday regarding the McHenry Coal Company, I wired this morning message reading 'Vannen Coleman writes confirming McHenry mention, our mail 13th. Chattanooga makes offer and solicits two years' contract. Price to McHenry and St. Bernard $1.25 less two. We hold option.' Now confirmed. The price Mr. Rood obtained from Duncan, Superin-

tendent McHenry, and Rash, Superintendent St. Bernard. Herewith I hand you copy Mr. Colemans' letter 13th in full mention of Mr. Duncans' visit at his office. This information tallies with Mr. Rood's report. I have a T from Rood reading: 'Rash is quoted $1.25 less two per cent. cash. He wants 11,000 kegs for the year, based on present consumption. But in case the consumption should not demand it so fast wants cars held until they need it. No other powder to be 3134
used during this contract.' My impression is, this is about 3,000 kegs more than they can use at Erlington and St. Charles. The purpose being to delay shipments and bridge over into a second year. I have wired Mr. Rood: 'Close contract, price named, for definite quantity. All to be taken within a year. Will accommodate shipments to consignees' wants, delaying or hastening as notified. Do not extend indefinitely into future. Except advices for McHenry tonight.' This gives
you full information of the situation in Ken- 3135
tucky. I hope to close the St. Bernard deal and have your instructions regarding McHenry, so that that case may be closed tonight. Our only competitor at McHenry is the Chattanooga Powder Company. But the Phoenix are involved at St. Bernard. They appear to be working in harmony with the Chattanooga people. Am sorry to annoy you so much with the details of our trade, but it seems best that we give you the fullest mention, while continually asking instructions.

Truly yours,

R. S. Waddell, Agt."

Q. That showed that you hadn't any general instructions at that time to meet any prices to keep out the Phoenix and Chattanooga, doesn't it, Mr. Waddell? A. I never had any general instructions at that stage of the game, no.

Mr. Button: Now for a moment going back to July 18, 1891, just a minute, I find a letter to the Hazard Powder Company or an agreement as follows:

3137 "If you understood the complex ownership of Indiana mines as I do our fears for that trade would be appreciated. To particularly illustrate:

Otter Creek, C. Co., Dan Corkery Zimmerman et al. buy Phoenix brand at $1.45 less 2 per cent. on time.

Jackson Hill C. & C. Company, 125 kegs per month. D. Corkery, Harder, Fairbanks, Mackey et al. order for Hazard given by Harder countermanded by Corkery. Buy Phoenix brand at $1.45 less 2 per cent. on

3138 time.

Diamond Block C. Company, 100 kegs per month. Harder, Hafer, Lancaster Block Co. et al. Andrews of Lancaster Co. ordered last car. Harder or Corkery will buy hereafter.

Lancaster Block C. Co., 15 kegs per month. Andrews et al. Have been notified by Diamond Block people of $1.41 price.

Brazil Block C. Co., 1,000 kegs per month. Gilman, Corkery et al. Buying Phoenix at $1.41. This Co. is confidentially negotiating to buy Parke Coal Co.

Parties who are interested in above mines also own stock in Coal Bluff. J. Smith

Talley, Indiana Block, Nickle Plate and other mines. It takes 85 per cent. of our Indiana trade and the 'cream' financially. Once out, always out. I believe you understand we are on the ragged edge expecting to exit.

Truly yours,

R. S. Waddell, Agt."

Q. Now that was in July, 1891, and you had 3140
lost practically all that trade in Indiana to the Phoenix Powder Company, hadn't you, for the Hazard? A. No, we held it, we held Indiana trade, I got the instructions to hold it and we held it.

Q. When? A. After that letter, after that letter or correspondence I held the trade, and when the Phoenix went out I had the business.

Q. That is the letter shows that at this time you lost it to the Phoenix, at cut prices? A. Maybe at the time, at the moment.

Q. At this time? A. Month to month.

Q. And the price then was $1.40 and $1.45 as 3141
made by the Phoenix, and as we have just seen in these letters a year later; and in the meantime they cut it down to $1.20 from $1.45? A. Went down to eighty cents before it ultimately fell into our hands; we had it at eighty cents.

Q. And gained it again only after this length of time, having lost it at the time, and this letter states the truth, the facts as they existed on July 10, 1891? A. Yes, at that date.

Mr. Button: Better mark this one that I just read.

(Same received in evidence and marked Defendant's Exhibit A-13.)

3142 Q. This is another one, Mr. Waddell (handing to witness). A. Yes, that is my signature.

Mr. Button: This is the 18th of July, 1891, to the Hazard Company.

"Dear Sirs:

Morris Sternberger just called—inquired if his car had been shipped. I told him it left the mills 15th inst. He told me he had purchased fifty kegs of Phoenix for $1.58 on
3143 trial—if it was found passably good for miners, he had bought the last car of Hazard unless they made him a $1.42 price net. Will be ready to order in two weeks. I told him there was more than ten cents a keg difference in the powder. He replied: 'Possibly to a consumer, but Phoenix will sell for as much as Hazard to a miner, and afford me more profit.' I wonder where this inroad upon our trade is to end and what there will be left to us. They seem to select only the best customers and leave us the
3144 doubtful trade.

Truly yours,

R. S. Waddell, Agt."

Mark this.

(Same received in evidence and marked Defendant's Exhibit A-14.)

Q. It was not quite correct, as you stated this morning, Mr. Waddell, that as soon as one of these companies made a cut price the du Pont and Hazard met that price and went lower and kept the customer? Do you recollect making that statement this morning? A. Yes, we went down with it, we went with Sternberger to seventy-five cents and held his business when we quit.

Q. But in the course of the next four or five years, wasn't it? A. When the fight ended July 4, 1896.

Q. But up to this date you hadn't met that price with Sternberger, had you? A. No, they came down slowly, alternating, first one would cut and then the other.

Q. Letter of July 20, 1891. Is that your letter (handing leter to witness)? A. Yes, that is my signature.

Mr. Abbott: If they are all similar I don't 3146
care to read them over. Hadn't you better have this one marked?

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibit A-15.)

"Hazard Powder Company,
63 Pine Street,
New York.

Dear Sirs: 3147

Yours 17th inst. received.

No, my letter 15th was correct. The order is not cancelled nor confirmed. Mr. J. Smith Tally, President, called at our Cincinnati office Saturday and we discussed the matter at length. He is exceedingly friendly and I tried very hard to convince him that Hazard Powder was cheaper for him at $1.48 less 2 per cent. than Phoenix at $1.42—how well I succeeded the next ten days will decide, 'it is uphill work defending against Phoenix with their advantage in price.'

Truly yours,
R. S. Waddell, Agt."

3148

Q. At that time the Phoenix was consistently below your price, wasn't it? A. At that day they were below us.

Q. The next one comes down to September, 1891. Is that your letter to the Hazard Company (handing witness paper)? A. Yes, that is my signature.

Mr. Button: Mark this.

(Same is received in evidence and marked Defendant's Exhibit A-16.)

3149

"September 14, 1891.

To the Hazard Powder Company.

Dear Sirs:

We have yours 11th inst., order No. 54 for Coal Bluff Mining Co., Coal Bluff, Indiana, might as well be cancelled as I do not think it can be revived. The Coal Bluff Company bought two car loads from Phoenix
3150 at $1.45 less 2 per cent. We have dallied along with these people in the hope that something might transpire to retain that trade, but it might as well be abandoned permanently.

Truly yours,

R. S. Waddell, Agt."

Q. The next one is October 1, 1891, being a letter you sent to Mr. Weightman (handing witness paper). A. George Weightman. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibit A-17.)

"George Weightman, Esq., Treas.,

Care W. McBlair & Co.,
507 N. Third St., St. Louis, Mo.

Dear Sir:

Since receipt of yours 23rd ult., regarding sale by Mr. Rice through Mr. Madden to Coal Bluff, Mr. Rood ascertained when he called upon Mr. Talley that no mention whatever had been made to Mr. Madden nor in his presence to any other person, of Hazard powder. The reference to a $1.40 price was made by one of the gentlemen in the office, I think, a Mr. Ripeto, but it applied to Phoenix powder. Mr. Madden, of his own volition, stated that it was Hazard, for the purpose of influencing Mr. Rice to authorize a sale, and Mr. Talley says that Madden took the order at $1.40 and if so disposed he could have held him to a delivery. However, the order was cancelled as Mr. Talley at once purchased a carload of Phoenix Powder. All this is reported to the writer by Mr. Rood, and is given as such without endorsement or comment. We certainly have not sold or solicited orders at $1.40 and I am not altogether sure that any one else has done so, except in the instance related to Mr. Madden.

3152

3153

Truly yours,

R. S. Waddell, Agt."

Q. You lost that customer, didn't you, Mr. Waddell? A. No, sir, that is the best trade we had when we quit.

Q. You lost it at that time? A. Yes, we did, yes.

3154 *R. S. Waddell—Cross*

Q. Is this yours with the enclosure (handing paper to witness)? A. This is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibit A-18.)

Mr. Button: "October 8, 1891.

The Hazard Powder Company,

3155 63 Pine Street,
New York.

Dear Sirs:

Yours 1st inst. received.

The fellow who did not have the boots when they were wanted, is said to have accumulated a large stock later on, and was at last accounts behind the door trying to kick himself for not keeping up with the demands of a country that gets larger every year.

3156 I wanted to sell 150,000 this year and feel a little disappointed.

If it is the policy to let Phoenix market her output and all others hold to list, we submit—but others are going in for trade that would be ours at equal price. Your statement of carloads to me is misleading—about five orders were cancelled and several others are used to replenish stocks.

When I receive letters like the enclosed, and Mr. Rood writes they showed him a letter from Souerwine, naming $1.45 four months or $1.40 cash I get desperate, raise the safety valve and write principals.

Truly yours,
R. S. Waddell, Agt."

The letter enclosed was from Bugger, Neal & Co., to the Hazard Powder Company, October 3, 1891:

"Gentlemen:

We are not looking for cheap powder or low prices either, but we understand powder is down and we want you to let us have it as reasonable as you can. Thanking you for past endurance (?)

We are, Yours truly, 3158

Bugger, Neal & Co."

Q. Now at that time, that day they had not only cut your price but you were confident you could hold your trade if they would only allow you to make equal price in Hazard, weren't you, Mr. Waddell? A. I don't know whether I was confident or not.

Q. You said so. A. I was willing to try it, I was not a cutter.

Q. You say here "but others are going in for 3159
trade that would be ours at equal price." A. That indicated that other members of the association were getting business, we also held that trade but only at the end of the pool.

Q. This does not indicate that any of the associates was getting business, it indicates that the Phoenix Powder Company was getting business, doesn't it: "If it is the policy to let Phoenix market her output and all others hold to list," that would indicate they were the ones that were cutting just then? A. In that clause of the letter; the other, I inferred from the way you read it were our associates that were in on it.

Q. Is this the letter which you wrote in your own

3160 *R. S. Waddell—Cross*

hand December 1, 1891 (handing letter to witness)? A. That is my handwriting, yes.

Q. Inclosing a quotation or letter from some one else? A. Yes.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibits A-19-20, 21 and 22.)

"December 1, 1891. To the Hazard Com-
3161 pany.

"Herewith please find quotation by Chiles & Cronin, of Chicago, to David Engle, namely, 800 kegs at $1.42, and 400 kegs at $1.46 for powder, 'second' to none. Phoenix capacity 1,600 per day; McAbee new mill capacity 800 per day; Chattanooga new mill capacity 1,000 per day, total 3,400 per day.

This is the quantity that must be marketed and a good part of it will be unloaded in our territory. We have lost St. Bernard Coal Company to Phoenix. I tried to hold
3162 them for Sycamore but failed. They are good consumers. Correspondence like C. & C. fixes a price and we must decline Engle's order now on our files this office. He asked us to hold the order until the strike should be abandoned, or that it should not be known it would not include his miners.

I presume there is no relief, but it does seem essential that the associated companies should agree upon some channel through which the prices could be driven down to a living point without general and promiscuous cutting.

Why not pool a few carloads in the hands of discrete men and let the trade of the com-

panies that need protection be referred to them.

It would be a light loss on each associate and force the independent companies to capitulate.

Truly yours,
R. S. Waddell, Agt."

Q. Did you ever know of them, in that period, in the early nineties, to adopt your suggestion and pool some powder and sell it out to meet that 3164
competition, Mr. Waddell? A. No, that simply—the placing of an agency that meant that would control it that would have sense enough not to demoralize the market.

Q. However, the suggestion was not carried out? A. Oh, no, sir, no; they had a pool different from that.

Q. This shows that the St. Bernard Coal Company concerning whom we have already read some correspondence you had lost before this time? A. Yes, at that time; I held them when the fight was over. 3165

Q. You had it when you quit? A. I did.

Q. Here is another letter in your handwriting, is it not, and telegram that you sent or received, I don't know which (handing witness papers). A. Sent by my office, probably, that is my signature to the letter.

Mr. Button: Mark it please.

(Same received in evidence and marked Defendant's Exhibits A-23 and 24.)

This is dated December 7, 1891.

"Dear Sirs:

The enclosed T/d tells the whole story except it does not mention how much they paid to accomplish the work.

3166 *R. S. Waddell—Cross*

I presume the shortest and easiest way is for us to throw up our hands and gracefully admit defeat.

If you could understand the situation and I could rely on support at headquarters it would not be so easily won without struggle. Still it would be an ultimate loss.

Cancel the order. I think this lets Hazard out of the State of Indiana, excepting a little sporting through Van Camp H. & I.
3167 Co., and that will not survive the $5.00 price at which Cincinnati Grocers are selling Austin Powder throughout Southern Indiana and Illinois.

Truly yours,

R. S. Waddell, Agt."

Q. Therefore, in December, 1891, the Phoenix Company after having been operating for something less than a year had run the Hazard Powder Company entirely out of the State of Indiana,
3168 hadn't it, Mr. Waddell? A. No, not the Phoenix, they were all in it, all the powder companies.

Q. Somebody had done it, hadn't they? A. Well, yes, at the time of that information, from one of the associated companies in New York, we were down one month and up the next.

Q. I dare say, yes. This vicious contest had not yet begun? A. Yes, it was in full operation.

Q. With the Chattanooga and Phoenix as the victims? A. That is the start of it, well they were started.

Q. Then they started it by the Hazard being put out of the State of Indiana, did they? A. On that date.

Q. On that date? A. But they were in it at the end.

Q. That is, in December, 1891; but did you write this letter in March, 1892, telling what trade you had lost and to whom (handing paper to witness)? A. Yes, that is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibit A-25.)

This is dated March 18, 1892, to the Hazard Company:

"Herewith I hand you memo of car load customers held by us until December, 1890, all of whom were taken from us by cuts in price, or by combinations and business advantages that made gain for the buyer in quitting us. I also append a list of new carload customers acquired by us during 1891. 3170

I estimate net loss in carloads to the Hazard Company per year 46,000 kegs.

Carload Customers Lost.

Name of Customers.	To Whom Lost.
Globe Iron Co.	Kings
Sternberger Bros.	Ohio & Kings
Means, Kyle & Co.	Phoenix
E. B. Willard & Co.	"
Winifrede Coal Co.	Kings
Stevens Coal Co.	"
M. T. Davis	"
St. Clair Coal Co.	"
Rush Run Coal Co.	Oriental
Beechwood C. & C. Co.	"
Central Coal & Iron Co.	du Pont
Jackson Hill C. & C. Co.	Phoenix
Brazil Block Coal Co.	L. & R.
Pittsburgh C. & C. Co.	supposed Phoenix
Diamond Block Co.	Phoenix

3171

Sandy Creek C. Co.	Miami
David David	Ohio
Viele Stockwell & Co.	du Ponts

Carload Customers Gained.

Name of Customer.	From Whom.
R. McJohnston & Co.	Oriental
W. A. Murdock	Kings

Truly yours,

R. S. Waddell, Agt."

Q. Now, then, Kings and Ohio and Miami and du Ponts who had gotten your trade here and Laflin & Rand with Senior of the Fundamental Agreement which you have testified to in 1889 were members of this Association, were they not? A. Yes, and their agents received instructions to cut the price before I got it. We were see-sawing all the while.

Q. In other words, they were competing with you? A. Well, they got their instructions first and got on the ground first and got the order.

Q. We read some little while ago about the Sternberger trade in July, 1892. Are those your letters (handing witness papers)? A. Yes, they appear to be my signature on the first one.

Mr. Button: Mark them.

(Same were received in evidence and marked Defendant's Exhibits A-26, 27 and 28.)

"July 28, 1892.

"On receipt of yours about Sternberger Brothers, I wrote them the 25th inst., copy enclosed with their reply.

Please note Sternberger states he was offered at $1.20 last week.

Truly yours,

R. S. Waddell, Agt."

This was through the du Pont Company and your letter to Mr. Sternberger a copy of which was enclosed is:

3176

"Cincinnati, Ohio, July 25, 1892.

Messrs. Sternberger Bros.,
Jackson, Ohio.

Dear Sirs:

Yours 22nd inst. delaying shipment car powder to you is received and noted.

I am just in receipt of a letter from Messrs. du Ponts and also from Hazard in reply to our letter proposing to furnish 3177
them orders for two cars powder to you $1.30, price guaranteed. The du Pont Company say they will book an order at $1.30 per keg, price guaranteed against offers made by others, provided it is left optional with them whether or not to accept quotations made by others up to the date of shipment. This would leave you free to buy at any price quoted you. The du Pont Company would guarantee against their own general acts. The Hazard Company say they are willing to book you an order at $1.30 and guarantee the price against their own acts to the trade in your locality, but neither of the companies will bind them-

selves to guarantee against any price that might be named a dealer for the purpose of forcing them down, when the party making theoffer knew the dealer had purchased and understood his price would not be accepted.

I take it, either, and both of these companies want to sell you at as low prices as are ruling in the Jackson market, only they do not want to get into a controversy with a valuable customer over a price not understood at the time of shipment.

3179

When the shipping date arrives, please wire me the figure at which you are willing to take a car of Hazard powder based on offers you have from others, and give me six or eight hours to put it through. This, I think you will find entirely satisfactory.

Yours truly,

R. S. Waddell, Agt."

3180 And their letter to you:

"Your favor of the 25th inst. is at hand. Replying to same will say that your proposition is satisfactory, although it leaves us in doubt as to where we will buy our powder. I have been offered powder in the last week at ten cents per keg less than the price made by you, and I think others are buying as low if not lower. Will wire you as requested.

Very truly,

Sternberger Brothers."

Q. That was the general situation of prices and

the lowering of prices, wasn't it? A. On that date.

Q. This is July 28, 1892. The next is August 5, 1892. Is this a letter of yours (handing witness paper)? A. Yes, sir, that is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibit A-29.)

To the du Pont Company:

3182

"We wire you messages today reading:

'First: May we sell Johnson Mining, Brazil, Indiana, 1,000 kegs blasting, $1.20, Souerwein, Phoenix price.'

'Second: We can sell Zimmerman, Brazil, car at Johnson's offer, now using Phoenix.'

'Third: Dayton Coal Co. are offered $1.12½ at Dayton, Tennessee by Chattanooga Company. They tender us order 400 kegs same price.'

Now confirmed. In reply to which we have your telegrams reading: 3183

First: 'Sell Zimmerman, Brazil, car blasting at $1.20.'

Second: 'Do not sell Johnson Mining Co., Brazil.'

Third: 'We accept 400 kegs Dayton Coal Co. at 12 and half.'

We enclose you order Dayton Coal & Iron Co., and will advise you later as to Zimmerman.

Truly yours,

R. S. Waddell, Agt."

Q. Your experience of 1892 was that you had to bid against the Phoenix and Chattanooga so to meet their prices which they had made, wasn't

it, Mr. Waddell? A. All these particular customers they were very loyal friends of ours.

Q. They were not so loyal but what the Phoenix and Chattanooga had gotten away from you a while? A. No, sir, I think we held the trade of the Dayton Coal & Iron Company.

Q. On August 20, 1892, is this your letter (handing witness paper)? A. Yes, that is my signature.

Mr. Button: Mark it.

3185 (Same received in evidence and marked Defendant's Exhibit A-3.)

To the Hazard Company:

"The Phoenix Huntingdon mills are selling blasting at Jackson, Ironton and on Kanawha River at $1.10 per keg. We know of three carloads that have gone in at this figure.

I have orders for Sternberger Brothers, 800 kegs, delivered September 10th; Globe

3186 Iron Co., 800 kegs, delivered September 20th; Means Kyle Co., Hanging Rock, Ohio, 1,000 kegs, all at $1.10 per keg. F. E. Hayward & Co., Ironton, Ohio, 800 kegs at $1.15 per keg. These orders are taken subject to your approval.

Please advise if you want the orders.

Truly yours,

R. S. Waddell, Agt."

Q. So the Phoenix Company in West Virginia had gotten the price down to $1.10 in August, 1892, hadn't they? A. I don't know who got it down they were selling it at that at that time.

Q. They were selling any way at that price? A. They were at that time.

Q. And you took some orders on approval at the same prices? A. Yes.

Q. Don't you know that was simply meeting their price, your price had been higher than that? A. That was much lower than our price.

Q. I know it may have been lower, but prices had been higher theretofore? A. I think not.

Q. Did you not say a while ago that nobody could furnish powder in the Kanawha district less than $1.20 and this was $1.10? A. We went down below that a good deal. 3188

Q. I know you did. Take this $1.10 price was a good deal lower than you had been charging before? A. Yes.

Q. August 20, 1892, is this your letter (handing paper to witness)? A. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibits A-31 and A-32.) 3189

To the du Pont Company:

"Enclosed herewith is copy of our letter this date to the Hazard Powder Company which indicates recent action of the Phoenix Co. in the vicinity of their West Virginia mill.

I have an order for a car of powder, 800 kegs FFF from Stevens Coal Co., at $1.10 per keg, delivery to be made at Acme, West Virginia. This is located on the branch of the Chesapeake and Ohio railroad running from Coalburg, twelve miles south. The rate for switching a car is reported to be $15 or $20, but Mr. Garrison, who owns the

mines, says it is his impression that on carloads from the East the Coalburg rate will be made. Garrison purchased 400 kegs from Phoenix at the price named, but would prefer du Pont or Hazard powder at the same price. Freight considered, this figure seems so low that we gave no encouragement of the shipment. On receipt of advices naming your wishes in the matter, we will decline the proposition or forward you memo order.

3191

Messrs. Thompson Brothers Railroad, contractors, in addition to their Norfolk and Western works, have taken some seventeen miles near Owensborough, Kentucky. I have an order from them for 800 kegs for later shipment. This trade can probably be supplied best from Sycamore mills, although it might be well to get rates from Mooar, Iowa. The work will be opened some time in September.

3192

Truly yours,

R. S. Waddell, Agt."

That letter was to the du Pont Company. The enclosed copy of a letter is to the Hazard Company. Under date of the 20th of August.

"The Phoenix Huntingdon mills are selling blasting at Jackson, Ironton and on Kanawha River at $1.10 per keg. We know of three carloads that have gone at this figure.

I have orders for Sternberger Brothers, 800 kegs, delivered September 10th; Glove Iron Co., 800 kegs, delivered September

20th; Means Kyle & Co., Hanging Rock, Ohio, 1,000 kegs; all at $1.10 per keg; F. E. Hayward & Co., Ironton, Ohio, 800 kegs at $1.10 per keg. These orders are taken subject to your approval.

Please advise if you want the orders.

Truly yours,

R. S. Waddell, Agt."

3194

Q. What had happened to your business in West Virginia from 1891? A. They started in at $1.48—$1.58 I think in West Virginia, that section of it, and came down at that time to $1.10.

Q. Well, that had been brought down by the Phoenix Company there? A. Yes, sir, after the Phoenix built the mills it went down.

Q. In September, 1892, is that your letter (handing paper to witness)? A. Yes, that is my signature.

Mr. Button: Mark it.

3195

(Same is received in evidence and marked Defendant's Exhibit A-33.)

To the du Pont Company:

"We called upon Crescent Coal Co., principal office, Columbus, Ohio, who purchased powder from you for some months, and learned that they are now handling King Powder. While the price was $1.48, Kings took them from you at $1.42 less 2 per cent. sixty days. They have recently had several orders at $1.25 and two at $1.20 per keg. We thought best to take a conditional order for them for a carload at $1.20 to be delivered November 1st, subject to your acceptance

and approval. They insisted upon holding off until they were ready to buy, but we explained that the heavy demand for sporting powder and the rush to orders for blasting would probably prevent them from getting powder within thirty days of the time they needed it, unless the orders were placed in advance. Please let us know whether or not you will accept this order, so that I may advise Mr. A. O. Mauck, Secretary, and
3197 close the deal.

Yours truly,

R. S. Waddell, Agt."

Q. So the King Company had been competing with you, had it, at that time? A. All the companies were competing.

Q. I thought there was some arrangement between the associated companies that prevented any real competition as you testified this morning? A. Well, the association authorized certain custom-
3198 ers, and frequently they would get into a fight among themselves.

Q. You mean to say that this customer of yours was taken away from you by the Kings Company as the result of some authorization of the Association? A. I don't know.

Q. You know it was not so, that they were all competing, don't you, Mr. Waddell, at this time? A. No, frequently our trade was given to other powder companies.

Q. At this date? A. No, I don't know as to any particular date; but I know very frequently customers were taken away from us and given to other companies.

Q. Yes, in here as your selling price was $1.48 and Kings took that from you at $1.42? A. Yes.

Q. You mean they went into the market and under bid you and got that trade, don't you, Mr. Waddell? A. Well, may be one man may have had a price given to him by another customer in Columbus and went to this customer and gave him the same price, made him the same bid.

Q. That fact is that the King agent took your customer away from you at a cut price, didn't he? A. I presume he did or I would not have said that.

Q. This complete harmony hadn't yet gotten into 3200
working order in September, 1892, had it, Mr. Waddell? A. I didn't get that.

Q. I say this complete harmony between the associates in which they were going to kill off the Phoenix and Chattanooga had not yet got into working order in September, 1892. A. It was in good working order throughout the United States, except right in that exploited field, there was some competition and contention.

Q. Is this your letter (handing paper to witness)? A. That is my signature.

3201

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibit A-34.)

The letter is dated September 28, 1892, to the du Pont Company.

"I wired you yesterday from Louisville, asking $1.19 price for Speed Cement Works. We were competing with Phoenix and Miami and possibly with Kings, Mr. Gorman the St. Louis agent of Phoenix was in the City and working very hard for the order. We could not get the exact price, but I learned that Speed would be willing to give two or three cents per keg more for your brand than the others, and would prefer to

3202 *R. S. Waddell—Cross*

deal with Coleman. I thought we were competing with $1.15 price and the figure I named would be sufficient. Your reply reached us too late to see Mr. Speed last evening, but he agreed to hold the deal open.

This morning I had a message from Mr. Coleman and at once wired you T/D. Reading:

'Have message from Coleman agent, reading Speed wants 1,000 kegs blasting de-
3203 livered immediately, Speed Station, Indiana, and 800 three months delivery, Grays Station, Knox County, Kentucky. Can close with him at $1.10 for Speed's delivery. $1.20 for Gray's delivery. Answer quick.'

Which we now confirm. Speed is a cold-blooded buyer and it is difficult to get from him any price quoted by another; I feel pretty sure that the Phoenix Company would like to capture this order.

We now have your reply reading: 'Accept
3204 1,000 kegs blasting Speed $1.10 and 800 three months delivery Gray's Station $1.20.'

And have wired Mr. B. Coleman, Agent, in accordance therewith. We hope to have advices from him by early mail tomorrow.

Truly yours,

R. S. Waddell, Agt."

Q. Consequently, on September 28, 1892, in Kentucky and Indiana you were competing with the Phoenix and the Miami and the Kings, were you not? A. I thought I was competing with Kings.

Q. And the Miami, another member of the Association, according to this statement? A. Possibly,

I don't know; that is my best judgment at the time, evidently.

Q. October, 1892, the next one. Are those your letters (handing witness paper)? A. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibits A-35 and A-36.)

To the du Pont Company:

3206

"Herewith we hand you copy of letter written this date to the Hazard Powder Company.

Truly yours,

R. S. Waddell, Agt."

And your letter to the Hazard Powder Company:

"I have just received a telegram from Mr. Rood, who is at Terre Haute, as follows:

'King sold Crawford Company car $1.15. 3207
Zimmerman says has had it offered at $1.15. Zeller & Zigler, Jackson Coal Co., and Erlich want to buy a car each, but want us to name price $1.15 seems to be regular here. Had better see you and adopt plan.'

I wired Mr. Rood to come home, and this will advise you of the condition of things in the vicinity of Terre Haute.

I had a letter from Brazil a day or two ago stating they could buy powder at $1.17½ and declining to receive some from us. This will all make us trouble when we come to settle with Park County, Lancaster Block Coal Co., Diamond Block and others in that locality.

3208 *R. S. Waddell—Cross*

After Mr. Rood's return I may have occasion to wire you Monday, provided, of course, the conditions as to price have not changed in the meantime.

Truly yours,

R. S. Waddell, Agt."

Q. So around Terre Haute the King had gone
3209 down, still further down to $1.15 at that date, hadn't they? A. They had been down, of course, and I was expecting another change in the meantime.

Q. You didn't expect to cut it yourself, though, did you? A. I don't know.

Q. You were just watching those other people competing, weren't you, at that time, Mr. Waddell? A. When it was over, I had it all.

Q. I know, we will get to the time when it was over by and by. Now, is this letter your letter (handing letter to witness)? A. That is my signa-
3210 ture.

(Letter received in evidence and marked A-37.)

Mr. Button (reading): "Cincinnati, Oct. 5, 1892. The Hazard Powder Company, New York City. Gentlemen: Yours of the 4th instant received. Zeller & Zigler, Brazil, purchased a car Phoenix Powder at $1.15 less 2 per cent. before we received your instructions to sell them. We possibly could have held the trade open, had it not been that Mr. Zigler was compelled to leave home and wished to close the deal before going.

"Erlich left Brazil Sunday night to attend the Fair at St. Louis. He is expected back next Friday or Saturday. We indulge

some hope of selling him. The grain powder would come within the restrictions you make. Yours truly, R. S. Waddell, Agent."

Q. Now, on October 8th did you write this letter to the du Ponts (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked A-38.)

Mr. Button (reading): "Cincinnati, Oct. 3212
8, 1892. Gentlemen: Our salesman undertook to dispose of the Marmet, fine grain powder in the Kanawha Valley, but discovered the prices were very low. George Davis, Hazard agent, had just returned from a trip through the Valley where he was unable to supply the reguar trade of Hazard at $1.15. The Richmond Agency of Phoenix had sold one carload at $1.05. Railroad Contractors at work on an off side of Kanawha River above Charleston, have been buy- 3213
ing at $1.10 and $1.12 per keg. Quite number of sales have been made at $1.10.

"Prince, Dun & Co., King's agents, have sold very small lots, blasting at $1.15 and one 50 keg lot at $1.12. They have sold several lots of rifle at $4.00 per keg. This gives you an idea of the situation in that valley. We suggested to Ruffner Brothers that they make up an assortment for magazine stock. They said they would prefer purchasing at a net price. In discussing this question, Messrs. Ruffner Brothers told us they knew of a sale of a carload powder, recently, at $1.10 less 10 per cent. and one cent per keg drayage. This netted the Company $0.98 less the freight.

3214

"We discussed the car blasting powder now at Miami Coal Works just below Charleston. Ruffner Brothers offered us $1.00 per keg net for the blasting, with 100 kegs FF. additional, at same price. They would also like 60 kegs rifle, 55 half kegs, and 50 quarter kegs. Kegs at $3.65 net; halves and quarters in proportion. Terms 60 days. We could ship a car blasting to The Marmet Company, Raymond City, W.

3215

Va., and in the same car send 100 kegs FF. Blasting and the Rifle Powder. Upon arrival of the car at Raymond City the 800 kegs for the Marmet Co. could be taken out and the fine grain powder now at Raymond City be placed in the car and forwarded to Charleston, some 12 miles up the river.

"I presume if Ruffner Brothers do any rifle trade it will have to be at $4.00, in competition with King's agents. Deducting their commission, would net $3.60 for Rifle.

3216

"The very low prices on Blasting in Kanawha Valley seem to have been caused by the competition for contractors trade on four pieces of Railroad now being built near Charleston.

"The prices of high explosives are equally low. 40 per cent. giant and other brands, are openly sold at 12½c. per pound, sixty days; delivered on the work.

"I agreed to advise Ruffner Brothers on Monday whether or not their proposition would be accepted. Please wire me as early as possible. Truly yours, R. S. Waddell, Agent."

Q. So, at that time, you sent a man through the valley to offer powder at $1.15 and you found

that all of your competitors were selling it there from $1.05 to $1.12, didn't you, Mr. Waddell? A. At that particular time in October, 1892.

Q. Is this your letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked A-39.)

Mr. Button (reading): "Cincinnati, Oct. 10, 1892. The Hazard Powder Company, New York City. Gentlemen: In reference 3218
to consent given us to sell a car each to Zeller & Zigler and Erlich Brothers, Brazil, we report that we failed to get the Zeller & Zigler order for the reason that our price was above what they claimed to have paid Phoenix.

"We were tendered the Erlich Brothers order, but on the day they offered it, a quarrel arose between the brothers and a law suit resulted for a close of the partnership. The one in charge wished us to place the 3219
car, but we thought it better not to take any chances at such a low price and therefore passed the order. Truly yours, R. S. Waddell, Agent."

Q. So you didn't get the Zeller & Zigler business at that date? A. No.

Q. On account of a cut by the Phoenix. Wasn't the Miami cutting your price at this date also? A. Miami didn't have much in Indiana.

Q. Is that your letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked A-40.)

Mr. Button (reading): "Oct. 13, 1892.

3220 *R. S. Waddell—Cross*

Messrs. E. I. du Pont de Nemours Powder Company, Wilmington, Del. Gentlemen: Please start the car for Sternberger Brothers, Jackson, Ohio, mentioned in our Order No. 30; the grain to match Hazard's FFF. Blasting and to be packed in FFF. Kegs.

"Sternberger Brothers have purchased the property of Southern Ohio Coal & Mining Co. at Coalton, a short distance from Jackson. This gives Sternbergers control of
3221 nearly all of the coal lands in Jackson County. The Southern Ohio Coal Co. have been buying Miami powder at $1.10 per keg. Truly yours, R. S. Waddell, Agent."

Q. That was cheaper than your price, wasn't it? A. I don't know what they were charging Sternberger that date.

Q. Is this later? A. I sold it to him at $0.75 when I quit.

Q. Well, now, just keep along at the date we are at, Mr. Waddell. A. I cannot remember the
3222 dates when we went down.

Q. When was it that you got this trade all back? A. When was it?

Q. Yes? A. Just before the round-up.

Q. What date? A. July, 1896, I had all those fellows.

Q. How did you get them? A. I got them at the low price of $0.80.

Q. At an equal price? A. I don't know whether it was equal or not; it was as low as anyone would go; Sternbergers' particularly were $0.75.

Q. Well, now, I would like to know what you mean; do you mean that you got these people all back by coming in and cutting under the prices that had been made? A. We went right on down,

see-sawed, just as you are doing now, until we got down to $0.80 and then we quit.

Q. Now, won't you answer the question just asked you; how did you get them back, was it by cutting under the price that they had gotten down to in 1896? A. In a good many cases, yes.

Q. It was? A. In a good many cases; some we held at full prices.

Q. Next month, December, 1892, is this your letter (handing paper to witness)? A. That is my signature. 3224

(Letter received in evidence and marked A-41.)

Mr. Button (reading): "Cincinnati, Dec. 1, 1892. Messrs. E. I. du Pont de Nemours & Co., Wilmington, Del. Dear Sirs: I have written the Hazard Powder Company several letters regarding the small lot prices of Blasting in this and other neighboring markets; have mentioned that Hart. Hdw. Co. advertised on postal cards L. & R. Blasting in small lots to country trade,—$1.25 per keg. We, yesterday, read written quotations of King's at $1.15 per keg to merchant trade, subject to 2% for cash, 30 days; say, $1.12½ net. I have also seen the quotations of Austin Blasting to a city firm, at $1.15. 3225

"Four city houses are held from us on Rifle powder by Kings and Austin agents who sell them Blasting at $1.15 and by this means, command their trade on Rifle powder.

"Mr. Wentworth, a broker who succeeded his brother-in-law, E. T. Applegate, as agent of Kings, stated yesterday to one of our

salesmen, that Applegate had sold more powder for the King Co. in Cincinnati than that company or any of its agents has sold for them in several years; that he, Wentworth, is now selling four times the quantity of King Powder that Applegate had placed. I believe this latter statement is correct. They have a very nice trade in Cincinnati where they purchased from Hazard by a very
3227 liberal distribution of commissions and a special price on Blasting powder. We have thought it wiser to yield a little than to strive for all the trade and provoke further cutting. Truly yours, R. S. Waddell, Agent."

Q. Now, the Laflin & Rand Powder Company stood it about as long as they could up to December, 1892, and then they came in and began to compete with everybody, didn't they, in December, 1892? A. They didn't have much business in the
3228 Cincinnati district.

Q. Didn't they begin to compete in the middle west at that time? A. They were in all the while, but they didn't have any business in my territory.

Q. Now, those prices that are mentioned in Exhibit A-41 to the country trade which had been given by Austin and Kings and Laflin and Rand were very low at that time, weren't they, Mr. Waddell? A. I don't remember how the prices were; they were little retail lots of powder and they divided commissions.

Q. I understand, won't you look at that letter, and isn't it true that those prices on small lots there were cut under the ruling prices in that district at that time that had been made by the Laflin and Rand, Austin and Kings? A. I don't know

3229

what the prices were there then, they were on the decline.

Q. Well, you speak of them here as very low prices, don't you? A. Yes, they probably were, if I said that.

Q. Now, then, the Austin was quite active in competition at this time in cutting your prices, wasn't it in the latter part of 1892, one of the associates? A. In the City of Cincinnati?

Q. All through your district in various places? (No answer.)

3230

(Mr. Button shows paper to witness.)

The Witness: That is my signature.

Q. Do you recollect about that? A. The Austin had a little trade in Cincinnati, two or three customers in Indiana, had a very heavy trade in northern Ohio.

Q. Just which one of the associates was it that was not cutting your price during these years? A. All of the associates were in the general scramble for low prices in the disturbed districts.

3231

(Letter received in evidence and marked A-42.)

Mr. Button: (reading): "Cincinnati, Dec. 1, 1892. Messrs. E. I. du Pont de Nemours & Company, Wilmington, Delaware. Dear Sirs:—The Kruse & Behlman Hadw. Co. are excellent customers for both Hazard and du Pont Powder. The senior of this firm called on me about the middle of November and furnished satisfactory proofs that he was offered King and Austin Blasting powder at $1.15 per keg in small lots as needed. We were charging this firm $1.35 per keg. Their sales of rifle run over

100 kegs per month, while their Blasting sales do not average half that quantity. I told the gentleman that we could not meet a one fifteen price on Blasting powder, but until some decision was reached, we would protect him to the extent of ten cents per keg. There was considerable discussion about there being compelled to sell blasting at $1.30 and some times as low as $1.25 per keg, to meet the competition of other
3233 merchants on King and Austin blasting.

"Returning to his store the gentleman informed his partners that I had given him a one ten price on blasting. On settling with them a controversy arose which threatened to sacrifice the entire trade of this firm. The Dutchman had gotten mixed and was sincere in his belief that they were to get blasting powder at $1.10 per keg. They owed us about $4,300 for powder and Ctgs. and rather than make the sacrifice I allowed
3234 them the difference between $1.35 and $1.10 on 50 kegs of blasting, making $12.50. It was clearly a misunderstanding, but I thought it a good policy to yield rather than lose such valuable trade.

"We charge rebate account with $12.50 and this letter is written to explain the charge. I hope our action will have your approval. Truly yours, R. S. Waddell, Agent."

Q. Therefore, these prices that were being made by King, Austin and Laflin and Rand of from $1.10 to $1.15 were against your price of $1.35 in December, 1892, weren't they? A. Happens so, on that day, yes.

Q. Did the Miami get over into West Virginia with its powder? A. They have a few customers over there.

Q. Did you write that letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked A-43.)

Mr. Button: (reading) "Cincinnati, Dec. 20, 1892. Messrs. E. I. du Pont de Nemours & Company, Wilmington, Del. Dear Sirs:— 3236
We wired you yesterday afternoon message reading:

'May we sell St. Clair Company, Eagle, West Virginia, near Coal Valley, Kanawha, car Blasting at one eleven? Miami-Phoenix price,' and this morning have your reply as follows: 'Telegram received. We accept car St. Clair Company, one eleven.' Earlier in the day we wired you message reading: 'May we sell car blasting to buyer for Great Western Company at one nineteen delivered Peach Orchard, Kentucky,' and wired you today message reading: 'May we sell Belmont, Montgomery, West Virginia, near St. Clair, car one thirteen,' to which we await your reply. Truly yours, R. S. Waddell, Agent." 3237

Q. Now, the lowest price you had heard of in the Kanawha Valley was about $1.15, that Kings had made; now the Miami and the Phoenix were in there and got it down to $1.11 Dec. 20, 1892, didn't they, Mr. Waddell? A. No, you have been speaking now about a $1.10 price; just a while ago, in the Kanawha River, Tom Davis.

Q. Well, your price was $1.15, that your man offered. We found some at $1.10 and so on, and

now we find the Miami and the Phoenix in there at $1.11, don't we? A. Yes.

Q. So the Miami was competing for that trade and quoting prices considerably lower than the Hazard, were they not? A. They might have done so that day.

Q. Is this your letter (handing paper to witness)? A. That is my signature.

3239 (Letter received in evidence and marked A-44.)

Mr. Button (reading): "Cincinnati, Dec. 21, 1892. Messrs. E. I. du Pont de Nemours & Company, Wilmington, Delaware. Dear Sirs:—Replying to yours of the 17th instant. I think we are in excellent position to take good care of the Pocahontas-Bramwell district through as far as Lynchburg, Virginia. Our travelers can go east via Norfolk and Western Extension and return by Chesapeake & Ohio through New River and
3240 Kanawha, and the expense will be very slightly more than we would have to pay for travelling the C. & O. and returning over the same road. Another pertinent reason is that the large competitors on New River—Wm. Beury, Copper & Co., S. N. Buck and others—are largely interested in the Norfolk and Western district. We understand there associations and I believe will be able to secure a good trade in that locality. We represent for you a very small territory at present, the southerly half of Ohio, Kentucky and a part of West Virginia.

"You are aware that the Phoenix Mills are located at the West Virginia terminus of the Norfolk & Western extension. Although reports have been made to the contrary, these

mills have been rebuilt and are now operating again. I learned yesterday that an injunction had been served which will stop them today. The Phoenix Company have replied to the injunction that had it been served before the mills were placed in repair, they would not have rebuilt; now that the expense has been incurred, and the mills are in operation they will insist upon the county paying them the damage occasioned by their mills having been declared a nuisance. If the Phoenix Company are finally successful, we will be in better position to watch them and compete than would the Chattanooga office who are remote from the scene of action and not familiar with the surroundings. 3242

"Kings are active competitors in Pocahontas district. We, here, are in very good fix for looking after them. It would be my judgment that Cincinnati can take care of the W. Virginia district and that portion of Old Virginia which I have indicated, more economically and successfully than the Chattanooga office. Your wishes in the matter, whatever they may be, will be cheerfully respected. 3243

"I expect to mail you on Friday a comprehensive report now in course of preparation giving full particulars of the new coal fields. Truly yours, R. S. Waddell, Agent."

Q. Now, then, in December, 1892, there was some new and large operations being opened up in this Pocahontas-Bramwell district, were there not? A. Yes.

Q. And this is the same trade which you refer-

3244 red to in your direct testimony as having made contracts with in 1903? A. King, Hazard and du Pont had it all.

Mr. Abbott: 1902, Mr. Button, is what he testified to.

The Witness: 1902.

Q. Well, possibly, 1902 or 1903 when you were at Wilmington? A. We took it all.

3245 Q. Consequently you went there in behalf of the du Pont and Hazard when that trade began in 1892, didn't you? A. No, the railroad was built from the east towards the west and there was a long time that they hadn't reached the Ohio River that I couldn't get in.

Q. Well, you got along among the early ones, didn't you? A. No.

Q. Who was selling that trade then from the east? A. My brother was selling it from Chattanooga; it came around through that way.

3246 Q. What powder? A. He was selling du Pont, and Chattanooga had some trade in there; King got some in through the Chesapeake and Ohio Railway.

Q. And the King was competing pretty actively at that time, weren't they, for that trade? A. The Cincinnati office didn't have any business in there.

Q. Consequently this arrangement of 1902 when you went down there and made some contracts, wasn't a new arrangement, was it? You had been furnishing that trade for ten years previously, hadn't you? A. Yes, we furnished it on open orders up to 1899, and then I contracted the trade for three years in 1899.

Q. But it was part that you had for ten years in 1902, wasn't it? A. We had had a part of it.

Q. Kings had had part of it in there and you had both been competing for it way back here in December, 1892, hadn't you? A. Well, we each had our separate corporation.

Q. Weren't you and King competing for it at this date, December, 1892? A. I think we were at that time.

Q. Then you didn't intend to be understood on your direct evidence that that trade was allotted to you and the King Company for the first time in 1899 when you went down there and made a con- 3248
tract? A. That was the first time it was ever allotted on contract.

Q. Very good; but did you mean to be understood on your direct examination that that was the first time that any division of trade in that valley had occurred between you and the King Company? A. Yes.

Q. That was the first, in 1899? A. The first time that the contracts were ever awarded.

Q. I know it was the first time you made written contracts possible, but was it the first time that there was any division of trade in there? A. 3249
Yes, we were altered on customers, and Kings and myself divided.

Q. You mean that they would get whom they could and you would get whom you could; isn't that what you mean? A. No, we all sold the same companies; I would sell for a little while; then they would sell them a carload. In the end they had equities in our trade and we had equities in theirs, and we discharged these equities, treated these equities in each other's trade by entire separation of the customers.

Q. And that is what you meant in this letter when you said Kings are active competitors in the Pocahontas district, December 21st, 1892; you

3250 meant you were trading each other's equities and dividing the trade between you? A. Oh, no, not at that time, 1892-1899.

Q. I know, 1899. In 1892 you were actively competing with King, weren't you? A. We were selling them there.

Q. Weren't you actively competing with Kings in that valley in 1892? A. Yes, but not necessarily cutting prices.

Q. They were cutting your prices, weren't they?

3251 A. I don't know.

Q. Don't you recollect that; don't you know that they never could sell powder within 5 or 6 cents as much as you could get for your Hazard powder? A. Oh, yes; they did sell lots of it at full prices; they had their friends the same as I did.

Q. Well, is this your letter, December 21, 1892 (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked A-45.)

3252 Mr. Button (reading): "Cincinnati, Dec. 21, 1892. Du Pont Company, Wilmington, Delaware. Dear Sirs:—Referring to our t/d 19th inst. asking consent to sell Great Western Company, Peach Orchard, Kentucky, a car blasting at $1.19, I base the price on the old freight rate and believed that this was low enough to sell them considering the competition from all sources. We have quite an influence in our favor and I think can get the order at equal prices. The company is now in the hands of a receiver on account of complications growing out of a settlement of the Carlisle estate in this city, but they are entirely solvent and I think there is no risk in selling them.

"Mr. W. S. Howell, general manager, has called two or three times but we have not yet reached an agreement as to price. The Chesapeake and Ohio Railroad have recently taken charge of the little road running from their main line to the mines, which in times past has charged an extortionate freight. I am now named a rate of 32c Cincinnati to the mines and this could be probably bettered on a through freight.

"I will see Mr. Howell again on Saturday 3254
or Monday and may have to wire you for another price after we get together. I can get the figures he has from all the others. Truly yours, R. S. Waddell, Agent."

Q. Consequently, on December 21, 1892, you were experiencing competition from all sources, weren't you, Mr. Waddell? A. Yes, they were in the market.

Q. You mean by that you were competing with all of the associated companies as well as these three new ones, didn't you? A. Yes, whenever the 3255
price went down they bought at the price.

Q. On December 24, 1892, did you write this letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked A-46.)

Mr. Button (reading): "Cincinnati, Dec. 24, 1892. Du Pont Powder Company, Wilmington, Delaware. Gentlemen:—Our Mr. Hill, who has just returned from Bramwell, Pocahontas district, saw quite a number of quotations. Mr. Minnegerode, Lynchburg, Va., sales agent for Chattanooga Powder Company, is quoting their brand to mines

in that locality at a dollar per keg delivered. The consumers are divided as to their opinion of the powder; some of them will not take it at any price, while others consider the quality exceptionally good. The Phoenix and Kings are their most active competitors in that locality. Truly yours, R. S. Waddell, Agent."

Q. So, there is a cut of another ten cents since
3257 we last heard of it, isn't it, Mr. Waddell, a dollar ten to a dollar in that valley? A. Yes.

Q. And here you have four companies in there, the Phoenix, the Kings, and yourselves and the Chattanooga, all competing for that trade, weren't you? A. We were a very small factor there at that time.

Q. You were competing, nevertheless, weren't you? A. Yes, we were starting in there.

Mr. Abbott: You said 1896; you meant 1892.

3258 Mr. Button: 1892; did I say 1896. Number 46?

Q. Mr. Waddell, did you write these six letters in the month of January, '93 (handing papers to witness)? A. That is my signature to all of them.

Mr. Button: Mark this one first, please.

(Same received in evidence and marked Defendants' Exhibit A-47.)

Mr. Button: "Cincinnati, January 4th, 1893. Messrs. E. I. du Pont de Nemours & Co., Wilmington, Del.

Gentlemen:

We confirm message to you this date reading: Laflin and Rand have offered Great

3259

Western, Peach Orchard, Ky., at One Ten. We had order One Fifteen. Must meet price or release. Advise.'

I closed an arrangement with W. S. Howell, for a car of Powder to Great Western Coal Co., Peach Orchard, Ky., at $1.15 per keg, delivered, subject to their selection of the special grain of Powder that they would require. Mr. Howell left for the mines and I was to wire him the following day whether the order was accepted at $1.15, and he was to furnish us the size, grain required.

3260

I wired accepting the order. It appears upon his arrival at Peach Orchard, he received a letter from Ed. Taylor, Agent, L. & R. Cincinnati, under date, December 29th, which reads:

'He had heard they were in the market for a car load of powder and would be pleased to quote him a price.' Howell solicited his price by wire, and received a message quoting $1.10 per keg. This was confirmed by letter. The correspondence is now submitted to us, so there is no doubt about the order. We are given the option of furnishing the car at $1.10, this explains my telegram to you.

3261

Mr. Howell was thoroughly satisfied with the $1.15 price, and if we make the sale, can credit the L. & R. Company with knocking us out of $40.

Truly yours,

R. S. Waddell, Agent."

Q. Now, Mr. Waddell, that letter indicates that in January, 1893, the $1.15 price which you quoted

to this concern in Kentucky was so low that you were obliged to wire for permission to make the quotation yourself, didn't you? A. I always had to wire for instructions.

Q. You did in this instance? A. Yes, sir.

Q. You didn't have to wire for instructions when you were selling at the ordinary list price, did you? A. No, it was only in the disturbed district where we were in a fight and there was general confusion.

Q. Therefore this $1.15 price was so low for your
3263 du Pont powder that you felt obliged to wire for permission to make it, didn't you?

The Court: $1.15?

Mr. Button: $1.15.

A. I had to wire whenever I went below the figures given me.

Q. Whereupon, after you had taken the order, the Laflin & Rand Company came in and cut your price five cents a keg, and got your business away from you, didn't it? A. Yes.

Q. On that date? A. On that date, yes, sir.

3264 Q. Was it on this date that you testified to the other day, that the competition between the Laflin & Rand and the du Pont Company during this period was nominal and not real, was it the period you were mentioning? A. This was the period; but outside of this district. In the disturbed district there was more or less confusion in prices and more or less competition between the associated powder companies.

Q. As I recollect it, this disturbed district took in some eight or ten or twelve states that you mentioned, or thereabouts, didn't it? A. Took in the districts that I described.

Q. And it was all over the parts of the United States in which black blasting powder was consumed, was it not? A. Oh, no.

3265

Q. Where was there another district in which so much was consumed? A. Pennsylvania district consumes more powder than two or three other of these put together.

Q. In the anthracite district, you mean? A. In the coal, bituminous as well as anthracite district.

Q. Where the powder is and always has been furnished by small local concerns, is not that true? A. No, they do not reach the Pittsburg district, the bituminous field extensively; most of that powder has been furnished by the old companies, the big companies.

3266

Q. That is the Western Pennsylvania? A. Western Pennsylvania and the bituminous field, yes.

Q. Outside of Pennsylvania coal fields, this large disturbed district as you call it, was consuming most of the blasting powder, was it not, in 1893? A. Yes, I should think it was; that is the north and the south district put together.

Q. And now you say that the associates cut each other's prices all through that district during that period? A. They were dragged into the fight and they competed with each other. For instance, all the agents were given a price; I knew when the Laflin & Rand agent got his price and he conferred more or less, he knew practically what my price was all the time, or could estimate it.

3267

Q. Did you know of this $1.10 price on January 4, 1893, when the Laflin & Rand man got his customer away from you? A. No.

Q. You didn't? A. I possibly knew of it, but I may have been in another part of the field; I was not omnipresent and on hand at all parts of the field at the same time.

Q. Was there any time you were present all over the district? A. No; they were made for one section, that particular price, and I would go after another then.

3268 *R. S. Waddell—Cross*

Q. Was this period in 1893 the period concerning which you testified yesterday forenoon that this contest was carried on by the associated companies as a unit against the Phoenix, the Chattanooga and the Southern? A. Yes.

Q. Same period? A. Yes, same period.

Mr. Button: Mark those other papers.

(Same received and marked Defendants' Exhibits A-48 to and including A-53.)

3269 (Reading): "January 4th, '93." That is the same date, to the du Pont Company: "When the question of price had to be determined, with Marmet Co., I found they had $1.10 named, them by three Companies, and saw a letter from their Mine Superintendent, that a Salesman for Phoenix had called and offered $1.10, and said he would beat this figure, if necessary to take the order. The superintendent wrote, the man intimated, as low as One Dollar per keg. I thought best to close the deal. Herewith I

3270 hand you order for the car.

Truly yours,
R. S. Waddell, Agt."

Q. That was about the distance below your prices that the Phoenix kept all the time, from five to ten cents, wasn't it, Mr. Waddell? A. They alternated.

Q. Alternated from five to ten cents, you mean? A. No, they alternated with the associated companies, sometimes below and sometimes above.

Q. So there was a period when the du Pont Company was below the Phoenix price, is that what you mean? A. We could not have taken the business otherwise.

Q. You could not? A. No.

Q. You could not take the business at equal price? A. There was some trade we could hold at equal price.

Q. When was that period and where that you cut under the Phoenix price with the du Pont powder? A. I could not specify individual customers or individual transactions.

Q. Will you specify for the Hazard Company—where that was that you cut under these prices? A. I could not give you fifteen years ago where I 3272
had a special deal on a given day at a given price.

Q. But yet you can remember everything that was in the meeting or on the minutes from 1871 to 1882, Mr. Waddell, in detail? A. No, not everything.

Q. So as to identify them and the places you saw them and what they were about? A. I knew when I saw a paper and was able to identify it.

Mr. Button: On January 5th, 1892, this is to the Hazard Company:

3273

"Dear Sirs: Yours 30th ult. received and noted. Am glad to see you are again in the market on Blasting Powder. There has been unusual activity in Blasting powder during the past week and a disposition to shove prices to a lower point. I have missed the sale of three carloads by holding firm and have heard of quotations considerably below any we have suggested.

I sent you a good collection of orders yesterday and will see what can be done to secure others. Are you in position to sell Powder along the Norfolk & Western R. R. in W. Va. at prices ranging from $1.10 to $1.20? The mines are located between

Vivian and Graham. This will be an important coal field and it would be well for you to get freight rates into that district. Our strongest competitors are Phoenix, Chattanooga and King.

Truly yours,

R. S. Waddell, Agt."

3275 Q. Therefore you were competing with these three companies in January, 1892? A. Yes, sir.

Q. That is a year before? A. Yes, I entered that field at that time.

Mr. Button: A letter to the du Pont Company, January 9, 1893:

"Dear Sirs: On Dec. 10th, I received a letter from Major Dawes, President St. Louis & Big Muddy Coal Co. copy of which I enclose. I have had two or three conferences with Major Dawes and I learned that
3276 the price of $1.10 was named the Mngr. of his mines by the Chattanooga Powder Company.

Mr. Howell, Manager of Great Western Coal Company, Peach Orchard, Kentucky, when negotiating with us for their car, told me he had just visited the Big Muddy mines and related a conversation with Major Dawes in which the latter stated he expected to buy du Pont powder at $1.10, as he had been quoted this price by two companies. I talked the Major into paying $1.20 for the December car and told him that I was not satisfied he could buy first class goods any cheaper than $1.20.

We stood firm on the Great Western deal

and lost that to L. & R.; I also stood pat on $1.12½ to Dayton Coal & Iron Co., and lost that 400 keg car; but we can hold their trade at equal figures on the next deal. Other quotations made our customers convinces me we may have trouble at Big Muddy, although I shall try to get $1.20 for all they take. I give you this history now, that you may be fully advised if at any time we may submit the subject.

3278

Truly yours,

R. S. Waddell, Agt."

Q. So over in this locality the Chattanooga was quoting low prices and the Laflin & Rand again had gotten away some of your trade, had it not, in their territory, Mr. Waddell? A. Well, that was in the St. Louis district, close to the St. Louis district, and the Laflin & Rand reached over there, you know; you could not have perfect harmony in prices. 3279

Q. That is some ways from Peach Orchard, Ky., where they got the order from this customer which you refer to? A. They got an occasional one.

Q. And also this seems to be a locality and a date on which you were able to place du Pont powder if you could have equal prices, was it not, as you mention in the letter? A. There was some customers.

Q. This was one of them, wasn't it? A. That was one of them.

Mr. Button: December 10, 1892, this is to yourself:

3280 *R. S. Waddell—Cross*

"Cinti., O. Dec. 10, 1892.

R. S. Waddell, Agt.,
Cincinnati, O.

Dear Sir:—

Yours 8th on hand. I have much lower price than $1.20 for Powder. How is it? We expect to stay with you but expect you
3281 to protect us.

Yours truly,

(Signed) E. C. Dawes."

This is January 14th, 1893, to the Hazard Powder Company:

"The Hazard Powder Co.,
New York City.

3282 Gentlemen:

Yours 12th received.

Dugger & Neal:

I understand we had consent to sell these parties below the price obtained, but want to get all the market conditions will justify us in asking. I cannot predict safely whether we will be able to get more than $1.20 for the last carload or not. There is an unusual activity among our competitors. They have, during the past ten days, forced prices down generally, throughout our District. Several of these cuts have been fool-

ishly made. I have sacrificed some orders, believing there was no foundation for the demands of Operators. I sold one carload of Powder at $1.15, closed every detail of the trade, except matching the size grain. Laflin and Rand office heard of the deal, and wired the man, offering him $1.10. We were asked to meet it, declined and L. & R., furnished the goods, I think, without ever making any inquiry about the rate of freight. 3284

Truly yours,

R. S. Waddell, Agt."

Q. Now, there was an instance in which the Laflin & Rand knew your prices and deliberately cut it, wasn't it? A. I don't know whether they knew it or not.

Q. You thought they did at that date, didn't you? A. Yes, but they may not have known.

Q. And it was also a time when, during which prices, during the past ten days had been forced down generally throughout the district below our prices, is not that true? A. Yes, they were probably in the saddle at that time. 3285

"The Hazard Powder Co.,
New York City.

Gentlemen:

I have wired you message today reading: 'May we sell Morley Brothers car Blasting for shipment March fifteenth; also four hundred Rifle, May twenty fifth Blasting one twenty; Rifle three fifteen delivered. These prices named by three competitors.' and now confirm.

3286 *R. S. Waddell—Cross*

The message explains fully. I know that two of the offers are from Kings and Austin; the other, Morley Brothers claim is from Laflin & Rand. French of the Kings, and a representative of L. & R.'s Chicago house have recently called on them. I await your reply.

Your telegram has come in time for me to advise Mr. Rood by mail to night, to try and close the deal when at Saginaw on
3287 Thursday morning. I do not believe that Morley Brothers will feel inclined to favor us by giving notes, but think they will make a written contract to take the Powder at the prices named, making sale absolute. As a rule, business men who command the means that Morley Brothers do, will not give notes, particularly for goods that have not been delivered. If a written contract would suit you as well, please wire me Wednesday so I can advise Mr. Rood to this effect.
3288 Otherwise, we will exhaust the deal on the terms of your telegram.

Yours truly,

R. S. Waddell, Agt."

Q. So in 1893, January, you were proposing to the Hazard Powder Company, at least to make a contract for the sale of powder, were you not, Mr. Waddell? A. It looks like I was for a car load, yes.

Q. And it doesn't quite read as if it was a surprising situation, does it, Mr. Waddell? A. Well, that is wholly different from a time contract for a term of years. On a secret contract that is a wholly different proposition.

Q. A secret contract? A. Yes.

Q. This was up in Michigan and the King and Austin and Laflin & Rand were competing with you there at that date? A. Yes, they always had.

Q. February 2, 1893, did you write this letter (handing paper to witness)? A. Yes, those are my signatures.

(Papers received in evidence and marked A-55 and A-56.)

3290

"Cincinnati, Feb. 2, 1892.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Gentlemen:

Herewith I hand you copy of a letter from E. C. Dawes, Esq., President St. Louis and Big Muddy Coal Co.—

I do not believe Mr. Dawes would claim to have a ninety five cent price on powder, unless the quotation had been made to him. —I presume this is below any figure you 3291
would care to make, to hold trade in that locality; however, the Phoenix and Equitable mills may have started, and there is a possibility that such a price has been quoted. I have, in compliance with your recent instructions, made Maj. Dawes a price of $1.10 on the last three carloads sold to them. The car he refers to as his last order, is our No. 74, dated January 30th for early shipment.

I expect to have a private talk with Maj. Dawes tomorrow, and will then get at the source of the offer. If so, I will wire you, and this letter will explain.

Yours very truly,

R. S. Waddell, Agt."

3292 *R. S. Waddell—Cross*

Q. There you are getting down from $1.50—$1.48 to about ninety-five cents in the course of something less than two years, Mr. Waddell? A. Yes, we got down to eighty cents.

Q. And when you first heard, or when you did hear of a ninety-five cent price for powder on February 2d, 1893, without knowing about it you immediately assumed that it was a price made by the Phoenix or Equitable, one of these new companies, did you not, in this letter? A. I
3293 guessed at it, yes; it may have been made on du Pont powder.

Q. Possibly; but your judgment at that time was that it would have been made by one of these new companies, was it not? A. It was the rule always to lay it on the independents.

Q. Was it a pretty safe rule to follow? A. On the independents, yes, for a cut in price.

"Cincinnati, Feb. 7, 1893.

The Hazard Company,
3294 New York City, N. Y.

Dear Sirs:

Crawford Coal Co., Brazil, Indiana, purchased a carload of Ohio powder at $1.05 per keg, to be delivered February 1st. The Ohio company also sold Brazil Block Coal Co., 5 carloads at same price. The superintendent of Crawford Coal Co., says he will take his next car of Hazard, if you can meet the Ohio Powder Co's price. He would want the car delivered April 15th; would accept either Hazard or du Pont brand. Mr. Risher, Manager of Crawford, would like an early decision.

Truly yours,
R. S. Waddell, Agt."

3295

Q. So in February, 1895, the Hazard Powder Company was coming in and cutting, was it not? A. Yes, and if we had gotten that order we would have shipped it for Hazard from the Ohio mills.

Q. Yes; you mean that the Hazard knew all about that. A. Might have known of it; I don't know what the Hazard knew, but I know that we did ship our powder from the Ohio mills and they were out as our competitors in this matter.

Q. When did you ship powder from the Ohio mills? A. Oh, I have shipped fifty thousand kegs from the Ohio mills.

3296

Q. However, you thought that your principals, the Hazard Powder Company, didn't know so much about it but what you ought to report it? A. It was my duty to report everything and leave it to them.

Cincinnati, Feb. 15, 1893.

Messrs. E. I. du Pont de Nemours & Company,

Wilmington, Del.

3297

Dear Sirs:

We had an order from Crawford Coal Company Brazil Indiana for a car of powder to be shipped about April 1st; price $1.05 per keg. They specified Hazard or du Pont powders. The Ohio company sold Crawford Coal Company a car load at $1.05 and have recently sold Brazil Block Coal Company 5 carloads at same price. We submitted the proposition to the Hazard Powder Company, who say they decline any and all orders at $1.05 and prefer that the Ohio Mills take the Crawford Coal Com-

pany's trade. Before turning down the order I thought best to submit it to you.

Yours truly,

R. S. Waddell, Agt."

Q. Now, then, who owned the stock of the Ohio Powder Company, Mr. Waddell, if you know? A. Well, du Pont, Hazard, Laflin & Rand, Browner
3299 and Pitcher, I know.

Q. It was not a company that was controlled by either the Hazard or du Pont companies? A. Their relations were pretty friendly, yes.

Q. Was it a company whose stock was controlled by either the Hazard or the du Pont companies? A. No, not stock, but they were in the association —members.

"Cincinnati, Feb. 28, 1893.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

3300

Dear Sirs:

I wrote you some time ago that 400 kegs of the last car ordered by L. M. Baird, Evansville, was intended for the First Ave., Coal Company, and purchased by Mr. Kellogg, a merchant of Evansville. He wrote Mr. Meecham, Mr. Rice and many other agents endeavoring to break the price. We quoted $1.30 knowing that Mr. Baird had sold the 400 kegs. When the car arrived Mr. Baird delivered half of it to First Ave., Coal Co., I now have a letter from him and quote:

'The First Ave., Coal Co. say positively

that they have been offered Austin, Miami and Laflin & Rand Blasting at $1.20 per keg in car lots of 400 kegs delivered here—and some other brands at $1.09 per keg. Please advise me fully relative to the foregoing cuts as the trade here is badly demoralized and will remain so until we know where we stand.'

My judgment is that the time has passed for middle men to hope for a profit between buyers of carloads and manufacturers. Mr. 3302
Baird has been very faithful to you and before cutting him off with a plain statement of the situation, I deemed it best to consult you. We are selling Ingle at $1.20 and have given the same price to Mr. Baird. The First Ave. Co. are entitled to the same price. I think Mr. Baird would consent that we assume the account of First Ave., Coal Co., and release him from that much of his account so that we may take care of that trade direct until such time as the price will admit of some margin to Baird. 3303
This I think should be satisfactory to Mr. Baird as we are not competing with agents, but with other manufacturers. Would such a course with Mr. Baird meet with your approval?

Truly yours,

R. S. Waddell, Agt."

Q. Now, Evansville, was that Evansville, Illinois? A. Indiana.

Q. There you were competing with the Austin, Miami, and Laflin & Rand, were you not, at that time? A. Our agent was, yes.

Q. Now, the next one is March 7th, 1893. Are

3304 *R. S. Waddell—Cross*

these your letters (handing papers to witness)? A. These are my signatures, excepting that second one (indicating); I don't know who that is by—per A. A. C.

"Messrs. E. I. duPont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:—

3305 Herewith I hand you a printed Price List, A. J. Rummel, Toledo, O., dated Feb. 3d, '93, which under head of Ammunition quotes:

Austin New Brand Crack Shot Powder per keg	$3.00
Austin Rifle and Shotgun per keg.	3.00
Blasting Powder per keg	1.25

Although Mr. Rummel quoted the latter at $1.25 he is selling it in small lots at $1.05 to parties in Fostoria, Mansfield and other
3306 Northern Ohio towns. We have some Hazard customers in that locality who are liberal buyers, have some powder in stock, and are not feeling in a very pleasant frame of mind because of our firmness in maintaining List, with authorized discounts, to them.

The Austin Co., are undoubtedly making pretty heavy inroads on Hazard business; they cannot sell their goods at equal price, but they are creating custom and winning favor of important dealers by their liberality. Buyers call this aggressive business and commend the disposition of the Austin Co., to become the ruling spirits in this territory. Such a sentiment is very favorable to the Austin Co., and will be difficult to

dislodge; they have placed traveling men on the road who are now working the West Va. and Indiana fields. Their only competitors are Kings and Ohio, who are making a price of $1.05 and in some instances $1.00 on carloads.

The customer who encloses us the Rummel Price List requests that it be returned to him. When it has served your purpose will you kindly mail it back to us, and 3308
oblige.

I also, as a side feature, call your attention to Standard Ammunition Company's Loaded Shells—25000—discounts 40-10 10-10 per cent. You remember I mentioned last week that Austin Co. is selling in this city at $2.75 per keg for Rifle Powder. I should think their price to Rummel must be in the neighborhood of $2.50, as he does not do business for glory.

1 Enclosure. Truly yours, 3309
H. R. S. Waddell, Agt."

(Papers received in evidence and marked Defendant's Exhibit A-64 to A-67, inclusive.)

Q. So in March, 1893, the Austin Powder Company was getting your trade throughout the country districts of Ohio, all through West Virginia and all through the Indiana coal fields at a large cut under your Hazard and du Pont prices, was it not? A. I don't know whether it was under them or not; they evidently were in command of the trade at that particular date.

Q. You say you don't know whether it was under them or not; you say here the Austin Com-

pany was undoubtedly making pretty heavy inroads on Hazard business; they cannot sell their goods at equal prices, but they are creating customers and winning favor of important dealers by their liberality; don't you know they were cutting under your price on Hazard powder by that statement? A. They may have been at that particular date.

Q. You knew it in March, 1903, didn't you, and you knew it extended to three states in this dis-
3311 trict, did you not? A. Yes, in a very mild way; they didn't have much trade.

Q. It was so mild that such a sentiment is very favorable to the Austin Company and will be difficult to dislodge? A. Yes, but we dislodged it.

Q. Oh, you did? A. Yes.

Q. Did you find it difficult? A. We probably had to go down under a little while.

Q. Are you able to state the date on which this dislodgment began, Mr. Waddell; can't you fix the date now before we get to it in this correspondence? A. Yes, on the first of July, 1896.

3312 Q. That is when it was all over? A. That is when we got together, yes.

Q. That is when they came to terms; they had been cutting each other's throats long enough at that date, didn't they, Mr. Waddell? A. That is when they bought Phoenix and Chattanooga and 49 per cent. of Equitable, but they all went into the pool.

Q. They bought 49 per cent. of the Equitable in 1896? A. Yes.

Q. Is that the concern, concerning which you testified in the Government case? A. Yes.

Q. Speaking of the Phoenix, page 126: "The first action I took with reference to the Phoenix Powder Company was I received instructions from

the Hazard Powder Company to go to St. Louis and meet a man named Goin, at the hotel. Q. Who was the man? A. He was the Superintendent of the Anthracite Powder Mills in Pennsylvania. Q. In Pennsylvania? A. Yes, those mills being operated by the Hazard Powder Company. Q. What were you told to meet them for? A. To inspect and give him my judgment as to a location that he had selected for the purpose of building a rifle powder mill for the Hazard Powder Company near Bellville, Illinois. Q. How near the 3314
Phoenix mill, if you know, was this located? A. Within three or four miles. Q. What did you do? A. I examined the site and remained there a week. Goin and I searched for other sites in the locality. I reported to the Hazard Powder Company the result of our work. I didn't like Goin's selection. Q. I will ask you to state whether or not there was a mill built there, not by the Hazard Powder Company nor by any one of the associated companies? A. The du Pont Company joined Mr. Olin and others? Q. Of what company? A. Of the Equit- 3315
able Powder Company, and built the mills just north of Bellville, probably thirty miles. Mr. Spooner: When was this? Mr. Scarlet: In 1892. Q. In 1892, wasn't it? A. About that time." Did you so testify? A. I testified that way and I believed it.

Q. Oh, then you testified on the basis of what you believed rather than what you know, Mr. Waddell? A. Well, everybody in our country believes that du Ponts were in with Olin and it was generally reported over the country that they were.

(Question repeated.)

A. No, on what I don't know I believe—believe I know definitely.

3316 *R. S. Waddell—Cross*

Q. Then there is no way when we take one of your answers to tell on which basis it is, whether it is your knowledge or your belief, is there, Mr. Waddell? A. Yes.

Q. How can we tell? A. I know about what I am talking about—I think I did.

Q. Oh, you do, do you; maybe you can tell, but how can we tell, Mr. Waddell; you don't know, do you? A. I don't know how you can tell anything.

3317 Q. Well, you testified here within ten or fifteen minutes that it was in 1896 that they bought their interest in the Equitable, didn't you, Mr. Waddell? A. Yes; I was very greatly surprised to find that that was Mr. Olin's testimony in the case.

Q. Mister who? A. Mr. Olin's testimony in the Government case? We always believed the du Ponts were interested in Equitable from the start in 1892; I knew no different until Mr. Olin had testified.

Q. That is why then—that is the belief that you had, gossip in your country out there that enables
3318 you to state that the du Pont Company joined Mr. Olin and others of the Equitable Company and built the mills just north of Bellville, thirty miles; is that the basis of that testimony? A. Yes, we didn't compete very strongly with the Equitable.

Q. Was that the basis of the testimony? A. Well, it was based on what I knew generally of the trade and of the ownership of the Equitable.

Q. Pretty positive testimony, wasn't it, Mr. Waddell, in the Government suit; you testified to that as a fact? I thoroughly believed it, yes.

Q. You testified to it as a fact? A. Yes.

Q. Did you know it was true? A. Why, I hadn't seen the stock certificates or anything of that kind.

Q. What had you seen? A. Well, I had seen

3319

the competition with Equitable; I had seen the conditions in which they competed with us as compared with Phoenix, which was a neighboring mill; our fight was made chiefly against Phoenix.

Q. What else had you seen besides competition? A. Well, the general discussion with the trade of the country—we all believed that Equitable was owned——

Q. I understand, but I am getting at the basis of that belief. You heard discussions among the trade and you had seen the competition; had you 3320
seen any of the documents on that subject? A. No.

Q. Seen any checks, any contracts? A. No.

Q. Any stock books? A. No.

Q. The fact is you didn't know anything about it, Mr. Waddell, wasn't that it? A. No, I believe that Laflin & Rand is owned today by the du Pont Company and I never saw any of the documents.

Mr. Button: I move to strike the answer out.

3321

The Court: Yes, it may go out as not being responsive.

Q. Have you any way of telling how much influence that testimony of yours may have had on the mind of the Judge who decided this case, Mr. Waddell? A. No, I have no idea.

Q. You haven't, have you? A. No, not very much after Mr. Olin had testified, the present president of the company, that du Pont didn't own it until 1896, when they sold 49 per cent. of the stock.

Q. That is, you think they would believe Mr. Olin rather than your statement, is that what you mean?

3322 *R. S. Waddell—Cross*

Mr. Abbott: We object to this line of interrogation.

The Court: I think it is all proper except possibly the last one or two questions.

Mr. Abbott: That is what I mean.

The Court: Answer it.

(Question repeated.)

A. Mr. Olin was the president of Equitable and was in better position to know the actual facts than
3323 I was.

Q. By that you mean that you didn't yourself know the actual facts? A. I thought I did.

Q. Well, you didn't, did you? A. It seems not. Mr. Olin had testified—I believed him.

Q. March 15, 1893, to the Hazard Powder Company—I beg your pardon, this is the letter which you say you don't know whether you signed or not; you don't know that handwriting (handing paper to witness)? A. Signed "Per A. A. C." or A. A. Company—I don't know which it is.

Q. Well, we will omit it; it doesn't matter.
3324

Mr. Button (reading):

"Cincinnati, March 20, 1893.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

In further mention of the contracts made by Chattanooga Powder Co., along the line of L. & N. R. R., between Winchester, Ky., and Knoxville. Our Mr. Hill has returned from that locality and reports that some of these contracts were made on the basis

of a mill price f.o.b. Chattanooga, of 85 cents per keg. In figuring the contracts made at $1.09 Mr. Hill states that the representatives of the Chattanooga Co. took as a basis —85 cts. per keg. f.o.b. Mills. Whether there is a local from their Mills, which are a short distance east of Chattanooga, I cannot say; but of this I presume the Chattanooga Office can give you full particulars. All of the conversation with the coal operators in Southern Ky. seems to point to 3326
an 85 ct. Mill price as a basis.

Truly yours,

R. S. Waddell, Agt."

Q. That was lower than any price that had been made up to that time, wasn't it, March, 1893, made by the Chattanooga, Mr. Waddell? A. I presume for that trade, it was.

Mr. Button (reading): 3327

"Cincinnati, March 28, 1893.

The Hazard Powder Co.,
New York City, N. Y.

Dear Sirs:

Several complaints have come to us lately from very good customers; some of these we have investigated. I enclose copy of a letter from McKeehan Heistand & Co., Hillsboro, O., who handle for us about 150 to 200 kegs Rifle powder, and about 100 kegs Blasting per year. They had just paid

us $1.30 for Blasting powder, I did not understand their complaint and had Mr. Rood drop off on his way to Chillicothe. A salesman for M. Bare & Co. had called and solicited McKee, H. & Co. to purchase a carload Miami Blasting. They asked his price and he said he thought he could get it for 90 cts., f.o.b. Cincinnati, if they would take a four hundred keg car at one shipment; he told them that he had a One dollar price
3329 on 50 and 100 keg lots and had been selling lots of powder at that figure. One dollar f.o.b. Cincinnati would mean $1.06 delivered Hillsboro.

I had last week tested a contractor in this city on a 400 keg car. We quoted du Pont powder, the brand he had used, at $1.15; he told us he had two objections, which he stated frankly: One, that quantity was too large; the price 15 cents per keg too high; that he was buying in 50 keg lots at $1.00.
3330 Our lowest price on small lots of Blasting is $1.25—of course we are out of the market entirely.

The carload trade is being assiduously drummed at $1.05 per keg throughout Ohio. At present the outlook for our trade is pretty gloomy, but something may occur to put us on a better footing before any more of our old customers slip away.

I recently sent you a contract which the Chattanooga Co., is making with all Coal Cos. in the vicinity of Pittsburgh Ky. or along the L. & N. R. R. north of Knoxville. In this Pittsburgh Jellico region there are several fine mines. They are all paying on a basis of 85 cts. per keg at Chattanooga mills, which makes their powder cost deliv-

ered $1.05 to $1.09 per keg. These prices shut us out entirely. I have felt that we could not afford to do business in that part of Kentucky at less than $1.30 and have been charging Laurel, Peacock, Pitman and others $1.30 per keg. They have all taken trial lots of Chattanooga powder with a view to changing on account of the difference in price of 20 to 25 cents per keg. These people always preferred Hazard powder at equal prices, or I think an advance of 5 cts. per keg. The freight from Cincinnati to these points is about 30 cts. per keg—this shuts us out. 3332

With very active competition of Kings, Miami, Austin, Phoenix and Chattanooga and their freight advantages from their respective districts which they can reach more cheaply than we can, very great sacrifices of our trade are being made. How much of this can be retained when prices are again restored, I cannot say. Our experience has been that with the advantages growing out of a satisfactory arrangement, considerably over 50% will be held by these rival companies. It would take three or four months to regain any portion of this trade so that if the purpose is formed to recover lost ground pending restoration of prices, some time should be allowed for the work. I give you these impressions that you may be advised of the situation. 3333

Truly yours,

R. S. Waddell, Agt."

Q. On March 28th, 1893, had this contest begun

under which the associated companies as a unit were killing off the Chattanooga and the Phoenix, Mr. Waddell? A. Had it begun?

Q. Yes. A. Yes, it had.

Q. It had. Chattanooga price was about 25 cents below yours that you had made in that district then? A. Yes, it should have been 40 cents below that, we were shipping our powder from Hazardville, Connecticut, clear down into Kentucky at ex-

3335 orbitant rates of freight and we had no business in there.

Q. And it appears from that letter also that at least five of these companies were very actively competing with you at that time, that is true? A. They were at that time, but at the round-up we held the trade.

Q. We will remember that when we get to it, Mr. Waddell. A. I will give you a list of them.

Q. And it also shows that in that district at least you could sell Hazard powder at equal prices also, but mostly at five cents more, didn't it? A. I had

3336 a few personal friends that paid me more.

Q. Well, these were among them? A. They were among them, yes.

Q. So you never had to cut the price for them, you could get it back at equal prices, could you not? A. I could.

Q. And I suppose of course you knew more about that situation when you wrote that letter than you do now, Mr. Waddell? A. Oh, yes.

Q. The next month, April, 1893, did you write those two or three letters, three of them I think (handing to witness)? A. That is my signature.

Mr. Button: Mark them.

(Same received in evidence and marked Defendants' Exhibit A-68 to and including A-72.)

Mr. Button (reading): "Cincinnati, April 4, 1893. The Hazard Powder Co., New York City, N. Y. Dear Sirs: Herewith I hand you copy of a letter from David Ingle; also one from Dugger, Neal & Co. The latter do not know that we have sold any powder at $1.05, but they do know that that is the popular price quoted by L. & R., Kings, Ohio, Austin, Miami and other companies throughout the state of Indiana. The representatives of these Cos. seem to have been given a limit 3338 price; they have called and left written quotations on the backs of business cards and these have been handed and sent to us, indicating that there is no telegraphing for authority, nor permission to quote.

Four of our customers have bought powder at $1.00; several others have purchased at $1.05. With the $1.10 limit which we have placed upon us, there is no need of calling upon the trade.

Mr. Rood and Mr. Hill returned Saturday 3339 from trips through Indiana and Kentucky respectively and stated that they passed several orders, preferring not to quote. Powder is sold in small lots at $1.10 and $1.15; I do not think any buyer of a ten keg lot pays more than $1.15. With our $1.25 price, we occasionally sell a keg to a country dealer but miss ten sales where we make one. Do you prefer to turn down the carload as well as the small lot trade, or do you desire to change your policy in any respect concerning all or any part of the trade.

Mr. Rood goes into the Kanawha Valley this week to settle the George Davis business and incidentally to seek powder orders.

3340 He will encounter a price of $1.10 above Hawks Nest and One Five to One Seven below on Kanawha River.

Truly yours,

2 Enclosures. R. S. Waddell, Agt."

Q. Losing a good deal of trade at that time, weren't you, Mr. Waddell? A. We had, yes.

3341 Q. These days seem to be pretty continuous through these months, don't they? A. That is only one side of it.

Mr. Button (reading): "Cincinnati, April 12, 1893. The Hazard Powder Company, New York City, N. Y. Dear Sirs:

Yours 8th inst. received.

I think you do Mr. Rood an unintentional injustice, particularly in regard to Dugger & Neal complaint. No one from our office has visited Dugger & Neal since a year ago

3342 last Feb. when Mr. Rood called on them. I have been trying to handle their trade through the mails, it worked very nicely until Mr. Neal visited Terre Haute and attended a convention of Mine Operators, on March 27th. It was publicly announced at that meeting that Kings, Ohio, Phoenix and Austin Cos. had been for nearly two months selling the several operators they supply at $1.05 and less per keg. One man mentioned having purchased at 98 cts. No one claimed to have bought Hazard powder at such prices, but Mr. Neal naturally felt indignant that we should be charging him $1.20 and $1.25 per keg when the market had been so low. Dugger & Neal were not the only ones

to complain. I have been hammered from several sources and there is very little for me to say; the statements are true.

While I regret the low prices, we were not at fault in making them. The absence of orders on our files attest the fact that our trade has been sacrificed to people who sell cheaper than we do.

Truly yours,

3344

R. S. Waddell, Agt."

Q. Now, in May, 1893, did you write that letter —those two letters (handing witness paper)? A. Yes, that is my signature.

Mr. Button: Mark them, please.

(Same received in evidence and marked Defendants' Exhibits A-73 and A-74.)

Mr. Button: This is to the du Pont Company. "Dear Sirs: I wired you message this a. m. reading: 'Ingle, Evansville, asks one 3345 fifteen price on Feb'y car and May car one ten. Kings quote latter price and have furnished fifty kegs for trial.' Now confirmed.

Jno. Engle & Co. have been dissatisfied with our prices for sometime, but I felt they could not use any but the du Pont brand and we could hold them pretty high in price. Now that they are making efforts to introduce King powder I concluded to wire you.

L. & R. Agent called on David Ingle a brother to Jno., and an old Hazard customer, and quoted $1.05. This caused the trouble.

Truly yours,

R. S. Waddell, Agt."

3346 This one of May 19, 1893, to the Hazard Powder Company.

"Dear Sirs: I have wired you message this date reading: 'Sternbergers are offered Kings, Austin, Miami, Austin, at One Dollar. Do you care to sell two carloads this price, cash.'

And now confirms. The Globe Iron Co. bought from Austin at $1.00, and other lots have been sold at Jackson at this price. I
3347 do not know how you feel on the subject, but conclude to submit the quotation to you. I have not much enthusiasm for the marketing of powder at $1.00 per keg; you may see some good reason for selling it at this price, but it certainly could not be for profit.

Truly yours,

R. S. Waddell, Agt."

3348 Q. That was Jackson, Michigan, was it? A. Jackson, Ohio, that we sold it.

Q. Jackson, Ohio, what? A. We sold it.

Q. Did you make the price? A. Oh, no, I never made a price, the companies made the prices.

Q. Phoenix had made the price, hadn't it? A. At that particular time I presume we met the price.

Q. That was in May, 1893, they had been making these prices, hadn't they, the Phoenix and the Chattanooga, bringing them down during that period? A. It alternated, they would sometimes be below and sometimes above, according to the information that we had.

Q. Did you say it had been below the Phoenix and Chattanooga price at any time up to this date of May, 1893? A. Been there lots of times.

Q. Can you recollect any instance? A. No, I have

no access to the letters, there are lots of them; we were not confessing our own faults.

Q. You were reporting business conditions as they were? A. I was reporting the faults of others, of other people. I didn't confess my own in these letters.

Q. In June, 1893, are these two letters yours (handing witness)? A. These are my signature.

Mr. Button: Mark those.

(Same received in evidence and marked 3350
Defendants' Exhibits A-75 and A-76.)

Mr. Button (reading): "June 7, 1893. The Hazard Powder Company, New York City, N. Y.

Dear Sirs: I received your message and letter confirming same which declined the Dugger & Neal and Norton Creek C. & M. Co. orders at $1.00. I sent Mr. Rood to see if he could induce these people to pay $1.05. I had his reply this morning that he found Dugger & Neal had written an order to Miami Powder Co. accepting their offer of a 3351
carload at $1.00. He intercepted the letter and induced them to take a carload of Hazard at $1.05, or rather permit him to file the order for same.

At Norton Creek he met Mr. Johnston of the L. & R. Co., who had offered N. C. C. & M. Co. at $1.00 per keg. Johnston explained that no one was asking more than $1.00 per keg and that Phoenix had sold at 98 and 99 cents. I give you this as it comes to me. I wired you message this date reading:

'Dugger & Neal and Norton Creek have agreed to pay One Five, although Miami and

Laflin offer One Dollar. Do you want their orders?'
and now confirm.

Truly yours,
R. S. Waddell, Agt."

Q. Those are the ones you testified a moment ago that you accepted, were they not? A. I did not mean that, I didn't mention it.

Q. "I received your message and letter confirming same which declined the Dugger & Neal and
3353 Norton Creek C. & M. Co. orders at $1.00"? A. No, they were not the ones we were talking about. Sternberger, of Jackson, Ohio. That is out in Indiana.

Q. I guess we were talking about Ingals. A. You asked me if it was Jackson, Michigan.

Q. Yes, that is the next preceding one, about Dugger & Neal. Here was a price that you did refuse anyhow, wasn't there? A. Yes, we had been getting $1.20 it seems from those people.

Q. In July, 1893, Mr. Waddell, did you write
3354 these two letters (handing papers to witness)? A. That is my signature.

Mr. Button: Mark it

(Same received in evidence and marked Defendants' Exhibits A-76, A-77 and A-78 and A-77½.)

Mr. Button (reading):

"July 18, 1893.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

We confirm our message to you this date reading:

'If desirable, we can sell two carloads at

One Dollar, delivered Brazil, Ind., to Crawford and Zeller.'

Crawford Coal Co. bought their last car of Powder at 98 cts., but were dissatisfied with the grain. Mr. Zellor has been paying $1.00. We talked with these parties a day or two ago, and they promised that if we would return and could sell them at $1.00 per keg, they would each give us an order for a carload. I think Mr. Rood will reach 3356
Brazil on Wednesday. Awaiting your reply whether or not the deal is desirable at price named, I remain,

Truly yours,

R. S. Waddell, Agt."

There is another one here dated July 24th, 1893, to the Hazard Powder Company:

"Dear Sirs: Herewith is a letter from Van Camp Hdw. & Iron Co., written by Mr. 3357
Beck, calling attention to cut prices in Indiana, particularly on Blasting powder. This, I think is correct, as we have had several cases where we met a One Ten price f.o.b. Indianapolis, and this would deliver the powder at $1.25. The price is made on Kings, L. & R. and Austin Powder. The Blasting powder handled by Van Camp goes to very small mines and stone quarries.

This is sent to indicate the condition of affairs in Indiana.

Truly yours,

1 Enclosure. R. S. Waddell, Agt."

That is in July. To the du Pont Company in September the 22nd, 1893; to the du Pont Company:

"Gentlemen: Herewith we hand you order for a half carload of powder to Grand Rapids. We found Ohio Powder Co. had captured the Gypsum trade at Grand Rapids at $1.10 per keg, but succeeded in getting the mines to take 100 kegs your pow-
3359 der at same price, provided you wish to deliver it. I sold 40 Keg lot at Traverse City, Mich., delivered from Grand Rapids, and as stock is needed in the Magazine, concluded to order a half car to get a low freight rate. Will ship all to Grand Rapids Agents, and they will forward the Traverse City Powder on arrival of car.

Truly yours,

R. S. Waddell, Agt."

3360

That don't seem to have been marked, will you please mark it?

(Same received in evidence and marked Defendants' Exhibit A-79.)

Q. You signed these (handing paper to witness)? A. That is my signature.

Mr. Button: Mark them, please.

(Same received in evidence and marked Defendants' Exhibits A-80, A-81 and A-82.)

Mr. Button (reading):

"September 23, 1893.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

We quoted Zeller & Zigler $1.02 on Blasting Powder delivered at Knightsville or Brazil, Ind., on information from their buyer that this was the lowest price that would 3362
be required. At the same time they received quotations from Ohio Powder Co. naming them 97 cts. cash on delivery. They purchased from the Ohio Powder Co. 1,200 Kegs at 96 cts. I enclose you copies of Mr. Rood's letters. Please wire me Monday if you care to accept these orders at 97 cts., and we will forward by first mail. They read:

'1,200 kegs FF. to Asherville, Ind., 97 cts. on delivery, to reach destination Oct. 1st to 3d. Also 400 Kegs FF. for American Beauty 3363
Mine, Asherville, Ind. This is on Vandalia R. R. near Knightsville, Ind.; same price and terms.'

The entire 1,600 Kegs to be delivered about Oct. 1st to 3d. The first order—1,200 Kegs—is for John H. Zeller Coal Co.; the 400 kegs for Zeller & Zigler. These people are worth about $50,000.00, good credit. We have tried to sell them several times but have over-sized the price on every occasion.

Truly yours,
R. S. Waddell, Agt."

Q. Now, in October, 1893, Mr. Waddell, are those your letters (handing paper to witness)? A. Yes, that is my signature to the first.

3364 *R. S. Waddell—Cross*

Mr. Button: Mark this first one.

(Same received in evidence and marked Defendants' Exhibit A-83 and A-84.)

Q. And those in your hand? A. All except the last are mine by McConaughy, my bookkeeper.

Mr. Button: This one is dated Oct. 24, 1893, to the du Pont Company:

3365 "Dear Sirs: The competition about Louisville has become very close. Herewith is submitted letter Mr. Bannen Coleman, Agt., which explains the situation. I wired you today asking consent to make Baskett Coal Co. $1.10 price. The L. & R., Miami, Kings and Chattanooga have all quoted $1.10 at Kentucky points south of Louisville. The Chattanooga Co. can get into Baskett, Ky., at about 20 cts. per keg. If their Mill price be 85 cts., they can easily deliver at $1.05. I think we could hold their trade at equiva-

3366 lent price with others, but not more.

Please note Mr. Coleman's statement regarding the local trade at Louisville. It is true that nearly all the merchants at Louisville are selling at $1.15 for Blasting Powder in small lots, but they purchase from agencies that have a $1.00 net price, the same as Kings, Miami, L. & R. and Austin have at Cincinnati. Heretofore we have practically abandoned this small lot trade at Cincinnati as well as at Louisville and I do not know your wishes now respecting this. Do you desire to revise the prices for Louisville?

Truly yours,

1 Enclosure. R. S. Waddell, Agt."

Mark those please.

(Same received in evidence and marked Defendants' Exhibits A-85, A-86, A-87 and A-89.)

Q. Now are those low prices lower than yours prevailing throughout Kentucky at that time, were not they? A. At that particular date, yes.

Mr. Button (reading):

3368

"Nov. 16, 1893.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Gentlemen: Herewith I hand you copy of letter, Jno. Ingle & Co. Also please read in connection with this, copy inclosed letter of David Ingle to the Hazard Company. It is possible that there might be collusion between these parties, but to day I had a postal from R. McJohnston & Co., with information from two other sources, which indicates that someone has visited that section, quoting a price of $1.00 on powder in carloads. This tallies closely with the latest reports we have had from St. Bernard Coal Co. 3369

I wrote Mr. Ingle that it was no use to discuss a price of $.95 per keg, but that I would advise him the lowest price we could make; if we could not go as low as $1.00, we would write them before shipment. The rate from Moaar to Evansville is 28 cts. per cwt. If 7 cts. per keg, this would net $.93 f.o.b. Mooar, if sold at a dollar. I am uncertain whether this new opposition comes

3370 *R. S. Waddell—Cross*

from Phoenix, Equitable or Chattanooga. It is true that powder in 50 and 100 Keg lots, is sold from Louisville at $1.00 per keg. Chiefly L. & R., Miami and King brands. If you can fill the order at one dollar, please do so; if not, kindly advise the lowest price we can make Ingle.

Truly yours,

3371 2 Enclosures. R. E. Waddell, Agt."

Q. On November 16, 1893, the rumors about the Equitable having been able to compete with the Phoenix had not yet reached you, had they, Mr. Waddell? A. Yes, I think so.

Q. You say here, do you not, "I am uncertain whether this new opposition comes from Phoenix, Equitable or Chattanooga"; at that time did you well understand that the du Pont and Hazards had built the Equitable? A. I knew they had not built it. I was at the Equitable when it was being
3372 built.

Q. Did you know at that time that they had co-operated in building it for the purposes of competing with the Phoenix? A. That was the general belief of the trade.

Q. At the time you wrote this letter? A. Yes.

Q. You knew it then? A. I knew it all the time; the opposition came from all brands.

Mr. Button: On November 25, 1893.
To the du Pont Company.

"Dear Sirs: After a week of negotiation with St. Bernard Coal Co., we have finally closed a contract with them and Madisonville Coal Co. combined for 1894 consump-

tion—16,500 kegs at $1.02 per keg for Sycamore powder."

Q. This is in 1893 and there is one contract for at least a year's supply for a considerable amount, wasn't it? A. For a definite number of kegs, yes.

Mr. Button (reading): "They had a price of $1.00 from Chattanooga and from Phoenix. One other Company quoted $1.02. I declined to make any quotation and while 3374
this put the St. Bernard people in a bad humor, it shut them off from playing us against others. Mr. Rood handled the case very nicely, told them to get their prices and when they were ready we would say whether we would meet the figure or decline the contract. Mr. Gorman, of St. Louis, was present representing the Phoenix Co., and the Chattanooga Co. were represented by their secretary. The St. Bernard Co. felt a little sore over having lost $1,000.00 on their last year's contract. They claim that within ten 3375
days after signing with us they could have bought powder at $1.10. They kept their contract and paid $1.20; 10 cts. per keg above the market, say on 10,000 kegs. I hold the written contract at $1.02, being 15,000 kegs for the St. Bernard mines, and 1,500 kegs for the Madisonville mines. If you will wire your approval Monday, I will execute the papers and forward them at once, closing the deal. While this was pending Crabtree Coal & Mining Co., of which Mr. Salmon, who is brother-in-law of Mr. Rash, is manager, bought a carload of Chattanooga powder at $1.00 per keg. We knew of this purchase but as we held a carload

order from Crabtree conditioned on our meeting the price and this order had not been finally cancelled, we claimed to be holding the Crabtree trade.

The freight on powder from Phoenix mills to Evansville is 22 cts. per cwt.—5½ cts. per keg. John Ingle was correct in his statement that Blasting Powder was offered him at 95 cts. The L. & R. Co. sold one carload at 95 cts. per keg, delivered at Koester Coal
3377 Co. at Evansville. This was sold in competition with Phoenix.

We are informed that the Phoenix St. Louis mills will start up again next week.

Truly yours,

R. S. Waddell, Agt."

Q. So you had a contract the previous year also, did you not, which you were renewing? A. Not a yearly contract, not a rebate contract. We had a contract which was for so many kegs.

3378 Q. I asked you if you had a contract? A. For a definite number of kegs, yes; it was a good one, that is, it was good in law.

Q. You mean by that that these other contracts were not good in law? A. That is my judgment of them, yes; that was Mr. Hillies' judgment.

Q. Your judgment as a lawyer or powder man? A. Just as a business man.

Q. Just as a business man. A. I have also had the opinion of learned counsel on that question.

Q. In December, 1893, are those your letters (handing papers to witness)? A. Yes.

Mr. Button: Mark them, please.

(Same received in evidence and marked Defendants' Exhibits A-90, A-91, A-92, A-93, A-94.)

Mr. Button (reading):

"Dec. 11, 1893.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: I had a letter from F. T. Gunther, Owensboro (copy enclosed). I have replied to Mr. Gunther that we met the market when we sold him the last carload of powder; that we have not since sold any du Pont Powder at Owensboro for less than the price we then made him—$1.10 per keg, and that we could not rebate on the last car. 3380

As to the price of the car now ordered. I said that the best price we could name him would be $1.05 per keg delivered at Owensboro. Mr. Gunther is not a very energetic seller of powder, and I believe will be willing to pay $1.05 per keg.

Truly yours,

1 Enclosure. R. S. Waddell, Agt."

3381

Q. You haven't any doubt that in December, 1893, that Chattanooga Company had gone into the Owensboro, or the Phoenix, and cut under your price about 10 or 15 cents, Mr. Waddell? A. They may have gone under Gunther; he was a very loyal agent of the du Ponts.

Mr. Button (reading):

"December 14, 1893.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: Referring to our order No. 157 dated 11th inst., Mr. L. M. Baird writes asking the privilege of changing the assort-

1127

3382 *R. S. Waddell—Cross*

ment. Instead of that already ordered, please send him: 100/F, 250/FF, 50/FFF, 300/C, 300/CC. The order is marked for shipment Jan. 1st.

Mr. Baird reports that the Chattanooga Powder Co. have offered Blasting in 400 keg lots at 95 cts. delivered at Evansville. He saw their offer at this price to Diamond Coal Co. He does not think they sold any powder at Evansville.

3383

Truly yours,

R. S. Waddell, Agt."

Q. Now, none of the other companies had made any 95-cent price at that time, had they, Mr. Waddell? A. I don't know.

Q. Don't you know they hadn't? A. No.

Q. Can you take that letter of your own and state whether that was not a new price as low as 95 cents made by the Chattanooga in that territory? A. Well, I don't know what the other prices were; we just learned them from day to day as we got them. I could not tell you on that date whether the other people had made a price that low or not. Chattanooga was driven out of her local territory down in Chattanooga and Tennessee and was seeking better prices outside.

3384

Q. You knew all about the situation at that day, both from your correspondence and also from the local conditions around Chattanooga, did you, which you stated you learned from your brother? A. Well, I might not have known it within a week or two weeks in the exchange of ideas.

Q. In the month of January, 1894, is that first one your signature (handing witness paper)? A. Yes, sir.

Mr. Button: Mark them.

(Same received in evidence and marked Defendants' Exhibits A-95 and A-96.)

Q. You might as well look at these others here. Are these also yours (handing papers to witness)? A. All of them bear my signature.

Mr. Button: Mark them.

(Same received in evidence and marked Defendants' Exhibits A-97 to and including 3386 A-102.)

Mr. Button (reading):

"Jan. 22, 1894.

The Hazard Powder Co.,
New York City.

Gentlemen:

Herewith please find a letter from Mr. J. Smith Talley, President, Chicago & Indiana 3387 Black Coal Co., which explains itself. Mr. Talley has been using other brands at $.95 per Keg, but now expresses a wish to continue the use of Hazard powder, provided we will make him a price of $1.00. This Powder is for the C. & I. B. C. Co.

I also have an order for a car of powder from David Ingle, Ayrshire, Ind., provided we can furnish Hazard at $1.00 per keg, net, cash on delivery. We supplied David Ingle with a car du Pont Blasting, but the grain does not suit his Miners, and they rebelled. They have been buying Phoenix lately, and are now willing to take of us at the price named.

3388 *R. S. Waddell—Cross*

I expect to write you fully tomorrow in reply to yours inquiring the condition of the Blasting Trade. We are out of the market on Hazard brand. There are a few good customers who would like to stay with us, and the two named in this letter are among our best.

Please wire on receipt of this, whether you can receive the orders, and if so, send Chi-
3389 cago & Ind. Block Coal Co. 400 Kegs of F., and David Ingle, Ayrshire, Ind., 800 Kegs of F.

I will send you formal orders for same on receipt of your telegram.

Yours truly,

1 Enclosure. R. S. Waddell, Agt."

Q. Now you were out of the market on the Hazard brand in January 22, 1894. Do you mean to
3390 say, Mr. Waddell, in that letter, that you meant to say you were simply out of the market on that one day? A. Yes.

Q. You meant that? A. We had that trade, both of those gentlemen when the fight ended.

Q. I know that. But you say here: "We are out of the market on Hazard brand." You meant by that statement, didn't you, that the prices had been cut so low during the last year or two that you had lost all of your trade? A. Oh, no.

Q. Didn't mean that? A. No.

Q. You simply meant on that one day you were out of that market? A. Yes, for that particular time; I was selling 150,000 kegs a year.

Q. You say "by that trade"; what did you mean "by that trade"? A. Those particular people.

Q. Yes, but the language is, "I expect to write you fully tomorrow in reply to yours inquiring the condition of the Blasting Trade. We are out of the market on Hazard brand. There are a few good customers who would like to stay with us and the two named in this letter are among our best." A. Yes.

Q. That is your trade would like to stay, but you are out of the trade, having lost it. A. Our price at that date was a little high, we were probably in it the next day on a telegram. 3392

Q. Probably what? A. Probably in the market the next day on a telegram as we got them again after that.

Mr. Button (reading):

"Jan. 22, 1894.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: 3393

Yours 17th inst. received mentioning purchase by Messrs. Ross, Brown & McCrey, Brazil, Ind., 1,600 kegs Blasting Powder which they are offering at $1.00 in small lots and 90 cts. in lots of 400 kegs. We have never sold any Powder to this firm. They buy L. & R., Kings and Ohio. I am quite sure they have not received any du Pont or Oriental powder through this office or sub-agencies. Ohio Powder Co., Miami, Kings, Austin and Phoenix have quoted powder in the Terre Haute district as low as 90 cts. per keg for cash. The usual quotation has been $1.00 less 5% or 7% for cash. Two

3394 *R. S. Waddell—Cross*

or three of our customers have been named 10% for cash from a One Dollar price. I have not heard any complaints from our trade of the sales made by Messrs. Ross, Brown & McCrey; although we have customers in that immediate locality who are very prompt in advising us of prices below that which we are charging them.

I think if the $1.00 price is to be cut, the way to do it is in the shape of a cash dis-
3395 count. I will ask Mr. Rood to investigate the Brazil report when he passes through that city the latter part of this week, or the first of next week.

Truly yours,

R. S. Waddell, Agt."

Q. The dollar price you refer to was the one you had been maintaining theretofore for the du Pont and Hazard, was it not? A. If that is what it
3396 states.

Q. It does not mean merely the day before, it means the year before, doesn't it, Mr. Waddell? A. No, I had been up beyond that up to $1.30 and $1.40 in the year before.

Q. Had been above, you never had been below the $1.00 before that time? A. No, we were on the down grade.

Q. That 90 cents rate was made by your four associates, the Ohio, Miami, King and Austin and the Phoenix, all members of the association, were not they? A. Yes.

Q. And they cut the price ten cents? A. There is about twelve in the association and it was twelve against one.

Q. That is against the Hazard? A. No, against the Independent.

Q. Oh. A. We were all in that, no one was doing all the cutting.

Q. That is the harmonious fight, one unit against the three independents that you mentioned, is it? A. Yes; my files at Cincinnati was full of the correspondence cautioning me against associates.

Q. Now, on January 24, 1894, you wrote as follows to the Hazard Powder Company:

3398

"Gentlemen: Reporting on the general condition of our Blasting Trade, enjoyed by the Hazard Powder Co., I give you herewith, in tabulated form, a list of our old customers, the name of the brand they are now buying, and the price they pay for powder.

Your prices to us are, for Indiana Coal Field, minimum, $1.05, Jackson, Ohio and Ironton, Ohio,—$1.00, other Ohio points, $1.05. West Virginia, minimum $1.05, excepting Norfolk & Western Trade, which is $1.10, and if anything below this is required, on consultation there is a possibility that you might allow $1.05; permission, however, is not given for this price. 3399

In Interior Kentucky, $1.12½; Central City District, $1.10, Ohio River points, $1.05.

Our customers have been very reluctant about quitting the use of Hazard Powder, have clung to us at an advance of from five to fifteen cents per keg higher than they were quoted by three or four competitors, and most of them feel aggrieved that we have not treated them more generously. Knowing that you were indisposed toward making a lower price than that already

3400 *R. S. Waddell—Cross*

given me for the different Districts, I have not been very urgent in letters on the subject. We have, during the year, taken orders for about forty three carloads to be shipped within thirty days after date of the order, which have been countermanded or delayed, and cancelled at a later date; for the reason that we could not meet the price which our competitors had made, the Trade drifted from us;—some of it permanently,
3401 but other customers will return whenever the conditions are favorable for us to care for their wants. I have endeavored to avoid disagreeable wranglings and ill-feeling with customers, expressing the regret that excessive freights and low prices precluded us from enjoying their trade.

I also send you separate sheet showing consumers who have Blasting powder, (Hazard brand) on hand, and who would probably ask a rebate should we quote them
3402 a lower price. Our rule has been to make no quotation until the party was in the market for a new carload, and then to except Stock on hand when the new quotations were issued. The fact is we have done a conservative business, and have not, in a single case, been sufficiently aggressive to solicit an order. We have known that our prices were from five to fifteen cents above the market, and it would injure us more than any good we could gain, by actively soliciting trade. As you will observe by our orders, we have had two or three different prices in every locality; this is due to the fact that we have got the most we could from people who had lower prices from

other Companies, and were willing to give us the figures named on our orders. We can do a moderate share of the business with a One Dollar price to all Indiana, Ohio and Kanawha District points; One Dollar to One Five for Norfolk & Western Trade; $1.05 in Central City, Ky. District, and $1.00 at Ohio River points such as Owensboro and Evansville. About half of our sales on Kanawha and Norfolk & Western, would be at $1.05, and exceptionally close buyers, at $1.00. 3404

The unusually mild winter throughout the Central States has cut down the consumption of coal fully 50% for heating purposes, and the reduced demand from manufactories, has cut off the carload trade in coal, more than 50%, so that the limited amount taken for fuel and manufacturing reduces the output of the mines below anything that has been known during my experience in the powder business. This has reduced the consumption of powder very materially, and at the same time has aggravated the cutting because every company has fancied it was losing trade, or desired more, attributed the loss to their high prices, and accordingly made a cut. 3405

Kings, Miami, Austin, Ohio & Phoenix Companies have sold in our territory at prices ranging from 90 cents to one dollar. I am informed the L. & R. Company have placed some powder in Indiana as low as 90 cents, but I have not had an opportunity to confirm this report, and it may be an error.

You understand very well, that the lowest prices capture the cream of the trade;

at high figures, we take the buyers of doubtful credit, who are slow in paying. If there are any points omitted that will interest you, I will be pleased to furnish them.

Truly yours,

R. S. Waddell, Agt.

P. S. I could not get the second state-
3407 ment ready for today's mail, and rather than delay this, I forward without it and will send the other later."

Q. Is that a report about a one day's condition, Mr. Waddell? A. No, it seems to be more general.

Q. It seems to indicate that theretofore your prices consistently had been from five to fifteen cents above all others, or many others? A. Well, the rate of freight from Hazardville was sixty-five cents a hundred or sixteen cents a keg, and they couldn't always compete; they didn't want to
3408 lose.

Q. But as I have understood you very recently within the last half an hour, you thought that this is only one side of the story, that frequently in answer to these requests for prices you got telegrams from the Hazard Powder Company to cut under these other people and hold their trade, didn't you say that within half an hour? A. Yes, very frequently.

Q. But here the prices were ninety cents by most of these companies and you hadn't been down below $1.05, had you, according to this report? A. We went down to eighty cents right in that field.

Q. I know, but up to this date had you been down below $1.05, Mr. Waddell? A. I don't know.

Q. Then you hadn't had any such telegrams ask-

ing you to cut down below ninety cents, had you, at this date? A. No, this was probably the pool.

Q. Won't you look at the report that is enclosed (handing paper to witness) and see if that doesn't correctly reflect the state of your business at that date and whether those are the people that had gotten your businss away from you and what prices they had gotten it at; that statement gives the name of the customer, doesn't it? A. Yes.

Q. Where is he located? A. And the powder company of whom he bought his last carload. 3410

Q. Yes, and the powder he is now using, the price he is getting for it, what price has been to them and general remarks. A. Yes. That applies to that date.

Q. And it shows quite a substantial list of your customers that were then being furnished by the Miami, Hazard, Ohio, Kings, Laflin & Rand and everybody else, doesn't it? A. Hazard was competing with du Pont and du Pont only, they all competed with each other.

Q. Then we really had a normal condition at that time? A. No, we didn't. 3411

Q. On February 19, 1894, did you write this letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked Defendant's Exhibit A-103.)

Mr. Button (reading):

"Cincinnati, Feb. 19, 94.

Messrs. E. I. du Pont de Nemours Co.,
Wilmington, Del.

Dear Sirs:

Enclosed herewith I hand you letter re-

ceived from our Louisville Agt. Mr. Coleman apprehends a further loss of trade by the introduction of Austin powder in the Louisville market. I think there is good cause for his expecting this, for the Austin Co., selling Blasting in small lots at $1.00 per keg and this is a sufficient influence to turn trade in their favor on Sporting powder. They have captured considerable Hazard trade in this City and at such towns as
3413 Waverly, Chillicothe, Hillsboro, Washington and other towns in Ohio and Indiana by selling them small lots of Blasting at $1.00 as an inducement for a stated quantity of Rifle. If this practice is sustained at Louisville they will take a full share of Mr. Coleman's trade.

Truly yours,

1 Enclosure. R. S. Waddell, Agt."

Q. Cutting went on then by these associates during 1894, didn't it? A. Yes, until the Austin
3414 filed charges against me that I had eighty-five per cent of the trade in Cincinnati.

Q. When was that? A. That was when the round-up came.

Q. In 1896; did you write this letter (handing witness paper)? A. That is my signature.

(Letter received in evidence as Defendant's Exhibit A-104.)

Mr. Button (reading):

"Cincinnati, March 15/94.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

Herewith I hand you copy of a letter from Mr. Rood. I had him call at Zanes-

ville in reply to an inquiry from the Harper & Cosgrove Co. There is no doubt that the Austin and Ohio Powder Cos. are selling at 90 cents. I refused to give Mr. Rood a 95 cts. price because I feared they might have a stock on hand and if this price was quoted them, they would make a new order conditional on our allowing a rebate on the old stock. If the freight to Zanesville were $50.00 per car, on the old basis, it should not now exceed $37.00 on the revised freight 3416
tariff, provided the powder is shipped in cars of 800 kegs or over. I can arrange to have the Blasting increased to 800 kegs; ship the car to Zanesville with the privilege of switching it at Cambridge, O., where we could take out 400 kegs for Byesville. The freight on the powder from Cambrdge to Byesville would be very light, as the distance is only about six miles. I mention this to enable you to figure what the powder will net you at the mills.

Regarding the price of Rifle—$2.75 net. 3417
This is more than the Austin Co. charges at other points. They recently quoted Wagner & Son, Mansfield, O., at $2.25 per keg, and Mr. Wagner states that he can buy it at this price now.

I will not send formal orders for the powder until I hear whether they will be accepted by you.

Truly yours,

1 Enclosure. R. S. Waddell, Agt."

Q. Did you write this letter (handing paper to witness)? A. That is my signature.

3418 *R. S. Waddell—Cross*

(Letter received in evidence and marked Defendant's Exhibit A-105.)

Mr. Button (reading):

"Cincinnati, March 24/94.

Messrs. E. I. duPont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

3419 We sent Mr. Rood into the Norfolk & Western district last week and while there he met Mr. Sherman of the Chattanooga Powder Co. Mr. Sherman was endeavoring to sell powder at $1.00 per keg and was in a fair way to take a good many orders. He had called on most of the trade soliciting orders and promised to see them to confirm the deal before he left the Valley. To meet this, Mr. Rood took written orders from:

3420 Louisville Coal & Coke Co., Goodwill, West Va., 400 kegs Hazard Blasting at $1.00 to be delivered May 1st. This Co. had King's quotation made by Mr. French at 98 cts.

A written order from Algoma Coal & Coke Co., Algoma, West Va., 400 kegs duPont Blasting at 99 cts., for delivery June 1st.

Lick Branch Colliery Company 400 kegs duPont to be shipped May 1st, at $1.00.

Shawnee Coal & Coke Co., 800 kegs duPont Blasting at 00 cts., to be shipped about May 15th.

Mr. Sherman sold Keystone C & C Co., a late customer of Kings, 400 kegs at 87 cts.

Tidewater C & C Co., a Phoenix customer at 97 cts.

Gilliam Coal Co., 400 kegs at 98 cts., this was a late customer of Kings.

Pulaski Coal Co., undertook to get up a competition in price between Sherman and Rood, and their order was left open. They prefer duPont powder and I believe we will get the order at 99 cts., even if Mr. Sherman should quote them 95 cts—as they expected he would. 3422

In addition to the above Mr. Sherman quoted Crozier Coal Co., 97 cents., Algoma, 98c., Shamokin, 97 cts., Shawnee, 98 cts. Mr. Rood is not certain of the price he made on the Tidewater car, but was told that it was less than 98 cts. Not hearing of a better figure than 97 cts., he concluded he sold at this price. Our orders aggregate 2,000 kegs; Sherman's 1200. The trade that Mr. Sherman gained was from Kings and Phoenix. He told several parties, for whom he made figures, that his freight rate into that section was $1.08 per cwt. At 97 cts. he is therefore figuring on 70 cts net at the mills. 3423

The Hazard Company do not want to sell below $1.05 and we tried to get the Louisville Company to take your powder. Their miners prefer the Hazard grain and if they cannot obtain this will take Chattanooga, which closely resembles it. Mr. Rood thought best to get the order and discuss it later. I will send copy of this letter to Mr. Colvin President which fully explains the situation. If it is decided to accept these orders which are written and signed by the purchasers please advise and I will write formal acceptances.

3424 *R. S. Waddell—Cross*

We do not intend to visit N & W trade until April, as we knew they did not need powder, but hearing of Mr. Sherman's visit I started Mr. Rood. They met at the hotel and slept in the same room. Sherman said that some of the powder companies were in a tolerably close place; that Mr. Conable, Prest of Chattanooga is acquainted with several banks in Ohio where they received some accommodations and he knew that the
3425 King Co., had worked the banks of Xenia, Springfield, Dayton and Columbus, for all the money they could get. He (Sherman) thought the King Co. were closer run than anybody in the business. Rood express the wish that Sherman had allowed him an opportunity to go into the business when organizing Chattanooga Company. Sherman said it was not too late now, that there was plenty of stock to be had on a very fair basis. Rood had made other arrangements
3426 and was not in shape to take any. Returning from this trip Mr. Rood met French—a salesman of the King Company. Mr. French said Messrs. Peters were greatly disheartened—the low prices and the deplorable condition of the business had discouraged them. Then they realized that every powder company in the country was making a drive at the Kings and they were the chief sufferers in this whole fight. Rood got the impression that if French in any way reflected the sentiment of Mr. Peters, that things were in a very bad shape with them.

Truly yours,

R. S. Waddell, Agt."

Q. So you were also making a fight against the King Company at that time, were you, Mr. Waddell? A. They were participating.

Q. Well, they were participating at the other end; they were in the class with the Chattanooga and the Phoenix, weren't they, according to this letter? A. No, they were members of the pool.

Q. The pool wasn't very profitable in those days, was it, Mr. Waddell? A. Not in that particular district; it was outside.

3428 Q. What were the dividends of the duPont company that year? A. I don't know; I knew the dividends of the Hazard for many years; they ran about $325,000.

Q. What were the dividends of the Hazard Powder Company in 1894? A. I don't recollect; I have had them—all of them.

Q. April 18, 1894, did you write these letters (handing papers to witness)? A. Yes.

(Papers offered in evidence and marked Defendant's Exhibits A 106 and A 107.)

3429

Mr. Button (reading):

"Cincinnati, April 2/94.

Messrs. E. I. duPont de Nemours & Company,
Wilmington, Del.

Dear Sirs:

Herewith I hand you copy of a letter sent to me by the Weakley, Worman Co., Dayton, Ohio, who asked for better prices. It is an indication of what the Miami and King people are doing at Jackson, Ohio. French, of the firm making the quotation,

3430 was formerly Miami agent. The firm now handles about equal quantities Miami and King powder. Their quotation of fifty keg lots at $1.00 is quite an embarrassment to us in the sale of carloads of 800 or 1,000 kegs at this price. The Weakley, Worman Company asked that we return the original letter.

Truly yours,

R. S. Waddell, Agt."

3431 Q. Now, it has always been the practice to make a trifle higher price for small lots, like fifty kegs and for carloads, hasn't it? A. About fifteen cents a keg difference.

Q. Therefore this $1.00 price at that place for a small lot of fifty kegs was a very low price, wasn't it? A. Yes; a man probably bought a carload and was selling it out.

Q. Well, was it a low price? A. Yes, it was a low price, I should think.

3432 Q. Now the same month, April 2d, 1894, did you write this letter? A. Yes, that is my signature.

(Letter received in evidence and marked Defendant's Exhibit A 108.)

Mr. Button (reading):

"Cincinnati, April 2/94

Messrs. E. I. duPont de Nemours & Company,
Wilmington, Del.

Dear Sir:

Mr. Dawes President St. Louis & Big Muddy Coal Company returned to-day and

I had an interview with him regarding future supplies. I asked what the chances were for his trade in the future provided we could bring about an adjustment on the two carloads at $1.00 delivered to them last fall. He said they would not want to break off entirely with Kings at once. Kings are selling him at 95 cts.—a price that was given by L. & R. They just received a car from the King Company but are using 3434
about 1,000 kegs per month. He offered me a car load for May delivery at 95 cts. I told him we would consider the proposition, but if we could have any sort of an assurance that there was to be permanency in the trade and I could write you to this effect, that I thought the deal would go through. He told me to write you that the miners as well as the company preferred duPont powder; that he could say now that we would have the principal part of their trade and that chances were favorable that 3435
the miners if given an opportunity would in time take duPont powder alone. I promised to let him know in a week or ten days whether we could accept his order for the 1,000 kegs at 95 cts.

Truly yours,

R. S. Waddell, Agt."

Q. There the King was cutting your price of five cents under a dollar, weren't they, for that trade in April, 1894? A. He owed me forty-two carloads—a couple of thousand dollars probably—and I couldn't afford to quote him a price without cutting the price on past sales.

3436 *R. S. Waddell—Cross*

Q. Very well, but the King was cutting your price, wasn't it? A. Yes.

Q. Did you write this letter, April 8, 1894 (handing witness letter)? A. That is my signature.

(Letter received in evidence and marked Defendant's Exhibit A-109.)

Mr. Button (reading):

"Cincinnati, April 28th, 1894.

3437

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Gentlemen:

Herewith I hand you letter from Ruffner Bros., Charleston, West Virginia, asking quotation on a carload blasting powder delivered at Charleston. I think King's have sold two or three carloads in Kanawha Valley at 90 cts. The Phoenix Company have
3438 also sold two or three carloads at 90 and 95 cts. Our best price in that Valley has been $1.00. We have asked agents the same figures that we named consumers. Messrs. Ruffner Bros. have been very gentlemanly and fair with us. They recognize that powder is sold at a loss, know that we quote the trade the same figure we give them, and they aid us by furnishing information. If you desire to make any change in price on a carload of powder to Ruffner Bros. please wire me on receipt of this letter.

Truly yours,

1 Enclosure. R. S. Waddell, Agt."

Q. Now, that is over in the Pocahontas district, isn't it, Mr. Waddell? A. No, that is at Charleston, West Virginia; they were our agents there—du Pont agents.

Q. Well, this shows that King was selling at ninety cents, the Phoenix at ninety-five in that valley, and your best price had been a dollar, hadn't it? A. That is King——

Q. No, "Our best price in that valley has been $1.00"? A. I only had one customer.

Q. Then so far as that valley goes, you hadn't 3440
received up to April 28th, 1894, any of these telegraphic communications to see-saw on the price and get under these other people, had you? A. No, but we did go down to eighty cents.

Q. We may get to that point some time, Mr. Waddell. In May, 1894, did you write this letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked Defendant's Exhibit A-110.)

Mr. Button (reading): 3441

"Cincinnati, May 28th, 1894.

Messrs. E. I. du Pont de Nemours & Company, Wilmington, Del.

Dear Sirs:

On January 31st we shipped a carload of powder to Collins Colliery Company, Glen Jeans, West Va., which we sold to them at $1.04 per keg without any conditions or guaranty. Mr. Collins, President of this company, is the manager of Louisville Coal & Coke Co., located in the Pocahontas dis-

trict; Collins Co. being located in the New River district. They made us a payment on account sending a remittance for 31 kegs at $1.04, and the remainder of the remittance at $1.00 per keg. We returned the papers saying to them: 'We do not understand why you remit for powder at $1.00 per keg when the price at which it was sold to you is $1.04. We return herewith the entire remittance and ask that you will please correct it.'

3443 In reply to this I have Mr. Collins' letter as per copy enclosed. I have not indulged in the practice of changing prices after a carload is sold, although some of our competitors make rebates—notably the King Company. Before taking final action in this matter I thought it best to consult you. The reduction is probably made by Kings as they did to regain the trade. They no doubt have a small quantity of King powder on hand or may have owed them a small balance and they rebated this to recover the customer.

3444

Truly yours,

R. S. Waddell, Agt."

Q. Now that was in the Pocahontas district was it, Mr. Waddell? A. No, that was in the New River district.

Q. Glen Jeans, West Virginia? A. Well, on the New River.

Q. Well, the trade was with Mr. Collins, who was president and manager of the Louisville Coal & Coke Company, which is located in the Pocahontas district? A. That was over in the other coal field.

Q. Well, but the same men were—you were sell-

ing them at that time powder at $1.04, and the Kings came in there and cut down to a dollar in that trade in that valley, didn't they? A. That is kind of a problem I put up; I figured it out that way.

Q. July, 1894, did you write this letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked Defendant's Exhibit A-111.)

Mr. Button (reading): 3446

"Cincinnati, July 14, 1894.

The Hazard Powder Company,
New York City.

Gentlemen:

Replying to yours of the 9th inst., Joe Martin of Parke County Coal Company sent an open order for a carload of powder, and knowing that he required it promptly I sent 3447 the order to you. Meanwhile we have been at work fixing the price. Mr. Martin has been quoted L. & R., Austin, Miami, Kings and Phoenix powders at 90 cts. We told him we could not sell Hazard at that price. He has consented to pay us 95 cts. on this carload. If this is satisfactory to you, please ship promptly.

The strike has about collapsed; only occasional mutterings at some points; but I think the trouble will be over before the car reaches our territory. United States Judge Taft locked Phelan, Strike Manager of Cincinnati in the Warren County jail for six months. No appeal to Cleveland. He is

3448 *R. S. Waddell—Cross*

about due to flop over, and may pardon the fellow. If they could hold Phelan, it will be difficult to fill the position he occupied.

Truly yours,

R. S. Waddell, Agt."

Q. Now that indicates although the Laflin & Rand, the Austin, the Miami and the Kings and the
3449 Phoenix was selling powder freely at ninety cents, the Hazard at that date had never gotten below ninety-five cents, doesn't it, Mr. Waddell? A. Just at that date, yes.

Q. Now, August, 1894, did you write this letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked Defendant's Exhibit A-112.)

Mr. Button (reading):

3450 "Cincinnati, August 10, 1894.

The Hazard Powder Company,
New York City, New York.

Dear Sirs:

Spencer and Hazelton, New Straitsville, O., wire Ohio Powder Company is endeavoring to take their trade at 95 cts., and asks if we can meet the price. There is no particular haste and I have opportunity to get a message from you Monday—therefore write before making reply. I know of sales made at 90 cts. in this immediate locality and there is no question but the quotation is cor-

rectly reported. Please wire me Monday morning if I shall protect the trade on carload order mailed you yesterday. I shall not concede the price unless fully satisfied after investigation that the miners will leave us.

Truly yours,

R. S. Waddell, Agt."

Q. And in September this one (handing paper to witness)? A. That is my signature. 3452

(Letter received in evidence and marked Defendant's Exhibit A-113.)

Q. The Ohio Powder Company was competing up there, was it? A. Yes.

Q. And the next month, September 14th, 1894—

Mr. Button (reading):

"Cincinnati, Sept. 14/94. 3453

Messrs. E. I. du Pont de Nemours & Company, Wilmington, Del.

Dear Sirs:

Frank Owens Hardware Company of Maysville, Ky., wanted some blasting powder and Mr. Owens called to see us about prices. He claimed that they could not buy Rifle powder from us on account of the price and that we were overcharging them on Blasting powder—$1.00 per keg f.o.b., Cincinnati, was our price on their last lot. I suggested that they purchase a carload (400

3454 *R. S. Waddell—Cross*

kegs) either alone or in connection with other dealers at Mayesville or Ashland. I promised to have Mr. Rood call and they were to canvass the subject in the meantime. They discovered that Austin Company is selling in small lots to some of their customers at $2.75 f.o.b. Cincinnati. Our price to them was $2.92½ on 50 kegs Rifle subject to 2% for cash. They would get free delivery in a carload shipment. Mr. Rood was
3455 unable to sell them for they said they would not pay more than $3.25 less 10% and 5% for 100 kegs Sproting. If this were conceded they would take 100 kegs Blasting at $1.00 as a part of a 400 keg car to be shipped via Mayesville to any point we might designate beyond that City.

Mr. Rood stopped at Catlettsburg to see Hazard's customer Ben Williamson & Co. They wanted to buy 100 kegs Sporting and 400 kegs Blasting. Mr. Williamson states
3456 that he paid $2.65 per keg for Sporting and 90 cts. per keg for Blasting, but he is now offering the same price on Sporting and 85 cts. cash for Blasting. He has been buying Austin and Miami powder but we do not know which company sold him at this figure. Mr. Williamson prefers Hazard powder and I had the opportunity to sell him the last car, but our price was too high. Our competitors are undoubtedly placing some good lots of powder at cut prices. Whether it is better to suffer this loss than to force them lower, is for your decision. Our experience has been that if we openly meet the price they would make a lower one. In how far the prices could be equalled in a quiet

way—I cannot say. It is the season when Sporting powder is being placed and there are very few liberal buyers; most of our orders are for lots of 1 to 4 kegs. The cutting seems to be pretty general, for we find it extends through Indiana, Ohio, Kentucky, and into West Virginia.

Truly yours,
R. S. Waddell, Agt."

3458

Q. From that letter in September, 1894, you would not say that the du Pont Company had only made prices, Mr. Waddell; you state here: "Our experience has been that if we openly meet prices the price they make would be a lower one"; is that what had been occurring, had they been making lower prices and you coming down to meet them, and now you are saying it does no good? A. We met them and sometimes went below; they seesawed on the prices; no one had a cinch on the trade.

3459

Q. Now in December of that year, that month, eighteen ninety four, did you write this letter? A. That is my signature.

(Letter received in evidence and marked Defendant's Exhibit A-114.)

Mr. Button (reading):

"Cincinnati, Dec. 17/94.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

Mr. Rood just returned from the Norfolk and Western Coal district. About ten days ago he met Mr. French, salesman for King

Powder Co., on a train near Cincinnati. Mr. French told him that they had withdrawn from the N. & W. coal field and that he had turned over the trade to Mr. Day, salesman for the Phoenix Co. We did not attribute much force to this statement, but on this trip Mr. Rood found that Mr. French of the King Company accompanied by Mr. Day of the Phoenix had traveled through the Valley calling upon all the customers. Mr. French had said to the operators that the King Co. had withdrawn from the Valley at anything below $1.00 net for Blasting powder; that he could not sell below this price, but that he had brought with him a man who could sell for less than $1.00 and he had the greatest pleasure of introducing Mr. Day. He vouched for the good quality of the Phoenix powder and felt sure the customers would receive courteous treatment from Mr. Day and his company. He sold two or three carloads. I had an order from the Indian Creek Coal Company for future shipment at 95 cts. They countermanded this and took a car of Phoenix powder because they obtained it for a less price. This seems a remarkable proceeding on the part of the King Powder Company and I am at a loss to understand why they should so earnestly wish the success of the Phoenix. If it was a personal grievance of Mr. French, he exposes his company to unfavorable criticism by such generous action toward our rankest competitors. It seems improbable that the managers of King Powder Co. have 'experienced a change of heart' toward the Phoenix people, who are said to be largely responsible for the present condition of the

powder market. As Mr. French confessed—and his actions confirm all that I have said, there can be no doubt of the question. The freight to Vivian on car Phoenix powder is $59.00. On car du Pont powder $91.25.

Truly yours,

R. S. Waddell, Agt."

Q. Is it true that the Phoenix people were largely responsible for the condition of the powder trade at that time? A. Yes, I think if the Phoenix hadn't been built we would not have had any disturbance. 3464

Q. And then the King Company was one of the people who were fighting the Phoenix as a unit in December, 1894, when Mr. French of the King Company and Mr. Day went through the valley and Mr. French introduced Day and turned his trade over to them, wasn't it? A. Well, it looked like they were getting together at that time.

Q. Phoenix would rather have beaten the King out of that valley at that date, wouldn't it? A. They had the advantage of King over the freight. 3465

Q. Now on January, 1895, did you write this letter? A. That is my signature.

(Paper received in evidence as Defendant's Exhibit A-115.)

Q. And in February this one (handing letters to witness)? A. That is my signature.

(Papers received in evidence and marked Exhibits A-116, A-117 and A-118.)

3466 *R. S. Waddell—Cross*

"Cincinnati, Feb. 23/95.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

Herewith I hand you copy of letter from Messrs. Thomas Henderson, Ashland, Ky., with copy of our reply. The Phoenix, L. &
3467 R. and some other companies have made an 85 ct. price net cash to four or five parties at Terre Haute and Brazil, Indiana. Two or three firms have purchased at 87 cts., sixty days, or 85 cts. cash. We have heard of this quotation in the neighborhood of the Phoenix Huntington Mills, which are only 5 or 6 miles from Ashland and I presume Henderson & Son have this quotation as they are cash buyers. Please wire me Monday.

Truly yours,

3468

2 Enclosures. R. S. Waddell, Agt."

Q. Now do you mean to say that you would put your price down to eighty-five cents voluntarily for du Pont Company in January, 1895, Mr. Waddell? A. No.

Q. At any time? A. We didn't put it down voluntarily.

Q. Well, had you at all up to that date? A. Oh, yes.

Q. When? A. The time we started at $1.48; we didn't have to sell below $1.48; we didn't have to conduct the fight against Phoenix.

Q. You mean by that that if you had stuck to your price of $1.48 in 1891 you would have given

up the trade? A. We would have given Phoenix a small share of the business.

Q. An ever increasing share, wouldn't you? A. How is that?

Q. An ever increasing share, wouldn't you? A. No, not necessarily.

Q. They had three mills, didn't they, one in New Jersey, and one in West Virginia, and one in Illinois? A. Yes, wholly distinct—distinct territories.

Q. Yes, but a very large territory was covered by 3470
those three mills? A. Yes, but they were small plants and didn't amount to much.

Q. Well, then, the killing off of those three plants didn't have much effect on the trade, they were unimportant? A. The plant at Kanawha, West Virginia, was a trivial thing, it didn't make very much powder.

Q. It was an important matter and they were killed off, as you say they were, and it had its effect on the trade? A. It was important to those who were learning the business of the competitor, 3471
that is all.

Q. Didn't have much effect on the trade though? A. Yes, after it was over they had the mills and they also had the trade.

Q. They had no importance, however; they were important enough to force the price down from $1.48 to eighty-five cents, were they not? A. No, they couldn't have forced it down unless the associated companies had joined in the fight.

Q. That is, if the associated companies had given up their trade, as you say, it probably wouldn't have gone there, but they would have had the trade, isn't that what you mean? A. If the associated companies had allowed an independent to live, allowed them a fair share of the business, a small

share of it, of the growing business of the country, they wouldn't have had this fight; but it wasn't the policy of the associated companies in any of the fights; they want to rule or ruin it.

Q. That is, if they had allowed these three mills of the Phoenix to cut their prices as they did and get enough to take up the capacity of those three mills, the Phoenix would have been satisfied undoubtedly. Also if they had done the same with the Chattanooga you think the Chattanooga would
3473 have been satisfied likewise, wouldn't it and the Southern? A. The Southern didn't amount to much. Yes, I think so.

Q. Well, you have enlarged on it in the various testimony you have given in these cases, haven't you? A. No, the Southern was a very trivial affair.

Q. Well, supposing they had allowed the Chattanooga to cut the price down there in Tennessee and had maintained their own price, Chattanooga would have been selling its full output, wouldn't it? A. Yes.

3474 Q. Now under those circumstances, Mr. Waddell, how long do you think it would have been before some other person would have come along and took three or four mills and gradually these associating companies would have had nothing left if they had acted in that way; that is just what would have happened, isn't it? A. No, I think not; there are very few people going into the powder business; the Chattanooga was built by men who built mills for Miami.

Q. Then your idea is that the du Pont and Hazard should have maintained their price of $1.48, not lowering it when the Phoenix and Chattanooga cut their price; is that what you think? A. Yes, that is the way I feel about it; there was room enough for all of us.

Q. February 23, 1895.

(Mr. Button reads Exhibit 116.)

Q. That was in February; there wasn't enough money for anybody at 85 cents, was there, Mr. Waddell? A. No.

Q. Did you write these letters in April, 1895 (handing papers to witness)? A. I don't know whose that is (indicating); all except that one (indicating).

Q. All except the one dated April 18th? A. It seems to be written by some one else. 3476

Mr. Button (reading):

"Cincinnati, April 1/95.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

We confirm message wired you this date reading: 'Kings have re-entered Pocahontas district rebating to 95 on enough kegs to net 92½. Phoenix sold at 90. L. & R., Kings and Phoenix have quoted New River 90 against our 95. Kings quote Ironton 85 to due Pont customer. Rood goes Kanawha, tonight. Hazard advised.' 3477

Truly yours,

R. S. Waddell, Agt.

P.S.—Have just read your reply to meet these conditions and will do the very best we can. A."

3478 Q. Therefore at that time you were all actively competing for the business in the Pocahontas district and the New River district, weren't you; du Pont, Hazard, Laflin & Rand, Phoenix, King and everybody else? A. Yes.

Q. Entirely open market; open competition, wasn't it?

Mr. Button (reading):

3479 "April 11, 1895.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: Mr. Rood has just returned from Kanawha and New Rivers and reports a badly demoralized condition. This I anticipated from letters that come to me prior to his visit and during the time he was en route.

3480 A man representing the L. & R. Powder Company travelled up the Ohio, Kanawha and New Rivers playing havoc with prices. He did not pretend to use any judgment but quoted indiscriminately to every operator, storekeeper and clerk that he met. His work reminded me more of the 'bull in the china shop' than that of a business man. At a dozen different points he bragged about the Laflin & Rand Powder Company and the wonderful influence they had on the powder business; he told several of our best friends that the 'L. & R. Company had downed du Pont and Hazard on many occasions and that was his mission to the Kanawha trade now; that it would only be a little while until we were out of that valley'; he stated

that he had heard our price was 90 to 95 cents on Kanawha and from 95 cts. to $1.00 on New River, but he would make them an 88 cent price throughout, and if that was not sufficient to take the trade, they would do something better if the people would come to them. He did not sell any powder, but Rush-Run, Union, Gauley Mountain, Fayette, Collins, Beury, Quinnimont and McGuffin all wrote me concerning his action. I telegraphed Mr. Rood when we learned 3482 the condition of business that we did not wish to lose any trade at this time and to meet the price, but under no circumstances to quote where no figure had been named. He now reports that it would not be possible to find a man in that section who did not have the business card of the L. & F. salesman or a written memorandum of his price either on the card or paper. Mr. Rood took a number of orders—all of which are to be shipped in April and May. Two or three of 3483 these are at 90 cents, but more of them are at the L. & R. quotation. I have not received the orders and do not know which brand of powder they will take, nor do I know the exact date of shipment. Herewith is the list:

McDowell, 400 kegs at 89 cents.

Beury Coal & Coke Co., 400 kegs at 90 cents.

Rush Run Coal & Coke Co., 800 kegs at 90 cents.

J. A. McGuffin, Agt., Longdale Iron Co., 800 kegs at 90 cents.

Nuttallburg Coal & Coke Co., 400 kegs at 88 cents.

3484 *R. S. Waddell—Cross*

Wm. Beury-Cooper & Co., 800 kegs at 90 cents.

Belmont Coal & Coke Co., 400 kegs at 88 cents.

Union Coal & Coke Co., 400 kegs at 88 cents.

Winifrede Coal Co., 800 kegs at 85 cents.

A. (Interrupting): Are those carload orders, please?

3485 Q. What? A. Are those carload orders?

Q. Yes, 400 and 800 kegs each. A. I thought so.

Mr. Button (continuing reading): "The latter is the price of Kings and Phoenix and the L. & R. people named the same figure in competition.

We had an order from F. E. Hayward & Co., Ironton, Ohio, for a car of Hazard powder at 85 cents, bnt they have countermanded the order as they say our price is a little above the quotation made them by

3486 others. I sold last week 4,000 kegs to Superior Coal Co., Wellston, Ohio, Hazard at 88 cents and ordered 2,000 kegs of this for prompt shipment; the other to follow in thirty days. They were quoted Miami and Kings at 85 cents. I sold Globe Iron Co. 800 kegs Hazard at 88 cents delivered at Jackson, Ohio, and W. A. Murdock, Ironton, Ohio, 800 kegs at 85 cents. Formal orders will be sent in the first of the week as soon as we can arrange exact dates for shipment.

We lost the Winifrede Coal Co. to Kings and Phoenix about two years ago and could not regain them without demoralizing prices in the Kanawha Valley. We now have an opportunity to recapture this trade provid-

ed you care to do so at the price named. They will take a car of 800 or 1,000 kegs Hazard FFF. for immediate shipment and this quantity will last them about 100 mining days, say three and one-half months. The Winifrede Co. is rich and their trade is very desirable. I am very sorry this demoralization in prices has occurred for we were getting along very smoothly with our trade and the break made by the L. & R. is as silly as it was unsuccessful. Up to this writing 3488
I have not rebated on a single keg and intend to fight it out on this plan unless it should develop that we would lose a customer permanently by being arbitrary. The only real troublesome case I have on hand is that of the Collins Colliery Co., Glen Jeans, where the Manager demands a rebate on Hazard powder. The same concern buys du Pont powder for Pocahontas district. Justus Collins is President of both companies and I do not believe he will insist on the rebate. Please wire me whether or not 3489
the Winifrede order will be accepted so that I may advise them and confirm the order.

Truly yours,

R. S. Waddell, Agt."

Q. This all occurred during a period concerning which you testified as follows yesterday, Mr. Waddell: "And then ensued what you have described as the 'vicious contest'? A. Yes. Q. Do you mean to be understood that that was a contest by this association on the one hand which has been formed under this agreement, and these new companies on the other? A. Yes; I knew that the contest was

not between those companies, it was between those companies as a unit and the others." It was this period that you referred to yesterday when you gave testimony, wasn't it? A. Yes, sir.

Q. In May, 1895, did you go on with this correspondence (handing papers to witness)? A. These are my signatures.

Mr. Button: Mark those.

(Same received in evidence and marked
3491 Defendant's Exhibits A-122 to and including A-128.)

Mr. Button (reading):

"May 3, 1895.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: Mr. J. Smith Talley made a call at our office yesterday to chat about the coal
3492 interests, and I took occasion to inquire into his different holdings. He told me that Mr. Eppert, several years ago was a clerk in their office at Coal Bluff; that he desired to purchase some stock and Mr. Talley let him have a few shares in Coal Bluff Mining Co., on which Mr. Eppert paid 7 per cent. interest until the stock was entirely paid for. Later he sold out all of his stock in Coal Bluff Mining Co. and moved to Clinton, Ind. In two years after this, desiring to enter the coal business again, Mr. Eppert organized the Eureka Block Coal Co. and in order to interest Mr. Talley and secure his favor and influence, he gave Mr. Talley one share in the Eureka Block Co. and made him presi-

dent. Mr. Talley does not claim to own the one share nor to have anything whatever to do with the business management or policy of Eureka Block Coal Co. Mr. Eppert does not own $1 of stock in Coal Bluff Mining Co., but is the chief owner in Eureka Block. I told Mr. Talley very plainly that he having been a customer of our Chicago office, I was not authorized to sell him powder, as our principals prefer to keep distinct the trade that belonged to Cincinnati and 3494
Chicago offices. He demurred to this proposition but said it was your business and proper for you to direct how you wished it handled.

I inquired particularly as to the prices quoted Mr. Talley and other operators and am prepared to say to you that the 83 cent price was quoted all the Terre Haute operators by Kings. The 82 cent price was made to them by Phoenix. If you failed to sell Mr. Talley at 85 cents the order must have gone to the King Powder Co., from whom 3495
he has purchased considerable powder. I did not go into any discussion of questions that were mentioned in your letter, but made my investigations wholly as to Eureka Block Coal Co. I now think this trade belongs to the Cincinnati office and the Eureka Block Co. is entirely independent of Coal Block Mining Co.—although Mr. Eppert and Mr. Talley are good friends and the latter is nominally president of Eureka Block Coal Co. In reply to my question as to how much Mr. Talley had invested in Eureka Block Coal Co. he said: 'Not one cent! The single share of stock he holds was donated.'

Truly yours,

R. S. Waddell, Agt."

Q. Therefore the Kings Company had quoted 83 cents all through the Terre Haute district? Had they not? A. On that day, yes.

Q. And didn't you know, Mr. Waddell, that the du Pont or Hazard had never gotten down to 83 cents on that date anywhere? A. I did not know that.

Q. Did you know that they had? A. On that particular day I didn't know.

Q. Or theretofore? A. I know that we had Mr.
3497 Talley's trade and all that trade in Terre Haute when the fight ended at 80 cents.

Q. You held Talley, up to that time, that your salesman Mr. Rood made contract with him to take part of the stock in a powder company that he organized in 1897? A. Yes.

Q. Mr. Talley was one of the same men who went in with Rood and made a contract with Mr. Rood for the building of the Indiana mills? A. He was president of that company.

Q. And the Phoenix was selling as low as 82 cents throughout the whole district? A. That par-
3498 ticular day I presume it was.

Q. In May, 1895? A. Yes.

Mr. Button (reading):

"May 23, 1895.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: Herewith I hand you copy of a letter from Chas. F. Keeler, owner of Diamond Block Coal Co., Brazil, Ind. It indicates that our competitors are cutting prices in the Brazil District to 80 cents net. Our price to Mr. Keeler has been 90 cents. He

3499

will soon be the largest consumer of powder in Western Indiana and I think he is loyal to us under equal conditions.

Truly yours,

R. S. Waddell, Agt."

Q. So as against your price in the Brazil district of 90 cents, they were then quoting 80, were they not? A. Yes.

3500

Q. And this is the same Keeler whom you in 1892 made a contract with and who co-operated with you to build the Buckeye mills, didn't he? A. He took $5,000 worth of stock of the Buckeye.

Q. He was buying powder from the du Pont Company as early as 1895, was he not? A. Yes, but then he bought the Indiana and built the mills.

Mr. Button (reading):

"May 27, 1895.

3501

Messrs. E. I. du Pont de Nemours & Company, Wilmington, Del.

Dear Sirs: Herewith I hand you copy of letter Mr. Chas. F. Keeler, in reply to mine asking if the offer was made him in good faith or merely to force us down. I said, business men should not recognize sharks in the powder line any more than they would in Coal; that we requested fair dealing.

I think Keeler is all right and know his Supt. is our friend. I will try to find out the source of the offer.

Truly yours,

1 Enclosure. R. S. Waddell, Agt.

3502 *R. S. Waddell—Cross*

(In ink): Since dictating above I have your letter declining the order. As Mr. Rood will be in that locality this week I will have him try Keeler for a better price and endeaver to hold him. W."

Then Mr. Keeler writes on May 24, 1895:

"R. S. Waddell, Esq.,
Cincinnati, O.

3503

Dear Sir: Your esteemed favor of May the 23rd received, and in reply would say that the parties that gave me the quotation of eighty cents did not know that I had an order in with you for a car, and I am satisfied that they expect to fill my next order. I would not treat your house unfairly by trying to get quotation other than in a legitimate manner. I am satisfied that you can do as well by me as any other firm, and also that it is your disposition to do so.

3504 We are nearly out of powder, and I hope there will be no delay in getting the last order in.

Yours truly,
(Signed) Chas. F. Keeler."

Q. They declined that order even at a higher price, the du Pont Company did, Mr. Waddell? A. Yes, they might have had to rebate on a whole lot of trade there that they didn't want to.

Q. July, 1895, did you write these letters, two of them (handing witness)? A. That is my signature.

Mr. Button: Mark them.

(Same received in evidence and marked Defendants' Exhibits A-129 and A-130.)

Mr. Button (reading):

"July 10, 1895.

Messrs. E. I. du Pont de Nemours & Company, Wilmington, Del.

Dear Sirs: Some time ago I wrote you that Mr. Wente of the L. & R. Cincinnati office, had gone through the Kanawha-New River district offering lower prices to operators and endeavoring to capture our trade. We made an 88 cents price to several companies. These visits have been repeated and he has cut the price one, two or three cents, as might appear necessary to get the order. 3506

He sold a carload to Gauley Mountain Coal Co.—a Hazard customer, at 87½ cents, and another carload to Great Kanawha Colliery Co. at 87 cents. The first car was shipped June 28th. I had a letter from the Great Kanawha Colliery Co. and quoted them 88 cents. Mr. Wente happened to be in the locality and cut our price one cent a keg for 400 kegs. He has made three visits to that district since May 1st. It is impossible for us to keep traveling back and forth from Kanawha and so long as he cuts the price some trade will be lost. He has made six different prices in the Valley: 90, 88, 87½, 87, 86 and 85 cents per keg. I could not safely risk a quotation in that district. 3507

If Mr. Wente has control of L. &. R. it has passed into very uncertain care. Mr. Turck, president, dismissed him as a failure, and Mr. Taylor, Cincinnati Agent, recommended him to Hercules. Mr. Haskell,

president, said if he was good for Hercules, he ought to be good for L. & R. under proper direction, and I presume we now have an example of 'proper direction.'

I am sorry that the L. & R. Co. find it necessary to lower the price in the Great coal district 5 cents per keg in order to market 400 keg cars and create the expectation that they will capture a large trade, for many years loyal to other companies. We
3508 have taken orders as follows:

Great Kanawha Colliery Co., Mt. Carbon, W. Va., 400 Hazard at 87 cents; shipment Sept. 1st.

Gauley Mountain Coal Co., 1,000 Hazard at 87½ cents, shipment Sept. 1st.

Mt. Carbon Co., Ltd., Powellton, 800 Hazard at 88 cents; shipment Sept. 1st.

Cannelton Coal Co., 400 Hazard, at 89 cents; shipment Sept. 10th.

Central Coal Co., 800 du Pont, at 88 cents; shipment Sept. 15th.

3510 We expect orders for two other carloads du Pont powder; one at 87, the other at 88 cents, for shipment about September 1st. We took these orders to keep the parties from buying of others and force them to come to us if lower offers were made them. Please advise if we may accept these orders; if so, I will make formal acknowledgment and try to bind the parties to take the powder. It is possible that some of them will need powder earlier than the date fixed. In taking an order for future shipment they usually place it far enough ahead to be safe, they specify an earlier date if they need it.

We send order today (400 kegs Hazard)

to new mine opened by Fayette Coal & Coke Co., at South Nuttall, at 92½ cents. This was a Phoenix quotation in competition with ours at 95 cents.

Truly yours,

R. S. Waddell, Agt."

Q. Now, was this the competition between the associates that you mentioned yesterday morning as 3512
being formal and not real? A. It may have been competition or collusion, I don't know.

Q. Well, this is the competition you had in mind when you said the competition such as it was between the associates was on the surface and not real, isn't it? A. They took turns about pushing it down until they got it down.

Q. Is not this the competition you had in mind when you made that statement yesterday morning? A. Yes, this is the competition.

Mr. Button: Here is one more in July, 3513
July 17, 1895: "Messrs. E. I. du Pont de Nemours & Co., Wilmington, Del.

Dear Sirs: On June 8 we submitted to you orders from Zeller & Sigler and others in the Brazil, Ind., district at 80 cents for blasting powder. Among those who tendered us orders at this price were the Superior Coal Co., Jackson Coal & Mining Co., Brazil. Immediately after we declined the offers the Laflin & Rand's Chicago office sold Superior Coal Co. 1,000 kegs at 80 cents, and Mr. Donnelly, salesman for Mr. Rice, called on Zeller & Sigler and told them they were out of their district for Hazard and du Pont Powder, but he took their order for a car-

load of Austin blasting at 80 cents. In submitting an order to us they mentioned these facts and inquire how it is that our Chicago office lap over into the Cincinnati territory with Austin brand and take orders that du Pont and Hazard declined.

80 cents seems to be the uniform price for Phoenix, L. & R. and Austin powder in the vicinity of Terre Haute and Brazil.

3515 I hold Zeller & Sigler's order for 800 kegs, du Pont, at 80 cents, for shipment to arrive about August 1st to 5th.

I also have an order from Parke County Coal Co. for a car of Hazard F. (Labelled FF.) at 80 cents; early shipments.

Laflin & Rand Co. are crowding strongly for trade about Brazil. What action do you desire us to take regarding these two orders?

Truly yours,

R. S. Waddell, Agt."

3516

Q. That is in July. A. In August, 1895.

Q. August, 1895, and October, 1895, did you write these letters, Mr. Waddell (handing papers to witness)?

The Court: 1895?

Mr. Button: 1895.

A. That is my signature.

Mr. Button: Mark them.

(Same received in evidence and marked Defendants' Exhibits A-131, A-132, A-133, A-134 and A-135.)

Mr. Button (reading):

"August 14, 1895.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: In accord with Mr. Weightman's request that we ascertain what brands were being offered in Brazil, Ind., district at 76 cents, I sent Mr. Rood to inquire. Parke County Coal Co., Chicago and Indiana Block Coal Co. and Zeller & Sigler had reported this price to us. Mr. Rood found that Phoenix Coal Co. had offered at 76 cents to 3518
two parties and had offered Lancaster Block Coal Co., Terre Haute, at 75 cents. He also learned of a quotation of this figure on Austin brand. Later I received his T/D reading: 'Talley and Martin have letters dated August 8th, from King quoting 67 cents. I saw them. We better meet Zeller and Chicago Indiana.'

Later I had a message from him stating:

'I mailed King's letter.'

I have wired you message reading:

'Rood wires: "Have mailed you King's letter to Talley same to Parke County, quoting 76 cents"; advises we accept Zellers and Chicago Block. Kings appear to have written all principal Indiana consumers. Hazard advised.' 3519

And now confirmed. This message was sent in duplicate to New York and Wilmington.

I expect to receive King's letter in the mail tomorrow morning. If it contains anything unusual will wire you. This seemed of sufficient importance to give you the facts and if you wish to supply Chicago and Indiana Block with a car of Hazard or to hold

3520 *R. S. Waddell—Cross*

Zeller and Sigler on their proposition for a carload, the way is still open.

Awaiting your advice, if there be anything further, I remain,

Truly yours,

R. S. Waddell, Agt."

Q. That reads, Mr. Waddell, that Mr. Rood found
3521 the Phoenix had come in and had offered at 76 cents to two parties and had offered Lancaster Block Coal Company, Terre Haute, at 75 cents. That is undoubtedly a misprint for the "Phoenix Powder Company"? A. Yes, it referred to that.

Q. Yes. Don't you recollect in August, 1905, that was the first 75 and 76 cent price that had been made and that it had been made by the Phoenix and Kings? A. No, I think there was the price of 75 cents made to Sternberger before that of Jackson, Ohio.

Q. By whom do you recall? A. Hazard.

3522 Q. You think they made the first 75 cent price? A. Yes, to Sternberger.

Q. Do you remember the date? A. No, I don't, I know we held the trade of Sternberger up to the 1st of July, 1896.

Q. However, this quotation for all of these companies in Southern Indiana, that is the first time that any such price had been offered there? A. I think that is the bottom—75 cents.

Q. Consequently in that case, we have got down to the bottom, haven't we? A. Yes.

Q. On August 17th, this is Exhibit A-132 to the du Ponts:

Dear Sirs: Herewith I hand you copy of

letter The King Powder Co., J. S. French, to Parke Coal Co. I have the original, but must return it to Joe Martin, Manager. The same letter was sent to nearly all the Indiana Operators.

Mr. Rood writes that Mr. Rice advised Mr. Talley he would meet any price made him by responsible people, and that Austin and L. & R. have made sales to Brazil parties at 76 cts. H. Johnson, of Nickle Plate Mine, bought a car of L. & R. 3524

I wired Mr. Rood our best price for Indiana points is 80 cents.

Truly yours,

R. S. Waddell, Agt."

Q. Do you say in face of that, that your best price was for 80 cents and you subsequently made a 75 cent price? This was the date where Mr. Rood had quoted the best price for Indiana down as 80 cents. A. Yes, sir. 3525

Q. Then you previously said that you made a 75 cent price in Ohio? A. Yes, sir.

Q. Where was that? A. Sternberger, Jackson, Ohio, Southern Ohio.

Q. This shows that in Indiana you had made no better price than this 80 cents. A. Mr. Rice was the agent of the du Pont Company having control of the Talley trade; I didn't have Talley's trade for the du Ponts, and he had brought to me the price that was made.

Q. I understand, but your price for Southern Indiana here had not been below 80 cents up to this date? A. I don't believe I made any sale in Indiana at 80 cents.

Q. Now Mr. Rice was the Chicago agent—and he was the same gentlemen that has been on the stand here in this case, is he not? A. Yes.

Q. That was contiguous territory? A. No, that was joint territory—we both had the Terre Haute coal field.

Q. You had? A. Rice had du Pont and I had the Hazard.

Q. Did Rice—Mr. Rice's territory was contiguous to yours on the west, was it not? A. Yes, sir.

3527 Q. And this statement about Mr. Rice was as follows: "Mr. Rood writes that Mr. Rice advised Mr. Talley he would meet any price made by responsible people, and that Austin and L. & R. have made sales to Brazil parties at 76 cents." Have you any doubt at all that what Mr. Rice had done was to follow these prices down? A. I should not think he would have made a cut price to Talley because Talley was raised in Delaware, an intimate friend of du Ponts, and a loyal friend of Rice's. I don't think it would be necessary for Mr. Rice to go below the current price.

3528 Q. He is the same man that helped organize the Indiana Powder Company? A. Yes, sir.

Mr. Button: Now the King Powder Company letter to the Parke County Coal Company which was enclosed and which is referred to both in this letter and a previous one that I read and is numbered 133 is as follows: "We quote you blasting powder in lots of 800 or 1,000 kegs at 76 cents per keg; in lots of 500 kegs at 77 cents per keg; terms net cash in 10 days after date of shipment, powder delivered f.o.b. cars at your mines.

Our offer is for early acceptance, that is within a week or so, and for shipment to be

made within the next two or three weeks, or sooner, if you desire it. Can you not let us have some of your trade at these prices? Will give your orders our prompt attention. Please let us hear from you and oblige,

Yours very truly,

(Signed) The King Powder Co.,
J. S. French."

3530

Q. Now in November, 1895, did you write these two letters (handing papers to witness)? A. They bear my signature.

(Same received in evidence and marked Defendant's Exhibits A-136, A-137 and A-138.)

Q. And in December, 1895, these three letters (handing papers to witness)?

Mr. Button: I will read this one of October 5, 1895, Exhibit A-134, to the du Ponts: 3531

"Dear Sirs: Herewith I hand you copy of letter from Mr. Banen Coleman, Prest., Central Coal & Iron Co., mines at Central City and Render, Ky. Our competitor at these points has been the Chattanooga Powder Co., who named a price of 90 cts. A defense of this trade cannot, in any manner, influence Ohio River points nor affect Northern Districts. I am satisfied an advance above 90 cts. which would be made by taking the 85 ct. Ohio River price and adding freight would shut us out of that market in favor of Chattanooga. Do you authorize a continuance of the 90 cent price for Sycamore

3532 *R. S. Waddell—Cross*

powder in du Pont kegs? I can take care of the 200 keg quantity either by shipping to a local point on the L. & N. R. R. which gives us a car rate on 200 kegs, or by dividing a 400 keg car between Central City and Render as heretofore.

Yours truly,

R. S. Waddell, Agt."

3533

Q. That appears, therefore, for the Chattanooga Company in this territory had got the price down to 90 cents, had it not, Mr. Waddell? A. Yes, sir; that is Mr. T. C. du Pont's Company; Banen Coleman was his brother-in-law.

Q. That seems to have been a general practice in that territory, does it not, from that letter? A. In that little district, yes.

Mr. Button: On Nov. 25, 1895, Exhibit A-136 to the du Pont Company, is as follows:

3534

"Dear Sirs: We wire you this date message reading:

'King powder being sold through Kanawha by Noyes, Hubbard & Co., Charleston, at 85 cents. This confirms sale same brand to Sternberger. Displaces considerable du Pont-Hazard Powder.'

And now confirms.

Belmont Coal Co. had an order filed with us and notified that we should not ship it as they were offered powder for less money. Inquiry at their office by Mr. Rood develops that Noyes, Hubbard & Co., Oriental agents at Charleston, have sold them a carload of King Powder to be shipped December 1, at

85 cents per keg. I also have a letter from the Macdonald Coal Co., Macdonald, West Virginia, stating they are offered a car of powder at 85 cents. Mr. Rood called on Thompson & Brewster, operators at Crown Hill Works near Belmont and they informed him they had just purchased a carload of King Powder from Noyes, Hubbard & Co. at 85 cents per keg to be shipped about December 1st. I thought this important enough to wire you. 3536

Mr. Rood arranged with Belmont Coal Co. to let their order for the car of powder stand, for shipment during December, provided you desired to hold the trade at the King price. Evidently these people are pushing for trade and their efforts are meeting with some success. They have deprived Hazard of about 18,000 kegs per year to Sternberger mines at Jackson, Ohio.

Truly yours,

3537

R. S. Waddell, Agt."

Q. This is the trade that Hazard had never lost, and to whom you testified that you had made a 75 cent price a few moments ago, isn't it, Mr. Waddell? A. Yes; I don't remember the rates, we held Sternberger's trade at the finish at 75 cents.

Q. Possibly. A. But my impression was we made it this rate.

Q. I understood you to say a few moments ago in reference to the 75 cents price, a few letters back that we read you said that this was one of the companies you always had had their trade, that is the Sternberger Brothers, and that you had

made this price to Sternberger Brothers; now it appears about a month later in November, 1895, that Sternberger was still paying 85 cents for powder and that King got at Sternberger Brothers at that time? A. At that time, yes, they did.

Q. Consequently it does not appear that the Hazard Company had ever made the 75 cent price to them there that you refer to in that letter? A. I thought that was a previous time, it may have been a few days later, a few days.

3539 Q. You were mistaken then? A. I know we cut it to hold the trade of Sternberger.

Q. Possibly, and you know also that these other people were making it first, don't you, Mr. Waddell? A. I know that there was a very strong effort made by the King and all the other companies to get as much business as they could just at that time.

Q. That has been quite common since 1891, hasn't it, from this correspondence? A. No, they stood out a good deal, they let the other fellow have a lot of the trade and allow time to come down and claim their quotas, they were after it.

3540

Mr. Button (reading):

"Nov. 26, 1895.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: Herewith I hand you copy of letter the Macdonald Colliery Co., Macdonald, Fayette County, West Virginia, mentioned in my letter of yesterday. I hold their order for 400 kegs du Pont powder for shipment December 13th at 88 cents as stated. I presume this 85 cent price was quoted on King Powder by Noyes, Hubbard

& Co. It shows what dependence can be placed in the Peters crowd for maintaining established prices. Noyes, Hubbard & Co. are agents of Oriental Powder Mills. They are not doing business without a margin. I venture they do not pay more than 80 cents for this King powder. This demonstrates that Kings do not intend to respect the agents of other companies as distributing points. They know Noyes, Hubbard & Co. very well as they have competed with them 3542
for a number of years.

Truly yours,

R. S. Waddell, Agt."

Q. These are your signatures (handing papers to witness)? A. My signature attached to this letter.
Q. In December, 1895? A. Yes.

Mr. Button: Mark them.

(Same received in evidence and marked 3543
Defendants' Exhibits A-139, A-140, A-141, A-142.)

Mr. Button (reading):

"Dec. 23, 1895.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: Mr. Rood reports that Ruffner Brothers are very much dissatisfied because we allow them no margin on powder, while their competitors in the same line—Messrs. Noyes, Hubbard & Co.—are allowed 5 cents

3544 per keg, and although agents for Oriental, are selling Laflin & Rand and King Powder. Noyes & Co. claim to have placed 15 carloads of King and L. & R. powder, and we know of about ten of these. Some of them displaced carload orders we had filed with you for shipment. Kings gave them a special price (we believe 80 cents) and Noyes sold the powder at 85 as against our 88 cent price. Noyes & Co. claim that their offer
3545 from Laflin & Rand was ten cents per keg, and that they have a letter to this effect. I doubt the statement, although it is probable that to meet Kings' price, the L. & R. Co. consented to furnish them at 78 cents, the powder to be sold at 85 cents. We have held Ruffner Brothers as agents without any margin about as long as we can do so, and I think it will now be necessary to give them say, five per cent. on carload orders. This will give them a little opportunity to offset the King-Laflin & Rand-
3546 Noyes combination and I do not think they will take very much powder at any price for we have the Kanawha and New River territory pretty well filled up and orders in advance for several carloads. If this meets your approval I will get them in fix again as they are somewhat disgruntled at present.

Truly yours,
R. S. Waddell, Agt."

Q. This is in this vicinity over in West Virginia near the Phoenix Mills, Mr. Waddell? A. About a hundred miles from the Phoenix Mills. Ruffner was agent of the du Ponts and Noyes, Hubbard & Co. were agents for King and Oriental.

Mr. Button: This is a letter of December 27, 1895, to the du Ponts: "Dear Sirs: The efforts of our competitors to make trade in Blasting powder are wonderful and in proportion to the strain they are undergoing their business methods are becoming the more contemptible. I have been called upon the last two weeks to defend against two lies circulated by French of the King Co. He told through the Pocahontas district that we had sold certain customers 3548
powder at 85 cents and that I had exhibited the orders to Mr. Peters. This caused three of our customers to countermand their orders and I sent Mr. Rood to ascertain the cause. Our lowest price had been 90 cents until the change reduced it to 88 cents. Such deliberate lying and with such pernicious effects, stirred me up and I think we cleared the atmosphere in the Pocahontas field. Two of our friends stated that if the fact were established that French had 3549
lied on this subject and we had not sold certain coal companies at 85 cents, that the King Co. had placed their last powder with them. After obtaining the consent of our other customers Mr. Rood showed the parties the written order for the carloads in question and I wrote a letter refuting the falsehood. We have reinstated the business and I think permanently gained two customers who condemned such practices.

It seems very queer to me that when the King Co., about a year ago, desired to quit the Pocahontas district they went through the field with a representative of the Phoenix Co. and requested all of their customers to give their trade to the Phoenix Powder

3550 *R. S. Waddell—Cross*

Co. Now the Kings have returned to the Valley and are making unusual efforts to gain trade; the Phoenix salesman states that they have withdrawn from that district at anything below $1 and has gone through the Valley requesting that all of their old customers buy from the Kings. This may be a practical working of the old adage:

'Misfortunes make strange bed fellows,' but it is quite certain that there is a sym-
3551 pathy between Kings and Phoenix so far as the Pocahontas and Kanawha trade is concerned.

Truly yours,

R. S. Waddell, Agt."

Q. That is the same trade that you mentioned two or three times as having visited with Mr. French in 1899 and 1902, Mr. Waddell? A. Yes, we divided that territory, Hazard and du Pont two-thirds and King one-third, and when the mix-
3552 up came on the 1st of July——

Q. That was one of the rules of the association and as indicating your knowledge of the contract system which you have mentioned, that you described the Pocahontas? A. In 1899, yes.

Mr. Button: This is Exhibit 141, December 28, 1895, to the du Ponts:

"Dear Sirs: Herewith I hand you a letter received from Mr. Rood in reference to Diamond Block Coal Co. to whom we have just shipped a carload of powder. Mr. Rood mentions other important matters. J. K. Seifert, to whom Mr. Rood refers, is the Manager of New Pittsburgh Coal & Coke Co., New Pittsburgh, Ind., south of Terre

Haute. The L. & R. Co. took this customer from Hazard three or four years ago on a coal deal with Mr. Vehmeyer of Chicago.

Truly yours,

R. S. Waddell, Agt."

The enclosure there from Mr. Rood is as follows:

"Chicago, Ills., Dec. 27/95. 3554

Mr. R. S. Waddell, Agt.,
Cinti., O.

Dear Sir: *Diamond Block.* Keeler wants a price on 5,000 kegs of powder delivered about 800 kegs every six weeks, payable sixty days for each car or less two per cent. if paid within thirty days. Says he can contract and the party is anxious to close at 75 cents. He gave me as much as to say that it was Phoenix Co. He said that the 3555
Phoenix Co. would not sell him 1,000 kegs at 75 cents, but if he would contract for 5,000 kegs that they would make a contract at 75 cents. The rate of freight to Brazil from Belleville, Illinois, Phoenixville, is 19 cents per 100 pounds. So you see they realize 70 cents for it at mills. I said to Keeler that I could not give him a price and he said for you to get a price on 5,000 kegs, giving the best terms and discount. He said write it all out so it would be plain and if he accepted it then he would be through and not have to bother any more.

I think Laflin & Rand are cutting at Brazil. I understand that they sold the Supe-

rior Coal Co. at 80 cents, the sale was three cars to Brazil Block and two cars to Superior Coal Co.

Zeller & Sigler.

Sigler of New Pittsburgh says he is not paying 85 cents for powder, so that was the end of him. He says he buys Laflin & Rand and that Vehmeyer is not out but holds the agency and is still selling powder and taking part pay in coal.

3557

Truly yours,

Geo. L. Rood."

Q. Mr. Keeler was always after a lower price, wasn't he, Mr. Waddell? A. All buyers are after a lower price.

Q. He was a little more inclined that way than the others, wasn't he? A. No, I think not. The buyers were all playing the powder companies one against the other.

3558 Q. Now in January, 1896, did you write this letter (handing paper to witness)? A. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendants' Exhibits A-143 and A-144.)

Mr. Button (reading):

"January 23, 1896."

To the du Pont Company:

"Dear Sirs: Herewith I hand you an extract from a letter written by Mr. Rood dated at Terre Haute, 22nd inst. In refer-

ence to the cuts that we have learned were made on Phoenix, Kings, and L. & R. powder at Brazil. While it has been impossible for us to get proofs in such form that they can be used, I am satisfied the L. & R. Co. have cut the price at Brazil.

Truly yours,

R. S. Waddell, Agt."

3560

The extract from Mr. Rood's letter is as follows:

"I then went in and had a talk with Mr. Eppert, Eureka Block Coal Co. He said that powder was being sold at less than 85 cents less 2 per cent. Said he had not purchased any but that an operator said to him that they need not pay 85 cents less 2 per cent., that he could buy for less; he, Eppert, said he would see the party and get particulars and let me know the facts 3561
in a week or so. I went to Brazil today; saw Zimmerman, he will take the two cars of powder but does not want them before March 1st. Johnson, of Nickel Plate Coal & Mining Co., said he could buy for less than 85 cents, Laflin & Rand or Phoenix Co.; that he would give me an order 82 cents, cash 30 days.

Superior Coal Co. say they bought two carloads of powder, one from Kings and one from L. & R. at less than 85 cents, so I think there is a cut going on.

I will get it in shape when I hear from Eppert, he is reliable and straight."

3562 Q. Now in reference to the Chattanooga Company, that was business carried on in a district which was reached by your brother's office during this period, was it not, Mr. Waddell? A. Yes, sir; he was in charge of the Southern District at that time.

Q. You were familiar with it I understand you to have testified the other day from conversations with him and correspondence and so forth? A. In a general way, yes, not to a——

3563 Q. Is it true that the same things that had been going on in the district that was reached by the Chattanooga Powder Company, Tennessee and the Southern States, that the Chattanooga had cut the price and gotten away your trade with the du Ponts and Hazard Companies, is not that true? A. No; I think my brother had—I know his statement to me was he had a wide open instructions to meet any price that was required to shut the Chattanooga out of the trade in the Southern States. That was a limited field and they could afford to give that kind of instructions there.

3564 Q. That is the same statement you made, isn't it, in regard to the Phoenix trade in the Government case, that you had wide open instructions? A. No, I never made such a statement. I would be glad if you would point it out.

Q. I may be mistaken about it, but I think you did. Page 128 of the Government record you say: "I reported to the company the prices made on Phoenix Powder in my territory, usually by wire and received wire instructions to cut the price and hold my trade." That was true, wasn't it? A. "Cut the price and hold my trade."

Q. That is to cut the price? A. "Cut the price" they had given me already "and hold my trade"; that didn't mean, it was not a wide open price.

3565

Q. Oh, no? This is in regard to the Phoenix contest that we have just read this correspondence about? A. Yes.

Q. So that you had instructions to cut the price and hold your trade. You mean by that to cut the price made by the Phoenix Company, didn't you? A. Oh, yes; I had abundant instructions of that kind as I have related here that I had; but they were not a wide open price; to make any kind of a price I believed as was necessary. I had numerous instructions to cut the price and I did it frequently.

3566

Q. It was in reference to the Chattanooga that you had these instructions then? A. No, that was in reference to my trade in the Northern States.

Q. I know, but it was in reference to the contest against the Chattanooga that you had open instructions to make any price you saw fit. A. I didn't have those instructions, my brother had them.

Q. Page 124. Did you testify as follows in regard to Chattanooga business: "At first they were to telegraph the companies"—— I will read the question on page 123. "Can you tell what the particular instructions were?" A. "At first they were to telegraph the companies whatever price it might be necessary for them to meet to hold their trade, and on receipt of their instructions to hold the trade at that price, which was made. Towards the close of the fight we had open instructions to meet any price made by the Chattanooga Powder Company." Did you have any such instructions as that? A. Those are the instructions I am speaking of that my brother had.

3567

Q. You say here "We have"; you mean your brother had? A. Yes; I used "we" very frequently there in reference to our companies. I didn't have charge of this Southern district at that time.

3568 *R. S. Waddell—Cross*

Mr. Abbott: Do you think it would be proper to read another question?

Mr. Button: Certainly. "How long were you engaged in the contest? A. It ended at the general round-up of the Independent Powder Companies about July 1, 1896." I have no objection to reading it, though I think that that hasn't anything more to do with what he said here.

Mr. Abbott: This refers to other things.

3569 Mr. Button (reading): "Q. You have stated in answer to my question that your brother, F. J. Waddell, was associated with you in this contest. Was he? A. A part of the time he was my sub-agent in charge of a branch office at Chattanooga, and the remainder of the time he was a direct general agent of the Hazard and du Pont powder companies at Chattanooga in charge of the Southern States. Q. Were you in consultation from time to time? A. We had frequent consultations and constantly cor-

3570 respondence."

Q. That is the way you got your information about the Chattanooga or Southern, wasn't it? A. Yes, and from discussions with Eugene du Pont while the fight was going on, I knew something of it.

Q. You recall your correspondence between your brother and the Hazard and du Pont companies that was introduced in this record on this subject? A. No, I don't.

Q. Were you familiar with it? A. I never read it.

Q. I would like to call your attention to some of it.

Q. Will you look at the exhibit marked No. 61 on page 194 of Defendants' Record of Exhibits and see if you know anything about the conditions that are there mentioned in regard to the Southern Trade (handing book to witness)? A. No; this is a letter from Fred J. Waddell, Agent of the du Pont Company, to the company.

Q. Were you familiar with the facts mentioned in that letter? A. No; I don't know anything about it.

3572

Q. Therefore there were matters about that situation that you didn't know about, were there? A. In the Southern States yes. I only knew in a general way about them.

Q. Then you are not prepared to say, are you, Mr. Waddell, that the Chattanooga Company did not cut the price of the du Pont and Hazard throughout the territory there and capture a lot of the trade? A. I don't know.

Q. That is a matter that your brother would be particularly conversant with, isn't it? A. Yes.

3573

Q. You say that you would not be famaliar with any of the correspondence between Mr. F. J. Waddell and the du Pont Company? A. I would not say that. There may have been some part of it that I have known about; but I would not be able to distinguish what it was now. He was the general agent, representing the Hazard and du Pont Companies there. He did not report to me and I had nothing to do with his business.

Q. I wish you would briefly examine a few of these things to see if they do refresh your recollection at all, Mr. Waddell. I will call your attention to these numbers, take Exhibit 67, say, at page 199 (handing book to witness)? A. I know nothing about that at all.

Q. Do you know anything about the facts stated in it? A. No, no, it is entirely out of my district.

Q. All right, take No. 70, page 201. Do you know anything about that letter? A. No, I don't know. That is a letter to the du Pont Company about some trade in Texas. I didn't know anything about that.

Q. You didn't know anything about the efforts of the Chattanooga Powder Company in Texas then? A. No.

Q. No. 72, page 204. Do you know anything about the Chattanooga's efforts in Tennessee? A.
3575 No; this is a letter of the same kind, to the du Ponts.

Q. No. 74, on page 207. Do you know anything about the Chattanooga's efforts around Birmingham? A. I don't know anything about No. 74, that is an identical letter——

Q. I will ask you whether you know about the conditions under which the Chattanooga Powder Company was offering powder in and around Birmingham, Ala.? A. Yes, in a very general way. I knew that the fight was very severe down there. I
3576 frequently talked with my brother in connection with the Chattanooga being pushed up in my territory—what was going on there; and he would give me in a very general way, without particularizing about customers or any special trade or any particular locality, give me a general idea about how the fight was progressing. That is as much as I knew of it. And then in a general discussion with Eugene du Pont during this long period I knew that a fight was going on there. I knew without going into particulars of the items or the special trade that might be written about, I didn't know anything about those.

Q. Well, then, your knowledge to the effect that your brother had instructions—open instructions to cut the prices that were made by the Chatta-

nooga Company and by the Southern is based on nothing except what he told you? A. I think that is all. I am not sure about that. I know I wondered at such a wide open price.

Q. Never mind you wondering, Mr. Waddell, I want to know if you have any sources of knowledge. A. I think that is all I had to go on was my brother's statement that he represented the du Pont Company and was supposed to know what he was doing.

Q. Is it possible that a long line of correspondence could have passed between Mr. F. J. Waddell with reference to matters in his district concerning the Chattanooga Company and the Southern Powder Company and their trade, giving the details and who was doing the cutting and you know nothing about it? A. It might have gone all in, oh, yes; I would not see that correspondence unless Fred sent me a copy of his letter; if so, you would find it in the Cincinnati files. 3578

Q. Now, Mr. Waddell, didn't you know, is the fact that during the whole period from 1891 to 1896, your brother at Chattanooga was making the same appeals to the du Pont Company and the Hazard Powder Company for permission to meet the prices that had been named by those competitors as you were in the Cincinnati office? A. I don't know what he was doing; but it was the duty of every general agent, in every disturbed district, to inform his principals as to what the conditions were and leave it up to them to say what they were going to do about it. 3579

Q. The fact is that you don't know much about conditions in those Southern States, isn't it, Mr. Waddell? A. Not in detail at that time.

Q. Then you don't want us to understand that you were making any detailed statements about the kind of a contest that was waged against the

Chattanooga and the Southern, did you? A. Not down to detailed letters; I knew the general proposition that the fight was going on and how it was conducted in a general way, and I knew the result.

Q. Now we have been over this correspondence in your district from early in 1891 to January 18th, 1896; when was it that some of these companies were purchased—the stocks in them were purchased? A. My impression is that the Phoenix was bought about May, 1896—I am not sure as to
3581 that; it went into the pool when the pool was formed on July 1st, 1896.

Q. And the Equitable was some stock purchased of du Pont about that time? A. What is that?

Q. The Equitable, some stock was purchased about that time? A. Yes.

Q. And the Chattanooga? A. Fifty-one per cent. of Chattanooga.

Q. Now do you know what prices were paid for the purchase of those stocks? A. No, I think I did one time, but I have forgotten all I knew
3582 about it.

Q. Don't you know that they were fair and reasonable prices that were paid? A. No.

Q. Consequently not knowing what was paid these companies, you are not exactly in a position to say they were ever killed, are you, Mr. Waddell? A. Yes, so far as being competitors in the trade and selling powder, they were.

Q. Oh, well, that was all you meant then by saying these people were killed; that is, they got out of the business? A. They went out of the business.

Q. That is all you meant by that expression, is it? A. Well, I meant that the powder companies bought the mills and operated them.

Q. Didn't you mean that they were reduced to such circumstances that they had to get out and

lose all their money; wasn't that what you meant when you used the expression? A. I certainly knew that they didn't have any chance to make any money.

Q. Wasn't that what you meant when you said "we killed them off"? A. We drove them out of business.

Q. So that what you meant was that we took their property away from them and their money and their plants? A. No, we didn't take the property away from them; simply made it impossible 3584
for them to conduct business at a profit.

Q. And they may have gotten out of the business with a large profit on account of the sale that they made, may they not? A. They may have; so far as I know they may have.

Q. And that is all you meant when you said here that those companies were all killed, is it? A. That wasn't all I meant.

Q. What else did you mean? A. I meant that they were no longer competitors in the powder business, that they were out of business; whether 3585
they sold out at a big profit or a little profit I don't know anything about it.

Q. Well, it is rather doubtful which side of this contest got killed, isn't it, Mr. Waddell? A. No.

Q. That would depend somewhat on how much they had to pay these companies, wouldn't it? A. No; it was the survival of the fittest, that is all.

Q. Well, you don't know how well they survived anyhow, do you? A. Yes; I know how well Hazard survived and du Pont.

Q. How much did the Hazard get; they didn't get any money, did they; you say they survived, what did you mean? A. They survived—they were very much alive after it was all over.

Q. So were the Phoenix and the Chattanooga, weren't they? A. No.

Q. They were dead? A. They were dead so far as they were concerned; the powder companies handled all.

Q. Did you write this letter of January, 1897, did you after the round up (handing paper to witness)? A. January, 1897, no, that is not my letter.

Q. Whose is it? A. F. J. W.

3587 Q. Well, in January, 1897, your brother, F. J. W., was in your office in Cincinnati, as your agent, wasn't he? A. No—he may have been there and written it.

Q. Won't you read the letter and see whether he was authorized to write that letter and sign your name to it? A. (After reading): I don't know who authorized him; I don't know anything about that letter—never saw it before.

Q. Do you know anything about the facts mentioned in it? A. No, but I know the general conditions there and I would be glad to throw all the

3588 light on it.

Q. I would rather have the contemporaneous record, I think, Mr. Waddell? A. I don't know anything about the letter.

(Letter marked for identification, D. A-145.)

Q. Wasn't Mr. F. J. Waddell authorized to sign various letters for you at this period? A. F. J. Waddell signed my name in the south for years by him and that was the form that the Hazard Powder Company required. The agency was run in my name for a long while and I never saw the correspondence or knew anything about it.

Q. Well, don't you know that there were years when he was in your office at Cincinnati that he

signed your name, "R. S. Waddell, by F. J. W." from the Cincinnati office? A. He was there just the last years I was in Cincinnati. I have forgotten now when he came.

Q. He came when he closed the Chattanooga office, didn't he? A. Yes; I don't know when it was.

Q. From that time on for a good many years he signed your name in just the way these letters are signed, didn't he? A. Not for a good many years; I should think one or two years; I don't 3590 recollect.

Q. And they were signed in this way, weren't they, the same as this exhibit? A. Usually while he was in Cincinnati he signed the name of the E. I. du Pont de Nemours & Company by him—by F. J. W.; the Hazard Powder Company by F. J. W.

Q. So when a letter turns up signed by R. S. Waddell, per F. J. W., you were not responsible for it, is that the idea? A. Well, I might be; I don't know; it depends upon the letter; if I could 3591 recognize it, that letter—I don't know anything about it.

Q. Well now you testified yesterday morning in regard to these contests as follows, did you not, Mr. Waddell, page 4240: "Q. And what did they do to these new companies? A. To the independent companies? Q. Yes. A. Each company named a price to agents—and the agents would ask for a price; I wrote hundreds of letters asking a price, lower price, to get the trade from the independents, and I got it. Q. And the Association granted such permission to you and in that way killed off these three companies, did you? A. I don't know what the Association granted, I was not present; but I inferred they did; they cut prices.

Q. Those three companies were killed off then by or through the cuts on the part of the allied companies? A. A concentrated fight for the entire district. Q. And a fight that was concentrated and I suppose confined to the territory that you have described as 'disturbed district,' is that correct? A. Yes, sir. Q. That is right. A. Yes, sir." That is the way you testified yesterday on that subject? A. That is right.

3593 Q. And on page 4241 you testified as follows, did you not? "Now who were your competitors, you were representing then the Hazard and du Pont Company in Cincinnati, who were your competitors in that district? A. Our competitors were of two kinds, we alone King; we didn't bother a King customer any more than we had to when they would ask for prices. When they asked us for prices we had to quote them; we respected the trade of the other associated powder companies as far as we could; we had to make a showing of doing business. Q. Did they also respect your

3594 trade? A. Yes, sir; very largely, they had to make a show of doing business and if they were asked for prices they have to quote and we had to quote. Q. No real effort to get the trade assigned to the other associates? A. No real effort unless it grew out of some trouble in our selling work, we didn't make any real struggle? Q. Who were your real competitors during that period? A. Our real fight was against the independents that were in the locality. The Phoenix and the Equitable got so much; the Equitable and the Phoenix had plants near the Phoenix, two plants at Conover and Kellogg, West Virginia, and an Illinois plant; and in competition with both of them; and in the Southern States at Chattanooga." Didn't you so testify yesterday? A. Yes.

Q. Oh, in regard to your brother's coming back

from Chattanooga you say you cannot give the date. "I know he was running it in 1890, 1891 and 1892, but how long he continued after that. Then I took it over again. Q. He had charge of it for two or three years and then they gave it back to you, did they not? A. I had it longer than two years—possibly four years. Q. Well, then, the fact was that they eventually gave it back to you? A. Yes, consolidated it. Q. And you brought him to Cincinnati, did you not? A. Yes. Q. And they discontinued the Chattanooga office." Therefore he probably was back in your office in 1897, wasn't he, when this letter was written? A. I don't know; I can't fix the date when he came back; he was for several years general agent in the south. 3596

Q. Well, four years from 1890 would be 1894; that gives you a lee-way of three years. Do you think he was in Chattanooga for seven years after 1890? A. I don't know how long he was there.

Q. Did you also testify yesterday: "Don't you know for a fact, Mr. Waddell, this further fact, that they never did any more than to meet the prices made by the Phoenix, the Chattanooga and the Southern during that period? A. Meet them only? Q. That is all, didn't you know that? A. Certainly not. Q. How much did they cut them? A. Cut whatever was necessary to take the trade, take the customer. Q. How much was that? A. We had the ability, the powder companies had the ability—— Q. How much was that cut, I don't care what the ability was? A. Cut so—whatever it was necessary to get the trade. Q. What did you say that was, how many dollars or how many cents? A. Five cents to ten cents a keg, whatever was necessary to get the trade. Q. Now that cutting began on the part of the older companies 3597

3598 when? A. It began about the time the powder was put on the market; sometimes a little in advance." Did you so testify yesterday? A. In reference to what trade was that?

Q. In reference to the trade of the Phoenix, the Chattanooga and the Southern. A. I think so; we cut from $1.48 down to 80c.

Q. Well, this correspondence shows that powder had gotten down in January, 1896, to seventy-five cents a keg in some places; that was the minimum that it got anywhere, wasn't it, Mr. Waddell, so far as you can recollect? A. So far as I can remember, yes.

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Q. So if the time came when you got it all back as you have stated several times, it must have been not at a good price but at equal prices, that is, not lower than seventy-five cents, mustn't it? A. That was to only one or two customers, I think the seventy-five cent price; the general price was about eighty cents—my recollection is the Kanawha River about eighty-three to eighty-five cents; in the Pocahontas coal field at eighty-eight cents; we held the trade at the finish at about eighty cents: in Indiana there may have been a few cases——

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Q. What I mean is, that wasn't any sudden cut, beneath this eighty and seventy-five cents at the time you say you got all the trade back? A. No, that was the bottom.

Q. That was the bottom; now you have mentioned something about rifle powder, Mr. Waddell, and stated that at the end of this contest the price of rifle powder went up from something to $5.00 a keg; how long had that gotten—— A. Rifle powder it seems to me during the Phoenix and Equitable fight it got down to about $3.00, and it went from there, the first jump I think was to $4.00, and I

don't recollect what the—the day after the pool was formed it went to $4.00 and I don't know how much it went beyond that; it is there yet.

Q. Didn't you say here the other day in stating how much these prices were raised that black blasting powder went up to $1.25 and rifle powder to $5.00? A. Rifle powder——

Q. From three to five; that is what you said on your direct examination, wasn't it, on the telegram? A. After the 1886 fight, the mix up in 1886, my recollection is that the price of black blasting 3602
powder went from eighty cents to $1.50 and rifle powder went from as low as $2.15 to $5.00. Now after the 1896 fight it is my recollection that rifle had gotten down to about $3.00—$2.75 I think is mentioned in some of these letters, possibly it may have gone a little below $2.75, but it recovered on the telegram to put prices up. It went to $4.00 that is my recollection.

Q. To which? A. $4.00 I think is the price.

Q. Well, you testified to $5.00 on your direct examination; was that a mistake? A. I may have 3603
confused the two jumps.

Q. Page 1697—— A. If I testified that way I will correct it by saying that in 1896 it went to $4.00 the first jump.

Q. Well, now do you mean—or I will ask you first whether the Phoenix Company made rifle powder? A. They made rifle powder, I think, at their Farmingdale, New Jersey, plant; I don't know whether they did at the other plants.

Q. And did the Southern Powder Company make rifle powder? A. Very little of it; I think they made one carload.

Q. Well, you know that the blasting powder that they made was not good for anything, don't you? A. Yes, it was very poor stuff.

3604 *R. S. Waddell—Cross*

Q. Therefore the most of the trouble they made was on their rifle powder, wasn't it? A. It was only in the Cincinnati markets as far as I know; they never reached any other of my territory.

Q. That was all through the south, wasn't it? A. I don't know what was there.

Q. Did this same contest involve this rifle powder business? A. Yes, that ventured into it, not right at the start, but a little later.

3605 Q. Page 1697 of the record you said: "In 1886, the first of July, 1886, when the first pool was formed the price of rifle powder jumped on telegram from $2.25 a keg to $5.00 a keg. Q. That was after the close of what contest? A. Against the King and the Ohio and the price of blasting went up from eighty cents to $1.50 on blasting. Q. After the next contest, how about the matter of prices? A. The first of July, 1896, the price advanced from eighty cents on blasting powder to $1.50 on telegram, and on rifle powder from $3.00 to $5.00. Q. What date was that? A. 1896." A.

3606 That should be $4.00.

Q. From three to four? A. That is my recollection.

Q. And $1.50—— A. $1.25 was the price after the 1896 settlement.

Q. But in this statement about blasting powder you correct it from $1.50 to $1.25? A. Yes, I thought I had corrected the rifle at the time too; the rifle should be $4.00; I think it remains at that price ever since.

Q. Well, now isn't it true that these two companies, the Southern and the Phoenix, shipped rifle powder to this entire territory and cut the prices on rifle very materially? A. The Southern never shipped but one carload, one lot of powder to the Cincinnati district. That was to Compton, Alt &

Company, Cincinnati; that was a stockholder in their company.

Q. He wasn't only a stockholder, but Mr. Alt was the man that bought the Southern Powder Company out when it failed, wasn't he? A. He had a mortgage on it.

Q. That is, it only ran a year or two and he foreclosed their mortgage and reorganized it? A. They never reorganized it; they tore the mills down and sold out to the du Pont and Hazard and Laflin & Rand; he tore the mills down. 3608

Q. Well, now, how low did they get the rifle powder; didn't they get it down to about $2.25 in Cincinnati? A. Yes.

Q. And in Louisville? A. The Southern was never in Louisville.

Q. Well, didn't the Phoenix get it down there and the Laflin and Rand? A. All of us. Yes, Phoenix was in the fight in Louisville.

Q. To St. Louis? A. I don't know about St. Louis; I think so.

Q. And practically all through the district? A. Not west, not to Kansas City, not west. 3609

Q. Now do you not remember, Mr. Waddell, that the same situation in regard to rifle powder existed as in regard to blasting, that is, that there was competition on the rifle powder between the Austin Company, the Laflin & Rand, the Phoenix, the Hazard, the du Pont, the Southern and possibly others, and that the prices were so wide open and that they were all competing one with the other during those four or five years? A. You asked me what I know?

Q. Yes, isn't that true? A. I know that the Cincinnati district after Phoenix began and Equitable began, the manufacturing of rifle, the prices went off. Up to that time the rifle had been $5.00. I know that all through New England, all over the

Eastern seaboard, all over the west and southwest where the Phoenix didn't reach the price of $5.00 was maintained everywhere.

Q. It was not maintained in Georgia, Alabama and Mississippi, was it? A. No, that was in the disturbed district.

Q. And the disturbed district was of the same states that you mentioned this morning as being disturbed in regard to blasting powder, wasn't it? A. Yes, after the independents began the manufac-
3611 ture of rifle. They didn't begin simultaneously on both powders.

Q. Now this rifle powder business is one that you didn't testify very specifically about in the Government suit, wasn't it—where is that Vol. 1? A. What was that question?

(Question repeated.) A. I don't remember.

Q. Can you state who started the cutting on the rifle business, Mr. Waddell? A. No, I can't.

Q. Don't you know it was these new companies, the Southern and the Phoenix? A. No, I don't know.

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Q. Pretty natural that it should be, isn't it, don't you think so? A. It wasn't natural during the King fight; I don't remember what the particular disturbance was when the——

Q. Well, now there couldn't be any such concentration of the fight in rifle powder as in the blasting, could there, on account of freight rates, that is, the price of rifle powder being four or five dollars a keg it can be shipped long distances, can't it, at a profit? A. Oh, yes.

Q. That is the freight rates do not confine the consumption in nearly the same manner as the freight rates do where blasting powder is concerned. A. Rifle was generally sold in small lots from distributing points; carloads were shipped

into Cincinnati, Louisville and other distributing points and sent out in small lots from there.

Q. And one of the largest dealers in rifle powder was the Hazard Powder Company, wasn't it, making all of it at Hazardville, Connecticut, and shipping it all through the United States, isn't that true? A. That was my largest trade.

Q. And the du Ponts made theirs where? A. Made theirs in the Brandywine down here.

Q. And the Laflin & Rand in the East somewhere, wasn't it? A. Somewhere in the East, I 3614
think.

Q. And the Austin at Cleveland? A. Cleveland, Ohio. Equitable at Alton.

Q. Did the Equitable make rifle? A. Yes.

Q. Are you sure of that? A. Yes.

Q. I thought they bought some rifle and resold it? A. They have made rifle in the past.

Q. I mean at this date? A. They have bought rifle for their cartridge works just before they bought the Buckeye mills.

Q. I am talking about the early nineties, from 1891 to 1896. A. Well, if they bought of du Ponts 3615
I didn't know it, just at the time.

Q. Well, I am asking for information, Mr. Waddell, I don't know, I am surprised to hear that the Equitable ever made any rifle powder; maybe they did. A. Yes, they did, and the Kings made it at Cincinnati.

Q. And the Kings at Cincinnati? A. Yes.

Q. Did you say in the Government suit, page 107: "The price of rifle powder has never varied from the price fixed in 1886, July, up to this date, excepting as I remember during the latter part of the nineties where there was some fear that the foreign powder would be admitted, and the price was changed slightly and that price has remained without change up to date on all brands in the

Association." Did you so testify? A. That was 1886.

Q. From 1886 up to date; the date was 1908 with the exception of a very slight decline in the latter part of the nineties; did you so testify? A. That is the way it reads here.

Q. Well—— A. But I have told you what the variations were.

Q. Well, I know you have. A. I presume 1896 was the last.

3617 Q. I know you have now told us what the variations were and you also told us then; is this what you said then, Mr. Waddell? A. I don't know whether I said that or whether it is a misprint; that may have been 1896 that I stated, that is what I mean, the price was fixed in 1886, then it was again fixed after the fight in the early nineties, in 1896 when that pool was formed, and it has never varied so far as I know from 1896 down to date.

Q. Then this statement as printed on page 107 is not correct? A. I should think not, no, it is not.

3618 Q. Now, then, we have been over this period from 1891 to 1896 pretty thoroughly, Mr. Waddell, and it appears that they were openly competing in the district that you have called disturbed, it includes a large number of states—the du Pont and Hazard with their plants, Laflin & Rand and their plants, the Austin with its plant at Cleveland, and King—the Austin was at Cleveland, wasn't it? A. Yes.

Q. King at Cleveland? A. Cincinnati.

Q. Miami; they had only one plant at that date? A. Yes, sir.

Q. Ohio at Youngstown, the Equitable at East Alton, and the Chattanooga at Chattanooga, Tenn., the Southern in Georgia, and possibly one or two

others, and that makes about nine of them, and they were competing each with the other, and the price went down to 75 cents a keg, didn't it? A. In a few cases, yes.

Q. Well, pretty generally? A. 80 cents was the general price.

Q. Now, then, 1903 to 1908, if we had had the 23 or 24 companies each with its plants, competing openly, and so on, you still think, I take it, that the price would have gone up to such an extent that you would have had thirty cents a keg profit on every 3620 keg of powder that you sold, do you? A. There was no competition between 1903 and 1908 between the Associated Powder Companies, sixteen of them, as represented by the du Pont Trust which had been centralized and incorporated.

Q. You do not understand my question, Mr. Waddell. I know you claim that. My question is, we outlined the conditions yesterday, which I understand from you would have been ideal with each of these companies not combined, but running independent plants and competing for the powder trade, 3621 that is, the conditions as they should have been, not the conditions as they were, under which it appeared there would have been twenty-three, I think it is, independent companies, competing for trade in the Middle West. Now, then, in view of this fact that when you had nine competing there, that powder went down to 75 cents, I wish to ask you if it is still your judgment that with those twenty-three independent companies, or thereabouts, all competing openly from 1903 to 1908, if that had been the situation, is it still your judgment that there would have been thirty cents a keg profit in powder?

A. My judgment is that if the independent companies, all of them independent of each other, had been operating at that time in the way they should

operate, that each one instead of relying upon a concentrated action, would have studied the good interests of their own business and conducted it with the expectation that they would safeguard their profits, that there would not have been such a reckless fight and cutting of prices. Business men generally when thrown on their own resources, do not give away their goods.

3623 Q. In other words, you think you would have gotten along better with 23 competitors than with nine, more chance of this harmonious recognition of other people's rights, protection of other people's trade; you think that, Mr. Waddell? A. If there were 23 companies and they were all independent, there would not have been a complete monopoly, a complete closing of the market and removing the markets, the trade of the United States, out of the reach of other independent companies, just as though the trade I reached were in Europe. I had no more access to it than if it were in Europe; it was monopolized by the contract system.

3624 Q. Your statement is based on the assumption that there is or has been some relationship between the du Pont Company on the one hand, and the Equitable, the Austin, the Miami, and the Kings, the other old associates, on the other hand, since 1904, has it not? A. Yes.

Q. And if you should happen to be mistaken in that, then your opinion as to what would have been is all wrong, is it not, or as to what did happen? A. No, I knew the reverse of it.

Q. If it should develop here that you are mistaken about these relationships that you think existed between the du Pont Company and these old associates since 1904, if that should develop, then your statement about the great control that the du Pont Company had over the business, would fall,

would it not? A. No, for this reason and with this explanation: That they all had contracts with all of these companies, continuous, running on for a term of years, a part of the same system, and the Miami, the Equitable, the Austin and those other companies you have mentioned, were a part of the system of contracts, and those contracts were a part of the system, so that while their meetings may have discontinued, when they were no longer necessary, their actions under contracts and the monopoly 3626 of the trade continued on down for a term of years.

(Motion to strike out answer overruled.)

(Question repeated.) A. No, for the reason that I have stated in the last answer.

Q. The reason you stated in the last answwer is that this relationship continued, is it not? A. Their actions under the old pool continued long after 1904.

Q. Now, won't you observe my question, and it is this: If you are mistaken about that matter— 3627 it is possible, you may concede that you might be on some subject—supposing you are mistaken, and this relationship did not continue down to date, then in that event, your contention about the great control of the du Pont Company over this trade would fall, would it not, that is my question?

Q. I understand your contention is that there was some co-operation, in fact, you have so testified on your direct examination, that these old associates respected the trade of the du Pont Company since 1904, I think you said. They left alone the customer, if they found the Equitable or Austin had a contract with him? A. Yes, sir, that is right.

Q. Now, my question is, supposing you are wrong

3628 about that, and supposing they did not leave them alone, then no control, such as you have stated, would exist? A. I am not wrong, and I cannot suppose a condition of that kind when I know different.

Q. If I recall, that was a subject which you knew all about, this contract system, because you had seen kegs at these various mines which showed you what powder they used on their renewed contracts? A. That was one item out of a good many.

3629 Q. Then you finally said you never saw a contract of the du Pont Company renewed? A. I never saw the writing of them, no.

Q. So it is impossible for you to imagine that you could be mistaken on that subject as to this relationship that existed? A. No, I do not think I could be mistaken on that.

Q. Could you not make that assumption, Mr. Waddell, because I would like to have you state how much your claim of the du Pont's control over the trade is based upon that fact? (Objection over-

3630 ruled).

Q. After this episode in 1896, you had pretty good prices for two years, I understand, didn't you? A. Up to the time that the Indiana got its mills going, yes. I think that was about 1897, the fall of 1897.

Q. Your price was $1.25 for blasting powder, wasn't it? A. Yes.

Q. How long had Mr. Rood been with you when he started out on that enterprise?

The Court: This is 1897?
Mr. Button: 1897 now.

A. Mr. Rood was at the Cincinnati office of the Hazard Powder Company when I went there about

1883, about May, and I think he had been there possibly a year before that. He was under a contract for three years when I went there from the time he arrived in Cincinnati.

Q 1882 to 1897—then he had 15 years' experience, had he? A. Yes.

Q. And had been travelling all through that district there and getting acquainted with your customers? A. No, not all over the district; Donohue had a very limited territory and Rood's travels was nearly all together on rifle powder. 3632

Q. Well, now, just what was the scheme that Mr. Rood adopted for the promotion of the Indiana Powder Co., Mr. Waddell? A. Mr. Rood had been under contract for a three-year term, for a period up to the first of 1907. He desired to renew his contract with us, with Hazard and du Pont Companies, for another three years. He had been getting $3,300 a year. He wanted $4,000. He authorized me to make a contract for him. I went to New York representing him, to make the contract for him, and get $4,000 or anything less, not going below $3,500. He had had the question up with the Hazard Company and they told him they would give him $3,500, but they would not renew the contract, they would not make a contract with him. Rood wanted some assurances that he could stay with the company. I asked the Hazard and du Pont Companies to renew that contract, or could have it renewed at $3,500, which they were willing to pay. They told me to say to Mr. Rood that they would hire him from month to month at the rate of $3,500. That was unsatisfactory to him; I told them he would quit and he did. I didn't blame him for it. He had been continuously under contract for many years and had a large family and he was cut off with a month's notice. Mr. Rood left and went to Indiana, as- 3633

sembled a lot of his old friends and customers—J. Smith Talley, with the Coal Block Mining Company; Joe Morton, of the Rosedale Parke County Coal Company; Zeller and Sigler and Dave Nickel, all my old friends and personal friends, and they took stock in proportion to the number of kegs of powder they would consume in their mines. Maurice Sternberger, of Jackson, Ohio, went in with him and he asked these men to get together to furnish powder for their own mines,
3635 that was for their own purposes, and I think he was right.

Q. I beg pardon. A. I think he was right.

Mr. Button: I don't object to that, although I think it is not a proper comment.

Q. You say Mr. Rood assembled a number of his customers. You mean he assembled a lot of the customers of the du Pont and Hazard Company, don't you? A. Yes, they had been here and I imagine that they had been for some time, but
3636 we finally held them at the end.

Q. They were your customers at that time? A. At that time, particular time, they were our customers.

Q. The scheme was for Mr. Rood to get these mine operators to furnish him money to go into the powder business so they could make a little more profit from selling powder to their miners than they had theretofore been getting. Was not that what it came to? A. I don't know what the purpose was.

Q. You did know at that time, didn't you, Mr. Waddell? A. I knew that their purpose was to manufacture their own powder for their own mines.

Q. And you knew that they, theretofore, they

had been operating their mines and buying powder from $1.25 down to 80 cents, which they had been reselling to their miners at $1.75, didn't you? A. Yes, I knew that.

Q. And you knew they were not satisfied with that 50 cents they made on each keg of powder and wanted to go and make more, didn't you? A. After I educated them as to the prices of powder, that it could be made for 80 cents or less, they all wanted to go into the business.

Q. Theretofore they had been making that 50 3638
cents profit on the capital invested by the du Pont & Hazard people in the business, didn't they, without any investment of their own at all? A. They bought the powder and paid for it.

Q. And under those circumstances to furnish them powder the Hazard and du Pont Companies and other companies had spent immense amounts of moneys to establish plants and machinery for the purpose of furnishing that very trade, hadn't they? A. Well, the plants were established. The Hazard plant was established in 1835—before
3639
these people were born—not particularly made for that trade. They had the mills, they were making the powder and had it for sale; but there was no compulsion on anyone to buy it; they could buy any powder they pleased.

Q. You didn't feel about Mr. Rood's proposition, at the time, just as you do now: That it was a perfectly proper thing for him to do, did you? A. I did.

Q. You did? A. I have always felt so.

Q. It was a kind of competition that you considered to be pretty dangerous to the business of the Hazard and du Pont Companies at the time? A. I did; I thought it was invulnerable.

Q. And you thought it would spread, didn't you? A. I thought if those coal operators made a great

success of the Indiana Powder Company, that other coal operators would do the same thing.

Q. And that more than that, the du Pont Companies and the Hazard Companies would be left without any business so far as the mining of coal went, that was your judgment at the time, wasn't it? A. Well, I had that feeling, that there was that danger; I didn't know.

Q. And Mr. Colvin and Mr. Eugene du Pont shared that apprehension with you, didn't they?
3641 A. I don't know what Mr. Eugene du Pont's—I don't know that he ever expressed himself on the subject. Mr. Colvin came to Terre Haute and we called on the people.

Q. I know, but they shared your apprehension? A. I don't think that was discussed at all.

Q. Can you state about when Mr. Rood got the Indiana Powder Mill started so that he could furnish powder? A. I think it was about October or November, 1897.

Q. You also, on your direct examination, stated
3642 that prices went down as low as ninety cents during a period of the operation of the Indiana Powder Company; and that in 1902, January, I believe it was, they were again raised from 90 cents to $1.25. Now the $1.25 was the price which had prevailed before Mr. Rood had started his mill, was it not? A. Yes.

Q. Now did you mean by that statement that at no time during the operation of the Indiana Powder Company's Mill there was a general price of 90 cents in that district? A. No, not general over the district.

Q. What was the general price, the lowest general price? A. All of the district that was not reached by Rood, where Rood did not compete the general price was $1.25.

Q. You misunderstood me, I am speaking of

the general price now apart from Rood's district. You say the 90 cents price was the general price, what was the generally low price there in his district? A. In his locality 90 cents was the low price.

Q. I know. I understood you to state just now that that was not a general price in his district. A. Not to every one I think.

Q. Well, it is a fact, is it not, that that was only an exception price in a few instances, is not that true? A. I don't know how general, it was in Illinois and Indiana, in Mr. Rice's territory. 3644

Q. The fact is, that the minimum price that powder went to in that district, during those years was from $1.05 to $1.10, wasn't it, Mr. Waddell? A. Yes, there were sales made at $1.05 and $1.10 and at 90.

Q. That hardly answers the question, Mr. Waddell. A. I could not tell you whether there were more sales made at $1.10 than at $1.05 or more at 90 cents than at $1.05. I could not tell you the proportion of the sales.

Q. This operation was right in the midst of your territory, wasn't it, Mr. Waddell? A. Yes, and I was excluded, almost, from that territory by Mr. Rood's organization. 3645

Q. Well, didn't you keep very closely in touch with the trade during that operation? A. Yes, I came in contact with it, but I didn't have much trade in that locality.

Q. And do you mean to say that you can not remember so recent a period as that, what the prevailing low price was right around your office, Mr. Waddell? A. Well, it was not right around my office, but I can remember it very well, that the price, the low point, was 90 cents.

Q. I understand that, but what I am trying to

get at is this: Was it not true that the prevailing low price was not in the market 90 cents, but, on the contrary, the price was $1.10 and $1.05? A. That would be impossible for me to fix that, because F. S. Peabody was the agent of Rood for southeastern Illinois; he controlled a great number of mines and his price was 90 cents. Now, how far Peabody sold, I don't know, nor what price he sold at.

3647 Q. He was Mr. Rood's agent? A. Well, he controlled, with Rood, at 90 cents and sold the powder for Rood in eastern Illinois.

Q. Now, when Mr. Rood resigned from your employ and entered upon this enterprise there, he was well aware of the fact that the powder companies had gotten together under this 1896 agreement? A. Yes.

Q. And had established the price at $1.25? A. Yes.

Q. And he relied upon the fact that they would maintain that price at $1.25 under that agreement,

3648 did he not, in order to make his success? A. No, I think not. Mr. Rood had a better arrangement than that.

Q. By the "better arrangement" you refer to the fact that he made an arrangement with the coal operators whereby they were to take stock in his mill? A. He had a contract with the stockholders. The Indiana Powder Company had a contract with its stockholders, Rood told me, for ten years, but it developed later that it was for five years, to take all of their powder supplies from the Indiana Powder Mills at $1.10 a keg delivered, regardless of any price that might be quoted them by others.

Q. That is, Mr. Rood went to a very substantial number of men who were operating coal mines in

that district, and made arrangements, written contract with them, did he not, to the effect that they would take all of their supplies from the Indiana Powder Mills at $1.10 for five years? A. That is with his stockholders according to the percentage —they took stock according to the quantity of powder they used, and it was based on 80 cents and 30 cents.

Q. And that was with a large number of important operators in that district, was it not? A. The best men in Indiana, yes, in the coal business. 3650

Q. And thereby that powder trade was taken entirely out of the market, was it not, Mr. Waddell?

Q. Have you any knowledge on this subject except from hearsay, Mr. Waddell? A. Only what Rood told me.

Q. Don't you know that to be a fact, from your general knowledge of the trade there? A. About his contract?

Q. Yes. A. Oh, no; I only know what he had told me about his contracts, and I never saw it, and didn't know anything of it except his statement. 3651

Q. Didn't you know as a fact that these coal operators did take all of their powder from Mr. Rood's mill? A. They did not take any from me. I think that they did; I am pretty sure they did.

Q. Mr. Talley was the president of the company, was he not, Mr. Waddell? A. Yes.

Q. How long had Mr. Talley been buying powder from you theretofore? A. I don't think I ever sold Mr. Talley any powder. I sold the firm of Talley & Tennant some powder while they were in partnership, but that trade was taken away from me and given to Mr. Rice, Talley's trade.

Q. How long had Mr. Talley been a customer of

3652 the du Pont Company? A. I don't know; he was a customer of the Chicago office and I could not tell you what their sales were.

Q. Well, for a long period of years, to your knowledge, was it not? A. I think so, yes.

Q. And you knew he stopped buying, didn't you? A. Yes, I knew about that.

Q. Who was Mr. Minchel? A. Minchel?

Q. Yes. A. Mr. Minchel was the president of the Parke County Coal Company.

3653 Q. Had that concern been an old customer of yours? A. Yes.

Q. Did they stop buying from you? A. Yes.

Q. What other stockholders was there? A. Dane Ingle.

Q. Did he stop buying from you? A. Yes.

Q. What other one? A. Mr. Reish of the St. Bernard Coal Company at Earlington, Kentucky; Mr. Morris L. Sternberger of Jackson, Ohio, and Dugger & Neal.

Q. Did they both stop buying from you? A. All of them.

3654 Q. Who else? A. Dugger & Neal.

Q. Who else? A. Well, I sold occasionally to some other people. I didn't have the regular trade of the others.

Q. Now, do you mean to maintain, Mr. Waddell, that you personally do not know that those customers were buying their powder from the Indiana Powder Company's mill, immediately after they stopped buying from you? A. Well, I think I knew. I had the statement of Mr. Rood.

Q. You had a great many indications— A. —That was good enough for me at the time.

Q. You had a great many indications of it, did you not? A. Yes.

Q. And you so reported to your principals, did you not? A. Yes.

Q. It was well understood by every one concerned that that was the situation, was it not? A. I accepted the statements that were made to me in regard to it.

Q. And that was based upon your acceptance of that statement that you and your principals had so much apprehension about Mr. Rood's enterprise, was it not?

A. I believed that it would be a very formidable opposition.

Q. And you believed so for the reason that if he 3656
had made contracts such as he stated to you he did make, it would shut out that trade entirely from your office? Was not that the reason of your apprehension? A. Yes.

Q. That is so far as those particular operators and those particular coal mines, it would be a complete monopoly in the hands of Mr. Rood, wouldn't it? A. No, it was in the hands of the stockholders. Rood did not control very much of the stock.

Q. Well, the company. A. The Indiana Pow-
der Company—they made their own supplies. 3657

Q. That was your judgment at the time and that was the basis of your apprehension, wasn't it? A. Yes.

Q. And, furthermore, you realized that if no opposition developed to that enterprise, it was one that was very likely to extend, did you not? A. Well, I didn't know about that; it was a mere guess.

Q. That was your judgment at the time, was it not? A. Well, I think I expressed such an idea and possibility of that kind.

Q. During this period, this same arrangement was prevalent throughout this district whereby the operators bought the powder from the powder com-

panies and resold it to the miners, was it not? A. Yes.

Q. And the prices to the miners during this period were $1.75 per keg? A. Yes.

Q. Were they not? A. Yes.

Q. And therefore the profit of the operator was the difference between what he bought the powder at and this $1.75—wasn't that right. A. Yes, excepting bad accounts and so forth.

3659 Q. Therefore it did not necessarily follow from this arrangement that these operators had made with Mr. Rood and his mill, that the miners would get any benefit from it, did it, Mr. Waddell? A. No, they had no share in the profits of the mill; the stockholders got that.

Q. It was well understood that these operators were simply going to make their own powder and then go on and sell it to their miners at the same price, at $1.75 per keg. Was not that true? A. Well, I presume that is what they were doing.

3660 Q. Therefore the miner was the real consumer of powder under that arrangement, was he not, Mr. Waddell? A. He was the consumer.

Q. And the mine operator was a mere middleman between the powder company and the miners. Is that not true? A. He was a merchant, yes.

Q. Therefore, so far as that situation went, it was one under which the du Pont and the Hazard Company would either step out and give up the trade entirely or be forced to compete for the business by selling directly to those miners. Was not that the situation? A. They could have done either, yes.

Q. Well, they were given their choice between those two alternatives and those only, were they not? A. That was so far as the trade of the stockholders of the Indiana Powder Company was concerned, I presume they were.

Q. Well, I suppose again your position is that they should have left them alone and surrendered the trade gracefully. Is that your position? A. Yes, I think that would have been the wise thing to have done.

Q. What was the price at which the great Northern Supply Company sold powder to these miners? A. $1.25.

Q. And the price at which the Indiana Powder Company was selling its powder was $1.10, was it not? A. $1.75. 3662

Q. I know, to the miners, but from the mill to the operators, $1.10, wasn't it? A. $1.10.

Q. So, as between those two sales, the Great Northern price was fifteen cents more than the Indiana's price, wasn't it? A. That is, retailed by the single keg. Indiana's price was in carloads, 8,000 kegs; that is different.

Q. Then it would be, according to your testimony yesterday, it would be on an exact parity, because there is a difference of fifteen cents a keg between retail lots and carload lots? A. Exactly the same figure. 3663

Q. Do you know what the price was that the Indiana Powder Company charged for its powder to outsiders other than its stockholders at the beginning? A. It didn't sell any outside that I know of.

Q. When did they begin? A. Well, it must have been a year and a half, maybe two years, after they started in business, before they began to extend their business.

Q. Didn't you know as a fact that it was the intention at the time of those people to enlarge that mill? A. No, I didn't.

Q. Didn't you know as a fact that there were several other mills of the same character contemplated in various parts of the coal fields. A. I

3664 *R. S. Waddell—Cross*

knew I was sent to Terre Haute to establish a plant to oppose the Indiana Mills and I selected the site. Mr. Colvin looked it over and it was expected that we would build a mill there and fight Indiana.

Q. Did the Hazard build that mill? A. No, it was decided not to build it.

Q. Well, now, will you answer the other question. Did you not know at that time of several other enterprises contemplated by outsiders of the same character as Mr. Rood's? A. No, I never
3665 heard of one.

Q. You spoke yesterday just before the adjournment of some interview that you and Mr. Colvin had with some of these gentlemen who were interested in the Indiana Powder Company. When was that? A. I think it was—I think Rood organized his company about March, 1897, and it was a few weeks—maybe several weeks—after Rood organized that Mr. Colvin came to Cincinnati and called for me and we went over to Terre Haute and had that interview.

3666 Q. What was the purpose of that interview? A. Well, the purpose was to try and get fifty-one per cent of the stock of Indiana for the Hazard Powder Company, and we failed to do it.

Q. Did you make various arguments why that should be done? A. Yes, in the interview I was the spokesman. Mr. Colvin wanted to hold a reserve position so he would not be compelled to commit himself, and he asked me to do the talking, and I did it.

Q. Do you recollect when Mr. Rood resigned—I say, do you recollect when Mr. Rood resigned? A. He didn't resign until after he had established his plant. He did wrong in not doing so. He organized his company while he was still under pay from the Hazard Company. That is wrong.

Q. That is, he was traveling around ostensibly

selling du Pont and Hazard powder and in reality making contracts with these customers to help him build a powder mill, wasn't he? A. I don't know that he was making contracts; he had discussed the question with them and I felt he was wrong in that he didn't resign first, as I did.

Q. You say this contract system concerning which we have heard considerable was organized by that fall. Can you tell about when in the fall? A. Why, I would think about September of that 3663
year.

Q. That was about the time that you have stated that you went to New York to examine various forms of contracts that were being discussed? A. I don't recollect the date that I went; it was about that time.

Q. Did you assist in the preparation of those contracts? A. No; only they got my judgment.

Q. You went there and gave them your judgment about it? A. They asked my judgment and I gave it to them.

Q. Do you recollect who presented the form that 2669
was selected? A. There were, I remember, about four or five forms submitted by Mr. Colvin—he was on the committee to get up a form and he presented to me a form that had been furnished by the Miami Powder Company, or by Mr. Fay of the Miami and American, and another by the Laflin & Rand—I kn——

Q. I know; we know all that. My question was whether you know who presented the form that was adopted? A. I don't think any one did that I know of. I think it was a complex form gotten up from a number of others and made as short as possible.

Q. Now, is it not true that the coal operators themselves desired to have these contracts for the

3670 supply of powder to their mines? A. They didn't know anything about it until we talked it to them.

Q. Weren't they solicited—hadn't they been for a long time to have contracts for future supply of powder, written contracts with your company? A. Oh, I think during the period when Chattanooga was independent, when we were making contracts. I had a few requests of that kind from some of them.

3671 Q. How long an arrangement did the coal operators usually make with their miners as to wage scales, Mr. Waddell? A. It was originally one year and it is now over two years.

Q. During this period in 1897, do you recollect how long it was? A. Over a yearly average at that time.

Q. Was it not true that the mine operators took the position that inasmuch as the price of powder entered into that wage scale for a year it was necessary for them to have a contract showing them how much they would have to pay for powder dur-

3672 ing that entire year? A. The rule has been with the price committees of the miners and operators to use powder—the miners to use powder for the purpose of raising their wages. They have always been willing to pay a high price for powder, an excessive price, knowing that there was a big profit to the operator in it, provided they could get the scale of wages up, and they have used powder in that way. The miner has always conceded that the profit on powder is excessive to the operator provided he could get higher rates per ton for mining his coal, and they have used powder as the means of pulling up their wages, and they are willing always to put that in. The price committees agreed upon that scale.

Q. I daresay that is true, Mr. Waddell, but my

3673

question was whether the fact that they fixed these wages for a year did not make the operators desirous of having written contracts for powder so that they would know how much they got to pay during the year? A. No, that was never suggested to me; I never heard of it.

Q. How is this coal sold? Is it sold on time contracts ordinarily? A. A good deal of it is, yes.

Q. How long term contracts are they? A. Oh, 3674
that varies according to the coal companies and market conditions; there is no definite rule.

Q. Well, a year or two? A. Might contract with a railroad to supply its engines for a year; I don't know what their arrangements were.

Q. Didn't the operators also take the position that it was necessary for them to know how much they had got to pay for powder, in order to figure on their contracts with these consumers for coal? A. No, oh no.

Q. Do you know about how many contracts, how large a proportion they had in 1902 of the total 3675
trade? A. In Illinois they had all of it under contract, one company or the other, I would occasionally hear of a new coal operator they didn't have a contract with it, but as a rule they would apply to me and I would call on an operator and he would say that "I want a contract in a year; come around in a year to see me."

Q. How large a proportion of the trade in the country? A. The contracts were mostly in the Central States, not much east of Pittsburgh and not very generally outside of the district, where we ordinarily had disturbance; there is where the trade was tied up.

Q. You say that all the trade in Illinois was tied up; have you any knowledge as to how much of it was in the whole country at that date, in 1902?

3676 *R. S. Waddell—Cross*

A. I think all of Indiana—practically every customer in the state. Occasionally we would be enabled to make a contract and we would have a special price trade that was equivalent to a contract. That was a cut price. That was special.

Q. Do you mean a lower price was equivalent to a written contract for a year or two; is that what you mean?

(Motion to strike answer sustained.)

3677

Q. Will you answer the question? Do you consider cut prices equivalent to a written contract for from one to five years? A. If the man gave me his word, I think it would be good as a verbal contract.

Q. Did it make any difference who the man was? A. Yes; generally a coal operator was responsible.

Q. Didn't you testify in the government case out of four million kegs of powder, sold in the United States, three million eight hundred thousand of it was under contract in 1902, all but 200,000? A.

3678 That four million kegs related to the basis that Mr. Moxham used in his speech as the basis for the contract trade. It is referred to in his speech that is in evidence.

Q. I understand. A. And there was a large volume of trade in Pennsylvania that was exempted from the advance, nearly the whole State of Pennsylvania, I think all the State of Pennsylvania; that part of West Virginia north of the Baltimore & Ohio Railroad; Maryland, and there was a very large volume of special price trade that I could—— Of course, I knew about, but the four million kegs was not the total consumption of the United States in powder by any means.

Q. Was not your testimony that of the four

million sold by the associated companies in 1902—four million kegs—that three million, eight hundred thousand of it was covered by these contracts? A. By the contracts that were scheduled there; yes.

Q. That was your testimony? A. Yes.

Q. Now, you have stated here on your direct examination that as soon as this contract business came into effect, you made contracts for all the customers of the Hazard and du Pont Companies, have you not—that is, in 1897? A. I began making them, and the Hazard Company instructed me to put in my applications as soon as possible for the privilege of contracting my trade. 3680

Q. I did not ask you that. A. I understood you——

Q. Read the question, please. (Question read.) A. I contracted with every one I could.

Q. Well, didn't you make this answer on page 1644: "A. I can answer that for the Hazard and du Pont Companies. The trade that was tributary to Cincinnati, which included Indiana, part of Illinois, Ohio, West Virginia and Kentucky, that was contracted with every customer that we had of any consequence, that is, that would take a carload or over per year." Was not that your testimony? A. Every customer that I could get to sign the contract. 3681

Q. You did not state here—you said every customer here of any consequence that would take a carload for a year or more? A. I meant that I had a few that would not sign, perhaps, but later on they did.

Q. They all signed eventually? A. Ultimately, I think I had all my trade under contract.

Q. So that they must have been between this and 1902, surely? A. Yes.

3682 *R. S. Waddell—Cross*

Q. Later you stated, after recess, that that was not exactly the situation, didn't you, Mr. Waddell, on your direct examination? Didn't you state this: "In cases where we failed to make contracts, a coal operator would not enter into a long contract for a long term, it was desirable to close his trade and make his trade permanent, and we applied to the powder companies for the privilege of making him a special price, and in many cases, in fact, most cases, that privilege was granted us and we
3683 made special prices." A. In most cases where we applied for them; but that was just as good as the contract with me, for it tied the trade up.

Q. Which of these situations were true. Did you have it all under contract, or didn't you, Mr. Waddell? You have made both statements here? A. We began contracting in 1897, in the Fall.

Q. Won't you answer my question? A. I did not make all the contracts in a day; we progressed.

Q. Which of these situations is true; that you had it all under contract or part of it under special
3684 prices? A. I think the major part of it was in writing. Occasionally, the contract would expire and the fellow would refuse to make another contract, and I would get a special price for him; it varied.

Q. Then your statement here, the other day, that you put every customer of the Hazard and du Pont companies of any consequence, under contract, was not correct, was it? A. Yes, it was.

Q. It was? A. Yes, it was under contract for a special price or under contract with a paper writing for a term of months.

Q. Oh. A. I had them either one way or the other.

Q. You meant you had some of them, verbal promises, to take powder? A. An oral contract is as good as a written one, if the man is good.

Q. Did you write this letter to Mr. P. S. du Pont while you were general sales agent at Wilmington? A. Yes; that is a summary of the Moxham speech.

(Paper marked Defendants' Exhibit A-146 and read to the jury as follows):

Wilmington, Del., October 22, '02.

Mr. Pierre S. du Pont,
Treasurer.

3686

Dear Sir: Referring to the list which I have today handed you, showing deliveries of powder on contract during a year, I have made from the list the following extracts:

Deliveries on expired contracts	403,658	kegs
Contracts expiring prior—		
to Dec. 31, '02	132,701	"
to June 30, '03	535,107	"
to Dec. 31, '03	445,257	"
to June 30, '04	325,524	"
to Dec. 31, '04	173,243	"
to June 30, '05	185,800	"
to Dec. 31, '05	90,100	"
1906	48,597	"
	2,339,987	"
Deduct delivered on expired contracts	403,658	"
	1,936,329	
Total sales per yr., all companies	3,887,774	
Sold on specials & card prices	1,951,445	
(Equal to about 50%)		

3687

3688 *R. S. Waddell—Cross*

You will note from this that about half of the Powder sold is delivered on contracts, and prior to June 30th next year contracts representing 667,808 kegs will expire.

Truly yours,
R. S. Waddell, G. S. A.

Q. Now, you took this data from these Moxham Exhibits 17 to 24, in the Government's case? A. In the schedules attached to his speech, yes.

3689 Q. And it appears from the figures that of the approximate four million kegs of powder, only about one-half of it was covered by contract instead of 3,800,000, as you testified; is that correct? A. Yes, there is a large territory outside of the contract field that I have already described. "Contracts covering Central States." It may have been one hundred per cent of the trade there.

Q. This says a total sales of all companies—that is approximately 4,000,000 kegs, the number you were testifying about in the government suit? A. Yes, sir, contract trade.

3690 Q. And of which you testified in the government suit 3,800,000 was under contract? A. Yes, and special price.

Q. And to which you testified to-day here that it was all under contract? A. Contract and special price. I gave the two there.

Q. Did you not testify that of that 4,000,000 kegs, 3,800,000 was under contract? A. Under contract and special price.

Q. Did you say contract and special price? A. I may have omitted whether it was oral or written, but it was in on the deal. We fixed the price for that; it was special. Whether the rebate was from a written contract or a rebate from a standard price. What is the difference? It does not make any difference whether it was oral or written.

Q. Your complaint here is that we made a great many long term contracts and thereby tied the trade up for one to five years? A. Yes, you have.

Q. That is your complaint and to substantiate it you have testified here and in the government suit that out of 4,000,000 kegs we had 3,800,000 in that condition, have you not? A. That was not in Illinois.

Q. Have you not so testified? A. I have testified what the government record states there.

Q. Does it not so state and have you not admitted it here this morning? A. Yes, it was all under contract. 3692

Q. Is it not true that only half of it was under contract from 1902 from your letter? A. Under written contract, yes. And the specials that were in the Moxham exhibits there.

Q. That is what you have been talking about all the time, have you not? A. The Moxham exhibit states specifically what is stated in the letter.

Q. It is very different from what you have stated in the testimony on several occasions, is it not? A. I think not. 3693

Q. At page 178, of the first volume of the petitioner's record, did you testify as follows: "Q. These are what? A. These are the lists of the contracts of all the powder companies in the Association, made up and prepared at our office, summing up the whole business. Q. Under this system? A. Under that system of contract, tying the trade up in contracts. Q. And what proportion, can you say, of the contracts of the United States, did it cover? A. About three million eight hundred thousand and some odd, out of four million kegs. Q. That is as of the date of 1902, is it? A. Yes. Q. October first? A. December thirty-first, I think we divided up to there. They were prepared for the December

nineteenth meeting, 1902." Did you so testify? A. Yes, and I furnished the schedule for it. I want to state that the government did not use the schedules, all of them. The schedule of special prices was omitted from the books for some reason.

Q. At page 887, did you testify as follows: "Q. In your former examination you testified that about December 19, 1902, the total volume of the contract trade of the pool companies amounted to about 3,800,000 kegs of powder. State whether or
3695 not this represented all of the trade of the pool companies at that time. I am speaking now as to the distinction between what you know, or remember, of the contract trade, and — A. No ;it didn't represent all of the trade of the pool companies. There was one special trade, special price trade, and that was in addition to that. There was quite a volume of it, and that was in addition to the 3,800,000 kegs. That was all of the contract trade of all the powder companies in the pool that had been assigned by the special and advisory committee." Did you so testify? A. That is the way you
3696 read and I must have testified that way, but the schedules I furnished them showed—I furnished them a copy of that du Pont letter there.

Q. Did you so testify, that is the question? A. I presume I did; I don't remember, I have no recollection about it.

Q. Consequently the schedule price that you are talking about is not then for these 3,800,000 contract trade that you are speaking about, is it? A. No, the schedule trade, not the schedule trade. No, the schedule there speaks for itself, the number of kegs, the contractor's names and all are right on those schedules.

Q. I dare say. A. Every customer is there and the number of kegs he took is named under that

column, in addition to that we have this special priced trade and I have furnished here the list of special prices to you so far as I had knowledge of them, or rather my son did.

Q. You will observe I am not speaking about what the schedules show, but what you testified to. Now, on this last occasion that I have referred to, did you not testify that this special trade was in addition to the three million eight hundred thousand kegs, of contract trade? A. That is the way you read it. 3698

Q. Is it not the way you read it? A. I never read my testimony. I never had the opportunity to read it and correct it in any way.

Q. Won't you spend a moment now reading this small part of it, at the top of page 887, and state whether you so testified, that question and that answer? A. I will take your reading of it. It states here that I testified to the total volume of the contract trade. That is written, and oral; but as the schedule that I furnished as per hat letter, and that special price trade, amounted to a total of 3699 about three million, eight hundred thousand kegs—that is correct.

Q. Is that what it says there, Mr. Waddell? A. That is Mr. — whoever asked the question there, and I stated here, no, it did not represent all the trade of the pool companies. (Witness examines document further). It seems from this reading that I testified the special price trade was in addition to the written contract trade. That is an error, because I laid before them the figures showing the opposite of that. He asked me if I could estimate what the additional trade would be, and I said no, I never figured that up; it was quite a volume. I think I have read that. That is familiar stuff.

Q. You speak of an error; do you mean an error

of the stenographer's, or an error in what you have stated, Mr. Waddell? A. I do not know where the error occurred. It was an eror evidently between my statement there, and the papers I laid down in support of it.

Q. It is exactly the same kind of a statement that the amount of trade that was tied up in 1902, that you have repeatedly made in this case, was it not, Mr. Waddell? A. No, oh, no.

Q. It is different now, is it? A. I had a list and
3701 I furnished you here a list of the contract trade in 1902, and you have produced about, I should think, twenty per cent of those contracts, but I know they existed.

Q. You knew that they existed to the extent mentioned in this letter, didn't you? A. To the extent mentioned in the Moxham list which I referred to you.

Q. Which is also mentioned in this letter and is 50 per cent of that trade, isn't that correct, instead of all of it? A. Fifty per cent of the contract
3702 trade were within written documents at a scheduled price less a rebate of approximately 50 per cent. The balance of it was at a scheduled price less the special allowance to a particular customer, to a particular powder company, and those contracts were oral.

Q. Then we understand each other now. So far as tying the trade up for a long period of years in 1902, that then applies to not more than fifty per cent of the trade, that is a present statement, isn't it? A. No, you have got that wrong. The contract trade was probably not more than half of the total trade of the United States, with contracts. The contract trade applied especially to Central states where the old disturbed districts were located. Now, outside of that there was a vast volume of trade,

there was a big trade in Pennsylvania that was not contracted.

Q. Not included in the association— A. Pardon me. That was not contracted, either oral or written. Now, of trade that was contracted, a total of 3,800,000 and some odd kegs, as shown by the schedule, and as shown by the list, footing the columns on this list I have given you and the correspondence with that letter—about half of that trade was in written contracts. The other half of it was special prices, oral contracts. 3704

Q. Selling from day to day on special prices? A. No, it was more than that.

Q. Now, then, speaking about this Pennsylvania trade, if you added that in, which was not governed by the association at all, it would have been 7,000,000 kegs a year instead of 4,000,000, wouldn't it? A. It was governed by the association.

Q. Would it have been 7,000,000 kegs instead of four, if you had counted that in? A. The total volume of trade in the United States I should say in 1902 would be 7,500,000 to 8,000,000 kegs, and of that total, about half of it was under written contracts and special prices—— 3705

Q. Very good? A. —and as between the two it is about equal whether it was all written contracts.

Q. And about 25 per cent of the total trade then was under written time contracts? A. Yes, and all of that was in the Central States, then, or nearly all.

Q. It was in the places indicated on these exhibits wasn't it? A. Yes, sir; nearly all of it was there.

Q. Was there anything to prevent a competitor from taking that trade at the end of a written contract? A. Yes, sir.

Q. What? A. They began about sixty days before the expiration of a contract to seek renewals,

3706 *R. S. Waddell—Cross*

and there was generally a cut in the price as an inducement for the renewal of the contract by the company, and by the time a competitor got around, a contract had been made for renewal before the old one expired, and it was my experience with them all.

Q. Yes, and of the exhibits that you spoke of, the first one, which covered about 25 per cent of the amount involved was for deliveries on expired contracts that had not been renewed, were they not?

3707 A. Yes, customers that went right on when the contract expired; they hunted the fellow along until they succeeded in landing him.

Q. There was quite a lot of them, in that particular instance, all expiring during the six months preceding this exhibit which had not been renewed, during the sixty days previous to their expiration, is that correct? A. A good many of those; you see Rood sold out about the first of 1902.

Q. Yes. A. And a good many of those contracts,

3708 of those people who had those contracts, had been buying from Rood, and we held them along under those Rood contracts; we could not get them renewed.

Q. I understood you to say a few minutes ago that this renewal was always attented to about sixty days before or during sixty days preceding the expiration of the contract. Now, regarding this amount of trade in the first exhibit, that was true, was it? A. The first exhibit, I do not know what you mean.

Q. That exhibit, those Moxham lists, that shows deliveries on expired contracts. Those contracts had not been renewed during the sixty days previous to their expiration, had they? A. We were not renewing them.

Q. Now, will you explain to the jury, Mr. Waddell, just how it was that that amount of powder mentioned in that first exhibit, that was delivered on expired contracts, was in any way tied up so that it was not open to free competition in 1902? A. Just went right along under the old contract, and delivered powder under it, just the same as it was in the others.

Q. And the customer, I take it, from your statement, was helpless. He was forced to take it? A. No, he was not; but he did take it. 3710

Q. Yes, he did; he may have thought it was good powder, that might have been his reason, might it not? A. No; he was getting it at a rebate, of 15 or 25 cents a keg below any other powder on the market.

Q. Was there any legal compulsion on his part to take any of that powder? A. No; I do not think there was.

Q. And if you had come in with your Buckeye powder and convinced him that it was as good or better, and had made an equal price, you had a chance at that trade, hadn't you, Mr. Waddell? A. 3711 You will have to point out to me a single expired contract that was not renewed before my mills went into operation. In the State of Illinois, I don't know——

Q. (Interrupting) I will point out to you Exhibit 17 in the Government case; I do not know what number it bears here. I will ask you to look at it, and see if there are not one, two, three, four pages of deliveries on expired contracts there? A. This was in 1902.

Q. I understand, December, 1902. A. Yes; there are deliveries in 1902 on expired contracts, the first exhibit.

Q. The first exhibit, No. 17? A. Yes, sir.

Q. Those deliveries, amounting to one hundred and thirty-two thousand, seven hundred and one kegs, as stated here? A. Yes; in about ten States, and extending over a year or two.

Q. Well, during that period, that trade was open, wasn't it, Mr. Waddell? A. In 1902, yes.

Q. At that date? A. Yes; but it may not have been open in 1903.

Q. Won't you further explain to the jury why trade that was under a special price, that is prices
3713 made below the schedule on a verbal contract, was not open to competition. A. Certainly it was not.

Q. Why wasn't it? A. A man's word was good, I thought. I guess the Powder Company was good for it.

Q. Do you mean a man made a verbal contract to take his powder for five years at that price? A. I do not know that he made it for five years or five months, or a year. Whatever the arrangement was he made. When I got a special price I went to a man with it, and I just didn't give him a
3714 special price on a car load of powder. I was not selling a car load of powder.

Q. You know, as a matter of fact, those special prices, a man would take at that price as long as he desired, and then quit, don't you, from month to month, that is what the special price was, wasn't it? A. The special price was given to, say, the Hazard Powder Company, and to no other powder company, and I knew that there was not going to be any competition so far as the associated powder companies were concerned, with that man's trade.

Q. Very good. A. And I knew I was safe with this business when I made a special price, and that was in lieu of a special contract. For some reason, they did not want to make a contract.

Q. You knew he was taking his powder at that

price from month to month? A. They were sending orders in.

Q. And he could quit whenever he got around to it, couldn't he? A. I presume he could. The order was not for any definite number of kegs or for any term.

Q. You had a list of these contracts and could tell when they expired and could solicit the business of these customers either 60 days before or any other time? A. I had a printed list, yes, sir. 3716

Q. These Moxham exhibits? A. Yes, sir.

Q. You have stated something about these contracts being confidential. What did you mean by that? A. They had a clause in them that the existence as well as the terms of this contract should be kept confidential.

Q. Did they all have that? A. All that I made out, did, and I made a good many of them.

Q. Well, what is the particular objection to that. Do you think they ought to have been published somewhere? A. No; but when I entered the field and you had changed your rebates, as you did all 3717 during 1903 and those contracts were confidential, I did not know what your prices were.

Q. Now, you testified the other day that you kept in absolute contact with all contract prices from 1903 to 1908, knew what the renewals were, and that they were all renewed at lower prices whenever a contract expired. Didn't you testify to that a week or two ago? A. That is what I testito, and that is the fact.

Q. So you did know what the prices were? A. Well, I had a man's statement, yes, sir. They went down.

Q. I call your attention to a form of one of these contracts that you produced, I think, in the Government suit, and ask you if it was a form that

went into this contract system that you are describing as a part of it? Is that the kind of contract you are talking about? (Hands paper to witness.) A. Let me explain this form fully.

Q. Well, let me read it first. A. That is one of several.

(The paper was received and marked Defendant's Exhibit A-147.)

3719 Mr. Button (reading): "This contract, made between E. I. duPont de Nemours & Company, of Wilmington, Delaware, first party, and ..... of ..... second party.

Witnesseth: That first party hereby sells, and second party buys, all the black blasting powder, in kegs, 25 pounds each, required for use in the mines owned or controlled by second party, as noted below, for the period of ..... from this date, at the current car load price established by
3720 the first party, at the location named, at the time of receipt of order, the present car load price being $.....per keg.

The following conditions are mutually accepted:

(a) First party agrees to allow second party a rebate of ..... cents per keg on powder purchased on this contract.

(b) First party agrees to allow second party the actual car load freight charged from shipping to delivery points.

(c) Terms are sixty days, or 2% discount for cash if remitted within ten days from date of invoice.

(d) Second party agrees to buy from first party in car load lots of kegs of 25 pounds each, all the black blasting powder required by it for the following mines:

Name.	Location.
.....	.....
.....	.....
.....	.....

or for any other mines that may be acquired by the second party, in the same district, during the time of this contract. 3722

(e) It is agreed that powder furnished under this contract is for consumption of the second party only, and not for sale, except to its own miners or employees. It is agreed that a violation of this clause gives to the first party the option of cancellation of this contract.

(f) The first party may furnish, and the second party will accept under this contract, powder of any standard brand, make and quality. 3723

(g) The first party is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

Dated at 190

E. I. du Pont De Nemours & Co.
By ....."

Q. That was the kind of contract they were making for furnishing powder, wasn't it, Mr. Waddell? A. No. That was a contract that was gotten up as an improvement by Mr. Moxham on the old form

3724

of contracts that we had used prior to that time. He thought he could get a contract that could be enforced in the courts, and that is his judgment of it.

Q. Where did you get that form of contract? A. They were printed.

Q. Where did you get it? A. I think I had it at Wilmington. They were sending them broadcast all over the country.

3725

Q. You remember you furnished it in the government suit? A. Yes; all of our salesmen had them.

Q. Here is a contract that was made in 1900 before this change. Is that the ordinary form of contract under which this system was carried out? A. Yes, sir; this one was one of the forms. We had four or five forms. That has the soda clause in it.

Q. This is Exhibit 1246 (166), already introduced. Let's see what the difference between this and the other is. (Reading.)

3726

MEMORANDUM OF AGREEMENT, entered into this 24th day of May, 1900, by and between the E. I. duPont de Nemours & Co., of Wilmington, Delaware, and The Princeton Coal & Mining Co., of Princeton, Indiana, party of the second party,

WITNESSETH: That the party of the first part hereby sells and the party of the second part hereby purchases at $1.25 per keg of 25 pounds each all the supply of Blasting powder to be used at the mines owned by the party of the second part, located at Princeton, Indiana, from May 24th, 1900, to May 23d, 1903, inclusive.

It is understood that this contract car-

ries a rebate from the regular carload delivered price of 15c per keg, and shall extend to any mines which may be acquired by the party of the second part during the life hereof, particulars of which are to be furnished by the party of the second part to the party of the first part, at the same rebate from the delivered price for the district in which said newly-acquired mines are located.

It is understood that powder furnished 3728
under this agreement is intended for consumption of the party of the second part only and not for sale except to miners or employees of the party of the second part. Deliveries are to be made in carloads of not less than ..... kegs. Terms, sixty days, or two per cent discount for cash within ten days from date of invoice.

It is agreed that if during the time covered by this agreement the party of the first part should make a less price than above 3729
named, under similar conditions, in the district in which the powder hereby contracted is to be delivered, it will give to the party of the second part the advantage of such less price on deliveries taken while the less price is in force.

It is agreed that this contract is based upon the cost of Nitrate of Soda not exceeding $1.80 per 100 pounds in New York City current funds, and that should the market price advance beyond that sum, the price made in this contract shall be advanced at the rate of one cent per keg for each five cents per 100 pounds advance in the price of Nitrate of Soda, to apply as indicated on

all deliveries made while the price of Nitrate of Soda exceeds $1.80 per 100 pounds.

It is agreed that should occasion require, the party of the first part shall have the right to supply under this contract Blasting Powder of any standard brand, make and quality.

Witness our hands and seals,

Princeton Coal & Iron Co.,
3731 Pr L. J. Oswold, Prest.,

E. I. du Pont De Nemours Co.,
Eugene duPont, Pt.

Q. That is the same as the other one with the exception of these two clauses, with regard to making a lesser price in the same district under similar conditions and with regard to the nitrate of soda clause, isn't it? A. Several changes in the form.

Q. But, about this lesser price named under similar conditions in the district where it was delivered—— A. The guarantee, yes.

3732

Q. That means that if the du Pont Company itself sells to other customers in that district? A. Yes.

Q. This customer shall have the advantage of that price? A. Yes.

Q. And this soda being the chief ingredient in blasting powder, do you see anything improper in the provision that the price should advance if soda advances? A. About 90 per cent. of my customers would not sign a contract of that kind with the soda clause in. They said they were not in the soda business, and did not keep up with the soda market, and they wanted that clause out of it.

Q. Very good, but if they consented to sign it, is

there anything obnoxious in that kind of a clause? A. I thought it was all right.

Q. Now, this is an ordinary contract for the furnishing of a stated amount of powder, isn't it, Mr. Waddell? A. A time contract, yes.

Q. You say there are other forms. Is this another form made in March, 1902, Exhibit 1246 (167), already in evidence A. This is another form; Moxham's is an improvement upon this form.

Q. Now, I would like to see what there is in this contract that is improper, Mr. Waddell? 3734

This agreement, made this 1st day of March, 1902, by and between E. I. duPont de Nemours and Company, of Wilmington, State of Delaware, First Party, and the Reincke Coal Mining Co., of Madisonville, Kentucky, Second Party hereto.

First party agrees to sell and furnish to Second party all the Black Blasting powder it may need for a period of one year from date hereof, for consumption in the 3735
mine now owned and controlled by it and such mines as party of Second part may acquire during the life of this contract. The mines covered hereunder being endorsed hereon.

First party agrees to guarantee Second Party against any lower price made by itself in the same district under similar conditions. Second Party agrees to take from First Party all the Black Blasting Powder it may need and consume, receive it in carloads of 400 or more kegs and remit for same in sixty (60) days from date of shipment, or less 2 per cent for cash in ten (10) days from such date, delivered at the near-

est railroad depot to the mine or mines covered by this contract.

It is further Understood and Agreed:

1st. That should occasion require, the First Party supply and Second Party will accept, under this contract powder of any standard brand, make and quality.

3737 2d. That there shall be allowed the Second Party on all powder furnished it by the First Party a rebate of twenty cents per keg from the current price of carload quantities to the general trade, as established by the First Party in the districts named at the time of receiving orders, provided that current price, less the rebate above stated, does not reach a figure below the rebate price under this contract, but should the current price fall below the present rebate price, as stated, then the Second Party shall have the
3738 benefit of all current prices that may be made by the First Party.

The mines understood as now owned and controlled and covered hereunder with the current price, being as follows:

The Reinecke Coal Mining Co., Madisonville, Kentucky, $1.30.

3d. That should the First Party be unable, from any cause beyond its control—such as explosions, strikes, accidents—to furnish powder of its own make, then, for the time being, the Second Party may purchase its powder wherever it may find it convenient, the First Party being freed from obligations in such transactions.

The terms and conditions, as well as the existence of this contract, to be confidential.

The Reinecke Coal Mining Co.,
Sec.

E. I. du Pont De Nemours & Co.,
T. C. duPont, President.

Q. Now, so far as the form of these contracts go, Mr. Waddell, what is there that you think is improper? A. There is no—the main purpose, the main purport of the contracts, all of them are the same—every once in a while the powder companies would pick up something that had been omitted from the form. I had about three hundred printed in Cincinnati, and got notice to destroy them, and have others printed and put in "current funds of New York," or something of that kind; just a little clause. 3740

Q. Then, so far as the form itself goes, they were ordinary contracts, were they not? A. This general form was carried all through all of them.

Q. I say they were ordinary commercial contracts, weren't they? A. Yes, but that one—— 3741

Mr. Abbott: If your Honor please, I object to that, upon this theory: This witness is asked to state what were ordinary commercial contracts. That opens up another field. We have not gone into anything of that kind. We do not know whether this witness is an expert on ordinary commercial contracts or not.

The Court: I think it is objectionable.

Q. I will put it this way: Did you intend to state on direct examination that there was anything objectionable in the form of these contracts, confin-

ing yourself to the form? A. Well, the—what particular contract?

Q. Take these two? A. I thought some of them ought to have been a little different. We differed as to the form. We used all the forms, five or six different forms, changing from time to time. I did not always like the form that was given me; when it had the soda clause in it I had to fight with the operator, I could not get him to sign it.

3743 Q. That is not exactly what I mean, Mr. Waddell. Did you intend to testify there was anything objectionable in the form of these contracts, so far as being in restraint of trade, and legal operations were concerned, on your direct testimony?

A. I have told you that the form was merely the carrying out of the system that had been adopted to tie up the trade.

Q. My question is, whether there is anything in the form of the contract itself that you object to on these grounds? A. No, it was merely the expression of the system that we had. The wording of

3744 them changed.

Q. Is this matter concerning which—I would like to read you these statements from your complaint, Mr. Waddel. (Mr. Button here read to the witness Section 11, page 22 of the complaint). Did you give your attorneys the information on which that was based, Mr. Waddell? A. Yes, and I will be glad to give it here.

Q. You say that the defendants circulated false and damaging statements in regard to the capacity of your mills? A. Yes.

Q. Did you write this letter, Mr. Waddell. (After argument.)

Mr. Button: (Reading) "April 26, 1897.
"Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

"Dear Sirs: I attach herewith copy of "telegram sent you this date. From the "assemblage of men from all parts of the "country who are interested in these mills "as stockholders, namely, Jackson, Ohio, "Oakland City, Indiana and Earlington, "Kentucky, I infer that Mr. Rood is gen- "eral organizer of the capital. They are his "personal friends. He tells me the organ- "ization was completed on March 26th.

"I enclose you clippings from the Indi- 3746 "anapolis papers, through which I brought "out the subject. Mr. Rood has not men- "tioned the subject to me, although at our "office up to 3 P. M. to-day. When the sub- "ject was called out by the publication in "the papers, he then handed me copy of his "resignation, which he says was mailed to "Mr. Colvin yesterday. Is it your wish that "we continue Mr. Rood's services or release "him at once? It is a matter of profound regret to this writer that one of our force 3747 "should be associated with the competitor, "and I do not know but it would have been "best for us to have sacrificed preferences "and to have entered into a contract with "Mr. Rood on January 1st, binding his serv- "ices for a term of years. Have you any "suggestions to make as to who shall take "Mr. Rood's place on the road? If not, I "will canvass the subject from our stand- "point.

"Do you not think it would be wise to "remove a portion of the Phoenix plant, or "some other mills, to the vicinity of Terre "Haute, and meet this opposition on the "'dead level'? It seems to me that the only "way for the Powder Associates to defend

3748 *R. S. Waddell—Cross*

"against continual inroads of this charac-
"ter is for them to centralize their business
"within smaller forces, and instead of main-
"taining a half dozen agencies, limit the
"number and decrease the general expense,
"sacrificing prejudice for prosperity.

"Truly yours,

"(H) R. S. WADDELL, Agt."

Clippings in another enclosure.

3749 The telegram enclosed is dated April 26, 1897.

"E. I. du Pont de Nemours Co., Wilming-
"ton, Del.: Of new company Tally is Presi-
"dent; Minshall, a capitalist, is Secretary;
"Stoernberger, David Ingle and Atkinson
"of St. Bernard Coal Company are stock-
"holders, with other coal operators near
"Terre Haute. Rood under contract to
"them for five years; has mailed resignation
"to Hazard. Stockholders claim output
"marketed for five years. Claim organiza-
3750 "tion is for mutual supply of stockholders."

Q. Now at the time you wrote that letter, Mr. Waddell, were you still feeling that Mr. Rood was doing what he should do in this matter? A. I felt that he had an absolute right to go into the powder business if he desired to do so. I felt that he was wrong in organizing the company while still under pay in my office.

Q. I recollect you to have testified last night that you went to New York and did the best you could to make a contract, to continue Mr. Rood with you for several years and were unsuccessful? A. That was right, January 1st—about January 1st.

Q. And you state here "And I don't know but what it would have been best for us to have sacri-

ficed preferences and to have entered into a contract with Mr. Rood on January 1st, binding his services for a term of years." A. Yes, I think that would have been a wise thing to do.

Q. I know, but is not that inconsistent with your statement that he had been trying to get such a contract made? A. Why no, I understand that.

Q. Whose preferences were you referring to? A. Colvin's, he preferred not to make contracts, he notified me he would never make another contract and then he turned around and made a contract 3752
with me.

Q. That is what you meant by that statement there, is it? It was Colvin's preference, he didn't want to make anything, make any contract at the moment.

Mr. Button: Mark this.

(Telegram just read marked Defendant's Exhibit A-149.)

Q. Did you write this letter in your own hand- 3753
writing, April 28th, 1897 (showing witness)? A. That is my letter.

(Following telegram and letter marked Defendant's Exhibits A-149 and A-150, and read to the jury).

April 26th, 1897.

E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Of new Company Tally is president; Minshall, a capitalist, is secretary; Stoernberger, David Ingle and Atkinson of St. Bernard Coal Company are stockholders, with other coal operators near Terre

3754 *R. S. Waddell—Cross*

Haute. Rood under contract to them for five years; has mailed resignation to Hazard. Stockholders claim out-put marketed for five years. Claim organization is for mutual supply of stockholders.

Cincinnati, 28, April, 1897.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

3755 Dear Sirs:

I cannot add any information to what I have written about the "Indiana Gunpowder Co." but can confirm all I have written and that Mr. Rood claims he is under contract with the new Co. for 5 years; that the coal companies whose officers take the stock have contracted to take the output for 5 years, and Rood says it is not their intention to seek much outside trade.

Now, as to the method of meeting this case: Your policy has not been outlined but I believe the most
3756 wholesome lesson would be to institute the methods of Shamokin, Pa.—Erect a mill by one of the companies near Terre Haute—about the junction of two railroads then run a powder wagon through the villages of Carbon, Coal Bluff, Fontanet, Rosedale, and other mining centers owned by these stockholders and offer at retail for cash at $1.00 per keg. These coal companies have entered into a contract with a rival company to confiscate the trade of other powder Cos.—and the price should be fixed so that the coal operators having decided to monopolize the powder trade should be made to part with their large profits on sales to miners. Later the price can be extended to Ayrshin (D. Ingli's mines) Jackson (Sternberger mines), and other stockholders locations, if deemed advis-

able. These coal operators could not continue to charge miners $1.50, $2.00 and $2.50 per keg when the retail price is $1.00 and the odium for low prices would attract to the opposition mill. Could not the association own this opposition mill and thus share the results? It would be better to run it under a separate charter like Marcellus or Anthracite or a company without a long-time reputation. I know Martin, Tally and particularly David Ingle love the $1.00 or $1.50 profit they make on a keg of powder and believe they should suffer as 3758
well as the older manufacturers of powder.

A great deal of the powder would be sold to the miners by the new Co., but the prices would be such as to make the powder branch of the coal trade very unsatisfactory.

This might drive them from home but in that event they would be nearing the Iowa, Illinois and Ohio mills.

It seems to me they have taken in the Indiana mines who use coarse powder and have included Jackson, O., to work off the FFF. I cannot say 3759
how many are interested, but would think they would include Keeler, Dugger & Neal and possibly Brazil Block Coal Co.

A low retail price would do more to deter other combinations of coal operators than anything we could do, should other mills be under consideration.

I offer this as a suggestion for I do not like to patiently accept the situation of having 50 to 75M kegs of powder trade contracted out of our hands without protest.

Truly yours,

R. S. Waddell.

Q. This was written two or three days that you

learned Mr. Rood embarked on this enterprise? A. Yes, sir.

Q. So you were the original suggester of the proposition of selling powder to the miners? A. Not the original suggester, but I was recommending to my principals that they follow the methods that they followed in Pennsylvania.

Q. That is one of the things you are suing us for now, is it not? A. No.

3761 Q. It is not? A. No, this is a different proposition.

Q. On May 4, 1897, did you send to the du Pont Company a list of the coal operators whom Mr. Rood had taken away from you by this operation (handing witness paper). A. That is my letter, I presume I did.

Mr. Button: Mark it please.

(Same received in evidence and marked Defendants' Exhibit A-151.)

Mr. Button: (Reading) "May 4, 1914,

3762 Messrs. E. I. du Pont de Nemours & Co., Wilmington, Del.

Dear Sirs: On receipt of telegram from Hazard directing that we accept Mr. Hood's resignation as of April 30th, I could not reach him until Monday morning. I then released him with the request that he remain a day or two at our office to go over the books with a stenographer and bookkeeper taking notes and analyzing each account. They will finish this work to-day. This will enable us to correspond and collect the accounts without reference to Mr. Rood in the future.

I had the instructions of the Hazard office to arrange for necessary travelling through our office force. F. J. Waddell and this writer have divided the territory. He

will take Eastern Ohio and West Va. I will take Western Ohio, Indiana and Illinois Fred is this week in Kanawha Valley. Any matters arising in the Southern territory will be held over until he returns as I am not so familiar with that work as he is. The same can be said of the Northern work while I am absent.

I discussed the new Powder Co. very fully with Mr. Rood. The following are the stock- 3764
holders.

Mr. Minshall, Terre Haute, Ind.
J. S. Talley, Terre Haute, Ind.
Joe Martin, Rosedale, Ind.
Capt. Zimmerman, Brazil, Ind.
Mr. Dugger, Bloomington, Ind.
D. Inglis, Oakland City, Ind.
M. L. Sternberger, Jackson, O.
James R. Rash, Earlington, Ky.
Mr. Atkinson, Earlington, Ky.

Mr. Talley is President, D. Ingle, Vice-President, Mr. Minshall, Treasurer, Mr. 3765
Reed, Secretary. None of the force receive any pay except Mr. Rood who has a contract for five years at $6,000.00. I think he has swelled the last amount a little, say—about $2,000.00. This contracts or satisfies the trade of:

Coal Bluff Mining Co.,
Chicago & Indiana Block Coal Co.,
Western Indiana Coal Co.,
and other mines controlled by Mr. Talley.

Parke County Coal Co., controlled by Messrs. Minshall and Martin,
Otter Creek Coal Co.,
Brazill Block Coal Co.,
Ten mines controlled by Mr. Zimmerman.

3766 *R. S. Waddell—Cross*

Dugger & Neal mines, controlled by Mr. Dugger.

D. Ingle mines, controlled by Mr. Ingle.

Superior Coal Co., Jackson and Wellston, O., controlled by Mr. Sternberger,

St. Bernard Coal Co., controlled by Atkinson and Rash.

There is considerable trade in the neighborhood of Terre Haute and Brazil that is
3767 not touched by the new company and with which Rood says they will not interfere. This is a good promise for the present when they have no mill; it is worthless for the future.

There are probably 18 or 20 other companies in the portion of Indiana, most of whom are tributary to this office.

Mr. Rood states that he was not interested in the organization of this company; that three of the men came to him and asked if he were open to a proposition and made
3768 the offer. He states a man from the East —a practical powder maker, will have charge of the mills. I inquired if it was Mr. Taylor and he replied that it was not. He states that the man came here about six years ago for the same purpose, a site was then selected, but the scheme was abandoned. The company expects to make powder for their own use when they can do so at a profit, when they cannot do so they will buy it and stop the mills.

I would like to look the ground over more carefully and study the situation in all of its lights and before making any final recommendation as to the methods for meeting this competition. I know all the parties very well and am friendly with every one

of them. Mr. Minshall passes for a millionaire, and I guess he is worth it. Mr. Atkinson is also a rich man and the others are all able to own or double their stock.

I do not think Mr. Rood is entirely free from influence in connection with the organization of this company, at least, in securing some of the members. Truly yours,

R. S. WADDELL, Agent."

3770

Q. So at this time you were making suggestions pretty actively as to what ought to be done to Mr. Rood's enterprise, were you not Mr. Waddell? A. I served the du Ponts, and the Hazard Companies with my whole heart so far as I was able and did my duty at that time.

Q. The point is I understood you to testify some days ago that you never made any recommendations or suggestions on these matters except as was requested. Didn't you so testify? A. No, I did not say that in—not in that connection, no; I constantly suggested and discussed matters and when they asked my opinion I gave it freely.

3771

Q. You were considerably stirred up over this Rood proposition in May, 1897, weren't you? A. I regretted very much that Mr. Rood should act as he did in leaving my office and doing this work prior to his resignation. I felt it was a wrong towards me. I didn't blame him for going, but he didn't do it in the right way.

Q. Did you write these further suggestions in May 9, 1897, about that suggestion (handing paper to witness). A. That is my letter.

Q. And is this one of May 17 (handing witness)? A. Yes, sir, that is my signature.

Q. And another one of May 17, in fact two, one to the du Ponts and one to the Hazards (hand-

3772 *R. S. Waddell—Cross*

ing paper to witness). A. They are required to send duplicates to the companies on important letters.

Q. These letters, too, are duplicates, are they not? A. They are.

Mr. Button: I would like to have them marked.

Mr. Abbott: These are duplicates?

3773 Mr. Button: These are duplicates, one to the Hazard and one to the du Ponts.

(Same received in evidence and marked Defendants' Exhibits A-152 and A-153.)

Mr. Button: And this one of May 9th.

(Same received in evidence and marked Defendants' Exhibit A-154.)

Mr. Button: And this one.

(Same received in evidence and marked Defendants' Exhibit A-155.)

Mr. Button: (Reading) "May 9th, 1897,

Messrs. E. I. du Pont de Nemours & Com-

3774 pany, Wilmington, Del.

Dear Sirs: I have written you several letters in regard to the Indiana Powder Company, and have one or two more suggestions to make. I am not yet prepared to finally recommend the best plan, but will talk with Mr. Colvin who is due here to-morrow.

My father and I were engaged in the coal business a number of years, employing about four hundred miners. No one could ever hope to sell those miners powder, but might sell a few, possibly twenty per cent. If the price were cut very much, it would in time cause dissatisfaction with the others and the result would be a strike. The continuous complaints from committees waiting on an operator renders his business very

unpleasant, and long continued extortions only makes the strike more severe when it occurs. While outside competition could not sell the miners of Fontanet, Rosedale and others, they would fix a price in time at which the operator would have to sell, and that would be all the better for the outside competition because if the losses were heavy, the coal operators, who are stockholders in the powder mill, would have to stand the loss. The only objection I see to any Powder Company agreeing to a low price, is that an odium would attach to that brand, which would be spread among other operators in other fields. If all brands were retailed at the low price at Terre Haute, then it would be said that the 'Powder Trust is trying to crash out our little enterprise' and there would be a disposition to stand by the small concerns in all other coal fields. That would spread the difficulty to other states. I think some one of the outside mills, having no reputation, should make the powder and bear the odium. This would enable our office to say that the new mill at Terre Haute had just shimply started up the opposition that we had quieted and this outside brand had come in and were getting up a very bad state of affairs at Terre Haute; that the Hazards and du Pont brands are not in sympathy with this cutting of retail prices, but it would be an object lesson to coal operators who leave their legitimate business to engage in other business; that where heretofore coal operators have made from $500 to $1,000 profit clear on a car of powder in which they did not have to invest a cent until they had sold half or more of it to their

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3777

miners in lieu of cash, they were not satisfied to let well enough alone, but were interfering with the powder business and producing chaos in prices. This works a general injury to all other coal operators by reducing their profits on powder. That would in my estimation work in our favor.

Another suggestion. You recognize that this new mill is to be built and you do not approve of the suggestions that I have made
3779 in regard to the retailing of powder to miners, then I would suggest that it would be well to go to Mr. Talley and associates and say to them: 'We have concluded to build a rival mill at Terre Haute in defense of our trade and powder interest. You are leaving your legitimate line of business to engage in ours and it is but natural that you awaken a certain opposition. We submit that it might possibly save you some money to join with us and if you desire to test the powder
3780 business, put your $50,000 in with say $75,000 that we will furnish and instal a plant at Terre Haute. We could not afford to take a minority interest in any enterprise, because we must govern this plant in harmony with our business throughout the country or general destruction will ensue. We think that we can make more money for you with your $50,000 invested in harmony with the Powder interest, then you could make, certainly with the opposition that we expect, and frankly state will use in defending our trade.' I believe they would join and if you held the controlling interest possibly it would be the cheapest way out of this difficulty, provided you could keep the word from the other fields where similar organizations could

be effected. I will suggest this to Mr. Colvin, and although it may not be new to you in any sense, it may appear a favorable solution of a very, grave problem. Yours very truly,

R. S. WADDELL, Agent.

Q. So you suggested also this interview with Mr. Talley in which it was endeavored to buy 51 per cent of this stock? A. No, when Mr. Colvin arrived in Cincinnati they had already thought of that proposition, it was never made. 3782

Q. They never did that, build a rival mill to sell powder down there at Terre Haute according to this first suggestion, did they? A. Well, wo looked up the sites, three of them there.

Q. You did not build any mill down there, did you? A. No, we finally gave it up.

Q. Do you recall also that you suggested that all of the Powder Associates appoint someone an agent out there for the purpose of economy to sell all the powder? A. Yes, I recollect a suggestion of that kind. 3783

Mr. Button: This is your letter, Exhibit A-152 of May 17, 1897. (Reading):

May 17, 1897.

Messrs. E. I. du Pont de Nemours & Company, Wilmington, Del.

Dear Sirs: The proposition that confronts the manufacturers of powder is one of serious import.

If the management of Indiana Powder Company, is discreet and controlled by good

business judgment the future success of the company is as fully assured and its prosperity as secure as that of any other company in the country. If it is a success for ten mines, it would be equally advantageous for as many more and I see no good cause why this could not be extended or a like organization formed for other operators.

If it be admitted that this company is well founded, is not the way open for other or-
3785 ganizations and will probable success for the four additional plants, now building or under contemplation at Birmingham, Pocahontas, Springfield and in Southwest Missouri?

Is it not imperative that owners of powder machinery that may be rendered useless by consumers buying their own mills, should take prompt and vigorous measures to meet this destructive competition?

I wrote you some time ago that it was time to sacrifice prejudices for prosperity. We
3786 are clinging to antiquated business customs that do not conform to present requirements. It is possible that these are too deep rooted that some great crisis will alone eradicate them. The powder business is loaded down with expensive methods that the public will not patiently bear.

Suppose Coal Operators in all parts of the country conclude to make their own powder and invest in machinery for that purpose. It will then be too late to meet the issue. If we sell below their cost or profit point they will buy from us; if above it they will make their own powder. The time to arrest such disaster is now when it only threatens.

The security and prosperity of the business in the past has rested on the ignorance

about the business among men are ready to invest. Manufacturers are at the mercy of the "Promoter" or "Organizer." No business offers the temptations, no field holds such inducements and promises of rich reward as the powder business. I could name twenty men of sufficient acquaintance, ability and information to organize a line of companies in all the coal fields. Why not fortify against a danger that menaces the business with total destruction. Electric 3788
Engineers are competent to furnish plans for installation of complete plants.

The waste and burdens of the powder business would enrich hundreds of men. It is the only business within my observation that is operated chiefly for the benefit of railroads and to perpetuate expensive evils that grew up in prosperous times. We are ten years behind the demands of the business world and our methods are obsolete among progressive manufacturers in other 3789
lines who make and market their products by improved methods. It is a marvel how we have escaped the attack so long.

The discontinuance of Agencies was more of a form than a fact. Several companies sustain them to-day as prior to 1891. It was a step in the right direction, but not radical enough to accomplish much good. The suggestion for two or three shipping days per week from cities is a trivial saving—merely throwing out a little ballast. Perfect security lies alone in two very radical changes:

First: In cheapening production by cutting down the general expenses attending the making of powder and not directly associated with the handling of the product.

3790 *R. S. Waddell—Cross*

Second: In reducing the cost of marketing the product to the minimum by eliminating if possible all the waste from this department. Three, or at most five, Sales Agencies would be sufficient to market all the powder and all trade and orders for all brands should be referred to such Agencies. The Mills and main offices should make powder and direct the business, but no sales should be made by them. Territorial lines would
3791 prevent competition between Sales Agencies. Instead of more than fifty travelling salesmen at average salaries of $2,000 each and as much more for travelling expenses and for "sugaring" the trade, five salesmen or more properly Adjusters (collectors) could do better work. Instead of a coal operator buying from one company until his credit is exhausted, then getting powder from other mills until he catches all in his general assignment, credit could be judged by one
3792 competent man, and if the operator did not pay in proper time he could pay cash or quit mining. The savings that could be made would enable you to supply powder at $1.00 per keg and net you a better profit than you get from $1.25 at present. It would reduce mill cost and the margin between mill cost and selling price so much that capital would shun the business. Profit and Lost Accounts could be shared as per quota of each brand sold and accounts be kept in the name of the Sales Agency, similar to the Ohio River Salt Co., which was the first Marketing Agency in this country in 1868, and rendered good service. My father-in-law was the bookkeeper and Treasurer of that Agency, and I was associated in direct-

ing it. The army of employees now in service could be reduced to a Squad. Freight, storage, cartage and other expenses could be wonderfully decreased.

Agencies (commission) could be controlled, the commissions equalized and reduced; stocks concentrated and delivery charges be lowered. Shipping or sales days could be fixed for cities in accord with the demand at different seasons of the years and 3794
without consulting railroads.

There would be no need of salesmen because contracts could be made with operators for the year at a price for Summer and Winter or subject to market fluctuations of nitrates. A commission composed of the principals could govern the sales and apportion the brands and direct as to shipping points, the quantity to be sold of each brand; then let the Agency study to disbribute this at the least freight cost. The sales could be reported weekly or monthly to the 3795
Commission.

Sugar is sold alone from New York. Oil from four or five branches, and this article is used by thousands of people, while few use powder. Other articles apparently irreconcilable are concentrated in sales departments. Economy in distribution as well as production is the necessity of the times and I believe you will ultimately come to this plan or be shut out by Combinations of Coal Operators.

It would release some worthy men and mean the survival of the fittest. No doubt every company would present its preferences and its prejudices and these would have to be sifted. Competency for the future

3796 *R. S. Waddell—Cross*

service would be the criterion. With the facilities which you possess for large, varied and cheap manufacture the ability to purchase on a large scale, and to get quicker returns with less losses than in the past, and with a diversified trade in Sporting as well as Blasting Powder, you could defy competition. You could make a good margin between the car and small lot price, for the little buyers will not be mill builders.

3797 It all would not enter the Agency, would they sell their quota to the other manufacturers at a mill price and let the Agencies sell the goods?

This is the business philosophy of the times and I predict you will be forced into it for self preservation of trade before two years have passed. The move should be made now and the details worked out at once. The forces trained to reduce expenses to the minimum per keg. Buy insurance you could bond the agencies and be secure.

3798 It would be a severe blow if you should decide on such a plan and having in view the saving of expense, reduce the car price of 800 kegs to $1.00, the 400 keg lot to $1.10, and small lots to $1.30 in Ohio, Indiana, Illinois, and proportionately in other threathened districts. The public requires and expects of manufacturers every saving they can make in office rents, salesmen, bookkeepers, agents, clerks, telegrams, freights, commissions, expenses of travelling and other burdens that the powder business now bears.

If smokeless powder complicates this question, omit it and sell that article sep-

arately until such time as a plan can be formed.

I can see the dozens of criticisms of the scheme. The loss of individuality, the appointing another to sell a company's goods, yet this is done now, and the objection to Trusts and combinations. If manufacturers can agree on a quota for each, they ought to be able to agree on a plan for cheapening the sale of all the quotas.

The main question is this: Do they read 3800
the signs of the times and recognize the emergency that is ahead of them when some good organizer will shut them out?

I do not wish to appear in the role of an alarmist, but I realize the necessity for concentrated action. People have been taught that powder costs 70 to 80 cents and it must be sold low or others will make it. Would it not be wise to cut off the excesses in the business. This cannot be done by the companies individually; it must be done 3801
collectively. Mill buying will only result disastrously. Prevention of mill building by rendering them undesirable investments is the safest and surest course to pursue. It does not alarm the Standard or Havemeyer to suggest that man will build an oil or sugar refinery. Their stocks are for sale at a price.

Please pardon this long letter for I have probably "thrashed old straw," but there seems to be urgent need of action along the lines I have discussed. Yours truly,

R. S. WADDELL."

Q. Now then, that recommendation was to form

an agency in the Middle West by someone, and have all these Powder Associates authorize that agent to sell all of the powder, was it not, Mr. Waddell? A. The plan was this: They had agreed upon a quota for each company; I understood and knew the quotas. Instead of paying out enormous costs to maintain six or seven or eight agencies in one city like Cincinnati, I recommended that the agencies be concentrated for sales. Their quotas were determined; let that agency sell it and give to the
3803 public, to the consumer, what that extra cost was. I thought that was economy at the time.

Q. That agent would be the agent of each of these companies, would he not? A. Not necessarily, they might go outside or find any other kind.

Q. I know, but that is exactly in line with your suggestion here, to appoint one man to market the product of these different companies, wasn't it, all through one selling agency out there? A. Not through one, no.

Q. Through but one selling agency and the ob-
3804 ject of that was that there would not be any competition between the various companies, that is the idea, or wasn't it? A. There would be no competition, I knew that, there was no competition.

Q. This scheme was, was it not, to work the business a little more economically, was not that the idea? A. It was to make an economy and give it to the public and that was the scheme.

Q. Was it a combination between all these companies of that character? A. If they could be combined; and instead of keeping high prices between them, to cut the prices down and give the benefit of it to the public.

And in 1897 you recognized that it was the philosophy of the business times to avoid this cut-throat competition which you had seen from 1890

to 1896, did you not? A. No, I did not have that in mind. We had discontinued—when I went to Cincinnati I had 165 agencies and I cut them down to about 10; all the powder companies in the United States discontinued these agencies.

Q. You well recognized in 1897, not only that this arrangement such as you have been complaining of here was a usual one, and one that the public was demanding for the age, was not that true? A. The public demands commodities at the very lowest price for which they can be marketed, yes. 3806

Q. You recognized at that period that the public requires and expects of manufacturers every saving to be gained in office rent, salesmen, bookkeepers, agents, clerks, telegrams, freight and so forth, and that thereby a company might put itself in a position to compete—so that no other company could compete against them simply by organization, didn't you Mr. Waddell? A. No, that was not the thought. The thought was this, that Hazard should not ship powder from Hazardville, Conn. to Nebraska or Colorado. The mill that 3807 should sell the powder in that locality should be a mill located nearby and not pay the railroads, not work for the railroads exclusively. I thought that there was economy along that line and I think so still.

Q. And also all of this clerk hire of the several organizations should be eliminated, that was your idea in 1897? A. Some of them, not all of them.

Q. Consequently when we come down to the period of 1903, you thought that it was a proper matter, would you not, for the du Pont Company to try to have concentrated its business of the companies it owned at that date for the purpose of eliminating separate clerk hire and sales departments and expenses of that kind and that the pub-

lic were demanding it, wouldn't you? A. They did not do it.

Q. Didn't they combine in one company all of their selling agencies and in one concern all of their manufacturing plants and concentrate each of their departments in 1903 in the E. I. du Pont de Nemours Powder Company as you understand it? A. Yes, they did that, they concentrated it.

Q. So far as that particular thing goes then, that is a matter which you considered in 1897 the pub-
3809 lic had demanded, didn't you? A. No, no, my proposition was very different from this.

Q. In reference to this long letter it appears from that that there were four new companies contemplated in other coal fields that you mentioned therein, one over in Birmingham, and one in the Kanawha District and one somewhere else? A. Birmingham,—I don't recollect that long letter, I think I spoke of Birmingham. That mill was built the others were just rumors of mills.

Q. They were talked about at that time, were
3810 they not? A. Rumors had come to us that they were contemplating building them.

Q. In our letter do you recollect that you stated that the electrical engineers were perfectly competent to furnish machinery for powder mills complete? A. Electric machinery, yes.

Q. Didn't that refer to the complete machinery for the powder plant? A. No, not for powder grinding machinery, wheel mills and things of that kind.

Q. Mr. Waddell, did you write this letter, April 29th, and this letter of May 22d, 1897? A. That is my signature.

Q. That is the newspaper clipping that was referred to in the letter this morning? A. I don't know what the clipping was in the other letter; that is the one that I refer to in this matter.

(Letters received in evidence and marked Defendant's Exhibits A-156 and A-157.)

Mr. Button (reading): This is "Du Pont Company, April 29th, 1897.

Dear Sirs:

I enclose you clipping from the Evening News of Indianapolis, under date of April 24th. I learned of this mention and wrote for the paper expecting to get full particulars. One of the names is spelled incorrectly; they should be: J. Smith Tally, J. W. Minshall, J. R. Rash and Joseph Martin. 3812
Minshall and Martin are the chief owners of the Ozark County Coal Company of Rosedale, Indiana. J. R. Rash is the purchasing agent and representative of the St. Bernard Coal Company of Erlington, Kentucky. Mr. Atkinson, President and owner of St. Bernard, is the one whom Mr. Rash represents.

I also enclose a clipping in regard to rates for mining coal at Terre Haute. This to indicate that the miners are organized and 3813
ready to assert their rights to cheap powder at retail, if a low retail price should be established in that vicinity.

I would recommend the moving of some of the idle machinery to Terre Haute and the supplying of powder by wagon to all the parties in that field, at a pretty low retail price. It will make a great difference to the operators who have been accustomed to making from $800 to $1,000 profit on a car of powder to their miners. That, in my estimation, is the best method for meeting competition of this kind.

Enclosure. Truly yours,

"H" R. S. Waddell, Agt."

3814 *R. S. Waddell—Cross*

Now, there are two newspaper clippings attached which I don't think are worth while to read.

Mr. Abbott: Let me see it, please.

Q. It was two years later than that practically before the du Pont and the Hazard actually did undertake to sell powder to the miners and these operators, wasn't it, Mr. Waddell? A. I don't know when they commenced; I know it was some
3815 time later.

Q. In 1899, wasn't it? A. No, I don't think it was so late as that.

Q. Well, wasn't it after the Indiana Powder Company had begun to extend and cut the price considerably in that district? A. No, I don't believe so; I think that the retailing of powder, the placing of some of the powder in the Terre Haute field is what drove the Indiana out of the foreign field.

Q. Do you know when the du Pont or Hazard Powder Company first sold powder to the miners
3816 during this operation? A. At that particular point?

Q. I mean during the Rood enterprise? A. No, I don't remember the date; it was when the Great Northern Manufacturing and Supply Company was organized.

Q. And that was organized in 1889, as you testified yesterday, was it not? A. I didn't fix the date; if I did I don't know it; I know they were organized at a later date.

Mr. Button (reading):

"Cincinnati, May 22/97.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

I have a letter from Mr. Rood dated the 20th inst., written from Fontanet. We shipped a car of powder to the Parke County Coal Company and it appears that Mr. Rood 3818
filed order for shipment before Mr. Martin wanted the powder. He has 600 kegs on hand. Mr. Rood agreed with me last week that he would fix the matter up with Mr. Martin and get him to take it; failing in this, he would dispose of it for us in the vicinity of Terre Haute. At the close of his letter he says: 'Mr. Tally, I think, thinks favorably of the project you were speaking to me about—regarding our business here. I am getting along reasonably well, but am so very tired that I can hardly speak. I 3819
will write you in a day or so again.' This refers to the suggestion that I made that the new company make a proposition to amalgamate with Hazard in the new mill. I will try to get this formulated into a definite proposition, but of course must proceed cautiously or it would defeat our plan. We are dealing with fairly bright men who are enthusiastic in the new enterprise.

I will try to see Mr. Tally next week and impress him with the fact that the powder companies are facing the necessity of very decided opposition to their enterprise. I think that I can show him that you are logically driven into a defense against their

movement, and that it will doubtless result in a mutual loss, by creating a ridiculously low retail price for powder that will be ruinous to the powder trade of coal operators for many years to come. I can show him very quickly that it would be disastrous to our business for the Indiana Powder Company to become a pronounced success. After this I will take up the suggestion made to
3821 Mr. Rood for the reason that I did not wish to see him lose all his hard earnings, and by this means I may bring about a proposition which I can either wire or submit to you by letter.

Yours truly,

R. S. Waddell, Agt."

Q. Well, now you did consider in May, 1897, that the older companies were driven into a defense against this kind of competition, didn't you, Mr. Waddell? A. I knew that they would defend and I was trying to harmonize the interests and save
3822 loss to both parties; I owed that duty to the company, and my friendship for the other people as well.

Q. And you knew that they had no particular choice in the matter; that it was necessary for them to get up some plan to meet this peculiar kind of competition, did you not? A. I knew when consumers decided to make their own powder that that removed their consumption from the market, which was a very dangerous kind of competition for the people that I was serving.

Q. Now you finally had this interview with Mr. Rood and his stockholders about buying 51 per cent of the stocks of the Indiana Powder Company, didn't you?

(Question repeated.) A. After I got authority

from the Powder Companies Mr. Colvin came to Cincinnati; he and I went over to Terre Haute and he instructed me what to say and I said it.

Q. Well, this is your report of that interview on June 4, 1897, is it not (handing paper to witness)? A. That is my letter, whatever the contents show.

(Letter received in evidence and marked Defendant's Exhibit A-158.)

Mr. Button (reading):

3824

"Cincinnati, July 4/97.

E. I. due Pont de Nemours & Company,
Wilmington, Del.

Dear Sirs:

REPORTING ON THE INDIANA POWDER COMPANY INTERVIEW. Mr. Colvin reached Cincinnati last Monday. We left at noon for Terre Haute; arriving that evening, I telephoned Mr. Rood at Fontantet (eleven miles 3825
out on the Big Four road) that I would like to see him about a car of powder that had been shipped and refused by purchaser; I asked him to come in to the city, and he invited Mr. Colvin and me to Fontanet, as he could not leave the work. He met us at the depot and we went over to the new mill site, description of which I will furnish you later. Mr. Rood said he would like to have us meet Mr. Tally, who was absent. I went to Chicago Tuesday night, returning at midnight Wednesday. Mr. Rood came in Thursday noon and said Mr. Tally would be home that evening and he would arrange an interview with Mr. Tally and Mr. Minshall.

Mr. Rood dined with Mr. Colvin and at 7.30 took us to Mr. Tally's office. There were present, Mr. Minshall, Mr. Tally, Mr. Rood, Mr. Colvin and this writer. I told Mr. Colvin that we were to interview very able business men, particularly Mr. Minshall, and that I thought it would leave the Hazard Powder Company in a better condition if he made no proposition, but left that wholly in my care. This was agreed upon.

3827 I opened the interview by stating that Mr. Rood and I were personal friends; that the relations between our office and the stockholders of the Indiana Powder Company had been close and pleasant and I deeply regretted the serious condition that this new venture placed on the powder trade, and the grave apprehension among powder men that this mill was to be built. I explained that we could see that perhaps the operators had not comprehended the full significance of

3828 their action; their chief thought had perhaps been that the coal business was not profitable and representations had no doubt been made that the powder business yielded good results. I explained that there was nothing so deceptive in trade circles as the ordinary powder prospectus, which gave the price of soda and other articles, the amount of labor—aggregating the total cost. This, I explain, was only a part of it as the balance sheet would show when the general losses and expenses were summed up. I said that powder manufacturers who held large investments regarded the subject more seriously. They apprehend that if the Indiana Powder Company is a success, other similar

ventures will be made and the powder business ruined. I explained the large investments already made in idle machinery. Mr. Minshall interrupted by saying that this was not a commercial enterprise. Both Mr. Colvin and I responded to this, expressing the thought that it was all the more serious, that if it were commercial enterprise the laws of supply and demand and of ordinary competition in trade would determine the question. 3830

I then stated that the cause of my close relations with the people and desire to avoid friction in business and not to be associated with a losing trade, and as I believed, for the good interests both of the Indiana Powder Company and the Hazard Powder Company that I had a suggestion to make which might not meet the approval either of the Hazard Powder Company or the new company; but to me it seemed equitable and feasible. I said Mr. Colvin (as Mr. Rood had no doubt informed them) contemplated the building of a mill at Terre Haute several months ago. 3831 We had been looking over the field, considering what was best and the idea occurred to me and had been suggested to Mr. Rood, that if the stock in the new mill is $50,000 that they amalgamate with the Hazard Company, who should put in an additional capital, sufficient to give them the controlling interest, which might be large or small, as could be agreed upon. I would suggest $50,000 and $51,000. I explained the relations of the Hazard Powder Company with other companies and their endeavors by a mutual understanding, to

maintain prices; that by such a combination the Indiana Powder Company could obtain the benefit of these relations and be in a condition to profit thereby. I said that so far as the Hazard Company were concerned, I would recommend to them through Mr. Colvin, that the present stockholders of the new company be permitted to build the mill in their own way, operate it as they thought best, and to take about fifty per cent. of the
3833 product of the mill, to be consumed by those stockholders, and that the Hazard Powder Company be required to take the fifty-one per cent., if necessary, to find a market for it. If such a plan were favored I would guarantee that we could place the extra output, provided of course the powder were of a merchantable quality, and such a company would make no other. Mr. Minshall replied that he would speak for the new company, and did so advisedly—that under
3834 no conditions would they consent to sell any of their stock to an outside company and that they would not under any condition enter into an arrangement with, or sell the controlling interest to a foreign corporation. He said they were a unit on this question. I asked him if he had any suggestion to make, and he said the only one would be that their mill was an assured fact; their contracts had been made; that they would be very glad to see prices maintained and to this end would be pleased to hear the views of other manufacturers and co-operate with them in the maintenance of prices; that they would use their influence for the suppression of similar projects in mill build-

ing by other people in other coal fields. Beyond this they could have no negotiations further than that in the course of two or three years, if it was found advantageous, they would no doubt be willing to join Hazard or some other company in combining their interests and making this a Great Western Powder plant. I then went over the ground carefully and specifically pointing out the advantageous and serious as- 3836
pects of the case; and there was some digression wherein we all discussed the building of parallel roads, multiplying of manufacturing interests, all tending to increase machinery beyond the requirements of legitimate trade; that it was a waste of capital and somebody would lose. Mr. Minshall responded by saying he wished to repeat clearly and with emphasis that they would not entertain a suggestion such as I had made.

Up to this point I had been affable and 3837
pleasant, avoiding friction. Mr. Minshall then said he did not see why the powder people regarded them as disturbers. I told him it was a menace to their business and capital; that the day powder manufacturers conceded the Indiana Powder Company as a success it would mean to them the multiplication of similar plants and a very early date when their own machinery would lie idle and rust and their invested capital vanish; that to my mind it meant not an aggressive fight, but self defense for the manufacturers, they could not do less than resist this assault on their business. Mr. Minshall thought they had a right to organize for the manufacture of powder for their own use,

because other coal men developed plants in competition with them and rendered their business unprofitable. This point was discussed and I explained that they were not the consumers, that they were the middlemen between the powder manufacturer and the miner; that having established plants for the manufacture of powder commensurate with the demands of the miner, we had a right to contend for a share of his trade,
3839 and I would predict that this would be done. Mr. Tally said he did not think we could afford to sell the miners as the pay was questionable. I said possibly we can do no more than sell them a part of their powder, and that perhaps would be best, but we could fix the price at which they could sell him, and that might not be so gratifying to their stockholders. Mr. Colvin explained that the powder companies had discontinued a large number of agencies so that they might not
3840 interfere with the retail trade, and by this means had benefited the operator. We spoke of the particular hardship such a reduction in price, both of carloads and small lots would be on Mr. Rood whose margin depended on the difference between mill cost and the carload price, while the coal operator might be able to get a little additional from the miners. I pressed the issue on this point with all the severity the parties would stand. They know clearly the whole situation. The interview ended by a repetition of their position and the statement made by Mr. Minshall, that they did not intend to seek, at present, a general market, nor would they now contemplate an increase

of stock, or the sale of stock to outsiders. He would not say what action would be taken in this regard in the future. Mr. Tally qualified this by saying that he thought it but fair to mention that if the Indiana Company had by reason of a strike at the mines of any of its stockholders, or for other cause, an accumulation of stock, that they would not limit themselves by saying they did not intend to sell all extra 3842
product; that they certainly would go on the market and place it. There were a number of pleasantries exchanged by all of us. We were invited to visit them and confer at any time and they promised to call on us in a friendly spirit. The interview was not satisfactory, but it was very clear and left each party with a thorough understanding of the position of the other.

This is intended to be a written confirmation of what I presume Mr. Colvin will give to you. I write it for record and future 3843
reference, thinking you might have occasion to refer to it in the future.

Yours very truly,

R. S. Waddell, Agt."

Q. Now that reflected pretty well the feeling that you and your principals had at that date, doesn't it, Mr. Waddell? A. That is a correct statement of the interview.

Q. And it was certain that unless something could be done you would drift into another period such as you had had from 1890 to 1906, wasn't it? A. No, it was a different proposition from that.

Q. Well, a worse one, wasn't it? A. Well, we were losing the trade of these men who were engaging in the powder business, the coal operators.

Q. And as you state in this letter there was plenty of machinery that the old companies had to supply all of that trade at that time, wasn't there; they had sufficient capacity, didn't they? A. No, we were just seeking the building of another mill a few months before that right at this place; that was probably an argument that I used
3845 at the time.

Q. Probably it wasn't true? A. I was using all the argument I had in favor of the companies I represented.

Q. Do you recognize here also the fact that it is pretty easy to fix the price of powder by selling a very little of it through a district at a cut price, don't you, Mr. Waddell; hasn't that always been true in your experience? A. No, not always.

Q. Well, don't you think that by putting out a very small amount of powder through a district at
3846 a cut price that that regulates the price on the whole output? A. It depends all together upon the people who have the large amounts. As you state there, the Indiana sold, I don't know what time it was, two years perhaps as you have it, and they didn't disturb the price very much.

Q. But you say, "I said possibly we can do no more than sell them a part of their powder and that perhaps would be best, if we could fix the price at which they could sell in"—— A. We could fix the price, sure.

Q. That is if you sold at a lower price to a few of the miners you knew well enough that that would fix the general price through that district, didn't you, that would make discontent between the miners? A. That these operators employed and their employers.

Q. And that was one of the things that you relied upon when you built the Buckeye Powder Company, was it not, to induce the du Ponts to make some arrangement with you? A. No.

Q. Did you write this letter? A. No, I didn't write that; it has got a rubber stamp on there with my name, but I don't know if I wrote it.

Q. Well, didn't you know that these letters were being circulated to the trade in 1907? A. I don't know what I knew at that time.

Q. Well, don't you know now that these—that 3848
this is a circular of the Buckeye Powder Company, gotten up and circulated quite largely through the middle west? A. I don't think that this was my language.

Q. Who got it up? A. I suppose some one in my office, Rob, possibly.

Q. Have you any doubt about it—isn't that another copy of it (handing paper to witness) sent to another company? A. I didn't notice who that was to (indicating).

Q. This is to the Carterville Coal Company, St. 3849
Louis. A. It appears to be a circular of some kind.

Q. Don't you know that these circulars were sent out by the Buckeye Company, Mr. Waddell? A. I don't recollect them; we sent out a great many circulars, advertising matter—all kinds—I don't recall specifically now.

Q. Do you recollect that you had a rubber stamp like that in your Buckeye office? A. No, I don't.

Q. Who was there that had authority to put your name on a circular and send it to the trade, if anybody? A. R. S. Waddell, Jr., would have authority, but he usually put his own name on.

Q. Well, now don't you know, Mr. Waddell, that you did see this circular and knew that it was being sent out? A. I have no recollection of the circular; possibly it may have been done.

Q. Was the Norris Coal Mining Company, Illinois, a concern to whom you were selling powder in 1907? A. No, I don't think we sold them—I think we sold them ten kegs and it was returned.

Q. It was a concern to whom you were trying to sell powder? A. We made efforts to sell.

Q. And the Carterville Coal Company of St. Louis, Missouri, likewise? A. I don't know whether I ever called on Carterville or not. I guess I did.

3851 Q. Then you wouldn't acknowledge that these were sent out with the authority of the company? A. They don't bear my signature or anything that I can recognize there and I have no independent recollection of them. We sent out a great mass of stuff—advertising—that I couldn't recall.

Mr. Button: I would like to have these marked for identification.

(Papers marked for identification A-159 and A-160.)

3852 "Peoria, Ill., Jan. 25, 1907.

Carterville Coal Co.,
St. Louis, Mo.

Dear Sirs:

'The Powder Trust' is on the toboggan. It is like a ship at sea in a storm without a head, a pilot or a rudder. The 'Trust' has been spanking rubber babies, the independents, for three years, and it is about exhausted. This delectable exercise costs the 'Trust' two million dollars a year and does no harm.

Buckeye only makes a little over a quarter million kegs a year, but it regulates the

price on five million kegs. The 'Trust' used to meet at New York and fix prices. Now the Coal operators, quarrymen and small country stores fix the prices for the powder trust by buying BUCKEYE. A swarm of 'Trust' salesmen follows.

If you want to see a salesman of the 'Powder Trust' 'throw a fit' show him a keg of BUCKEYE; then name your price. One of our friends just secured a cut of fifteen cents. 3854

It pays to keep a stock of Buckeye in your magazine for a squeezer. Try it. The 'Powder Trust' has no price. Its instructions to salesmen are: Accept any price the buyer tells you is necessary to beat BUCKEYE. The harvest is ripe, you are getting your share of 'Powder Trust' boodle. If not, consult us, don't contract.

Keep the play open. It is a continuous performance and yields fat returns to regular actors. 3855

Truly yours,

BUCKEYE POWDER COMPANY.
Robert S. Waddell,
President."

Q. Now it was pretty true, wasn't it, Mr. Waddell, that the powder you made during that time regulated the price on four or five million kegs of powder? A. They cut the price on four or five million to drive me out of business.

Q. That is, your small amount of powder regulated the price because you had cut the price, didn't it, Mr. Waddell? A. No, that wasn't it; you have got it all wrong.

Q. Isn't that the same thing that you said in this letter of Mr. ———— that I have just read here when you said that selling a little powder to the miners at a small price would regulate the price on the rest of it—the same situation, wasn't it? A. Oh, no, no. That was a deal between the operator and the miner; this was a deal to the general trade.

Q. I understand that well, but you think the principle would not be the same? A. No, oh, no.

3857 Q. So by this statement you think that the man whose price is the highest is the one who regulates the trade, do you? A. The man who puts detectives on the track and chases you down is the man who regulates the price in Illinois.

Mr. Button: I move that the answer be stricken out.

The Court: Yes, that may go out. Read the question.

(Question repeated.)

3858 A. It is the man that agrees with all of his associates to make a price and when my price was $1.18 per keg in Illinois, make a flat price of ninety-five cents. He is the man that regulates the price.

Q. Well, after you have repeated your whole declaration in this case, Mr. Waddell, I wish you would answer the question, which is whether or not it is not the man that makes the low price that regulates the price throughout the district? A. Yes, the Powder Trust cut the price to ninety-five cents, the Powder Trust did it.

Q. Then it is true that the Buckeye Company's powder was regulating the price on a quarter of a million kegs in 1897—it was because it was the lowest price, wasn't it? A. No; I was doing it be-

cause the Powder Trust was after me; they were fixing the price.

Q. When was this $1.18 price you were talking about that the Buckeye made? A. I think my average price during 1904 was about $1.17 or $1.18 a good part of 1904—certainly in the early part of it.

Q. Did you sell Gaunt Brothers in 1904 at $1.02—$1.02½? A. I don't recollect.

Q. Did you sell the Big Muddy Creek Company at $1.08 in 1904? A. Big Muddy. 3860

Q. Big Creek Coal Company or Central Coal & Coke Company, its predecessor? A. I don't recollect, I don't believe I sold them any in 1904; my sales were here.

Q. Can you say that you didn't do it? A. No, I won't say that I didn't do it or that I did do it; I don't recollect.

Q. What was the first sale that you ever made? A. From the Buckeye Mills? I think the first carload I ever shipped was to Brechnitz Brothers.

Q. Yes, and what was the price? A. I don't know whether it was $1.15 or $1.20. 3861

Q. It was $1.05, wasn't it? A. No, it wasn't.

Q. Wasn't it this voucher that you have heard these people examined about here and carried way through your books, which showed that it was $1.10 less some rebates? A. No.

Q. It wasn't? A. I sold Brechnitz at the start at $1.15 or $1.20.

Q. The first sale you made to Brechnitz was $1.10 and you know it, don't you, Mr. Waddell? A. No, I don't; look at the contract; I had a contract with him.

Q. That was later in May, 1904; you sold him in November, 1903, your first powder, didn't you? A. The first carload of powder went out, I think, to Brechnitz.

Q. And it was at $1.10 with some discount, wasn't it? A. No, I think not.

Q. And do you not know that he was buying from the Austin Powder Company for $1.35, didn't you? A. No, I didn't.

Q. Do you know whether he was or not? A. I don't know anything about his deal with the Austin; the books there will show what I sold Brechnitz, but it was at that price.

3863 Q. Well, I was trying to find out where your $1.18 price is? A. Oh, I sold powder as high as $1.30—$1.40.

Q. Whereabouts? A. I don't recall.

Q. Montana or Wyoming? A. No.

Q. Where did you sell any powder for $1.35 or $1.40? A. I would be glad to show you on the books; I cannot remember transactions years ago on hundreds of accounts.

Q. Possibly between now and the next adjournment possibly you can call our attention to some such sales? A. That I made at $1.35 and $1.40?

3864 Q. Yes. A. I would be glad to do it.

Q. Were those carload lots? A. I don't remember; I think I sold carload lots as high as $1.65.

Q. Well, it was at some remote place where your freight was very high, wasn't it? A. Yes, I sold some, I think I made a sale in Montana at $1.65 and the freight rate was eleven cents a keg on it.

Q. Well, you were selling to Brechnitz at $1.05 in 1904, weren't you? A. 1904—I don't recollect what our price was to Brechnitz, my contract with Brechnitz was, I think, $1.15, and we sold it to him at that. There were many cases I think, a dozen of them, where we would sell a carload and then they would send us in du Pont quotations and then we would rebate down to the quotations.

Mr. Button: I move to have that stricken out, your Honor.

Mr. Abbott: I don't think that that should be stricken out, your Honor.

(Question repeated.)

The Court: And this you say is the answer?

Mr. Button: As I caught it he was talking about their trade other than Brechnitz; if he was referring to Brechnitz, well and good. 3866

The Court: If that pertains to Brechnitz it may stand.

Mr. Button: I don't object to that; it is the rest of it.

The Court: You may ascertain whether he means Brechnitz or any one else.

Q. You stated that you didn't recollect about Brechnitz as I understand it, in the first part of your answer, Mr. Waddell? A. I recollect we made some rebates to Brechnitz possibly on more than one occasion. 3867

Q. Well, now do you recollect whether you sold Brechnitz in 1904 at $1.05 or not? A. No, I don't recollect.

Q. And that Brechnitz contract I suppose you recollect covered a large number of coal operators around Belleville, did it not? A. It didn't cover them; it covered Brechnitz and he covered all their supplies, I guess.

Q. That is, you were selling the Brechnitz Brothers all the powder, all of the requirements of those large number of coal operators, weren't you? A. I was selling him to supply his trade.

Q. And that was enough to supply all of those operators mentioned in that contract, wasn't it?

A. I didn't contract with anybody but Brechnitz; I didn't see the others or have anything to do with them.

Q. But you contracted to sell him something, didn't you? A. I contracted to supply Brechnitz whatever his requirements were and he sold the powder to the people mentioned in the contract, to a number of his customers; but whether he sold them or not, I do not know. I did not have anything to do with the customers.

3869 Q. What you sold him was this, all the black blasting powder not to exceed 25,000 kegs and all of that may be ordered by the party of the second part for delivery to himself or the following customers whose trade is hereby set apart and reserved to the party of the second part. That is what you sold him, wasn't it? A. Yes, that is the list in his contract.

Q. Consequently if it should turn out that this was a cut price to Brechnitz, it would not be to Brechnitz alone, but to these 18 or 20 coal operators? A. Oh, no, no. They were not interested in

3870 that contract.

Q. Were not they interested in Brechnitz getting powder from the Buckeye Powder Mills at 30 cents a keg less than Brechnitz, who theretofore had been a buyer from the Austin Company. A. No, Brechnitz may have charged them the same price on one powder that he did on the other.

Q. Do you know anything about that? A. I don't, no.

Q. He would be in a position to charge them 30 cents less if the facts I state are true, wouldn't he, and sell them at the same profit? A. Yes, if your statements were correct, but I doubt it.

Q. Shortly after these efforts to make some arrangement with Mr. Rood you began to get evi-

dence that he intended to extend, did you not, his business? A. I don't think he had extended his business for two or three years.

Q. Very good. But you got statements from him that he was going to do it, didn't you? A. No; the only statement we ever had was the threat that Mr. Talley made there in that interview, and that was a rather heated one.

Q. What was the threat that Mr. Talley made? A. He said that they reserved the right to sell outside of that, if they desired to do so in the future 3872 and they would not bind themselves.

Q. In this letter, will you look at it and see if Mr. Rood had not called at your office and stated, "We shall not at first have any powder to sell provided our mines are all in full operation; a little later on I think we will have a surplus and I shall try to dispose of this to two or three large buyers without causing general dissatisfaction among the powder companies." Read that letter and state whether or not you had such a conversation with Mr. Rood in July, 1897 (handing paper to witness). A. I may have had the conversation; I don't 3873 recollect ever having any conversation like this. If I stated it in that letter it is correct.

Q. I will have the letter marked then as an exhibit. Is that your signature? A. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendants' Exhibit A-161.)

Q. You have spoken in this letter of the Keeler contract and stated that was the first, he just sent you that wire?

Q. Who was it sent you to Chicago to make this contract with Mr. Keeler which you say was the

first contract made under this contract system? A. Eugene du Pont.

Q. Now isn't it true that Mr. Keeler requested such a contract to be made with him and that he was the first one to take that matter up? A. That is barely possible; I don't know how the question may have come up; he may have suggested it to me and I reported it to the company and it may have come around that way to me, I do not know.

Q. Do you recollect receiving a letter from him
3875 in May, 1897, asking that such a contract be made? A. No, I have no recollection of it.

Q. Well, you signed this letter to the du Pont Company enclosing such a letter (handing paper to witness). A. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendants' Exhibits A-162 and A-163.)

I would like to read the enclosure.

Mr. Abbott: What is this about?

Mr. Button: This is about the Keeler con-
3876 tract.

Mr. Button (reading): "Messrs. E. I. du Pont de Nemours & Co., Wilmington, Del.

Dear Sirs: I wired you message today reading:

'Keeler, Chicago, writes: "Am offered Indiana Powder stock. Arrangement appears liberal to coal men. Cannot you make me proposition on supplies? Do not desire to engage in business offered. Know nothing about it. Expect my consumption will double within two years. Answer."

Hazard.'

And now confirmed. Herewith I hand you

copy of letter from Mr. Chas. F. Keeler, President of the Diamond Block Coal Company of Brazil, Ind. This is important trade and I thought you might wish to do something with Mr. Keeler, as he does not appear anxious to engage in the powder business. Knowing of your proposed meeting in New York today, I thought you might like this information and so wired it. If advices are received from you instructing me to confer with Mr. Keeler, I will either go to Chi- 3878
cago or write him as you may deem best.

Yours very truly,

R. S. Waddell, Agt."

Mr. Keeler's letter is: "I am offered some stock in Indiana Powder Company, the stockholders of which will be all consumers of powder and practically take care of their own output. According to the statement of the gentlemen who are arranging the mat- 3879
ter, the margin on powder appears to be very liberal, especially to a coal man. Can't you make me some kind of a proposition on what powder I use that would keep me from doing a foolish thing by going into a line of business that I know nothing about?

Yours truly,

Charles F. Keeler.

I expect my consumption will be double inside the next two years."

Q. Now that was the origin of the Keeler con-

tract, wasn't it, Mr. Waddell? A. I should judge so from that letter.

Q. That is, he came to you and wanted you to get up a contract or some arrangement with him to furnish him powder so he would not have to go in with these other people? Don't you recollect that to be the situation? A. I have no recollection beyond the letters themselves.

Q. From this situation it further appears that the man who originated this contract—this con-
3881 tract system that you have mentioned, was Mr. Rood, together with his stockholders? Is not that true? A. No. No. Rood's contract with his individual stockholders was wholly different from this contract system that we are mentioning here.

Q. You and the du Pont and Hazard Company found Mr. Rood going around to this, that and the other coal operator making an exclusive contract for the purchase of all the powder for these respective mines, did you not? A. No, no, that was not the practice.

3882 Q. What was it? A. These gentlemen took stock in a manufacturing enterprise and of the amount of stock they took was based upon the amount of powder they consumed in their mines. This is wholly different from the contract system of tieing up the trade.

Q. I am talking about who originated it. The taking of these contracts that made the Hazard and the du Pont and the other companies follow around and begin to make contracts in that district with other coal men for one and two or three years, that made them do that, didn't it? A. No, they had done so at that time.

Q. And it was not Mr. Rood making these contracts with these different coal operators that caused it, was it? A. There was no similarity between the deals.

Q. Wasn't it after they had made these contracts, whatever they were? A. It was after he organized his company.

Q. And made these contracts with his stockholders, it was after that, wasn't it? A. Rood hadn't made the contracts with the stockholders, the Indiana Powder Company made them.

Q. Put it that way. It was after the Indiana Powder Company had made these contracts with its stockholders, wasn't it? A. Yes, six or eight 3884
months.

Q. Well, you went to Chicago and saw Mr. Keeler and had a protracted interview with him, did you not? A. Oh, no, not a protracted interview; we talked probably a half an hour in the forenoon.

Q. Here is what you said to Mr. Keeler, isn't it (handing paper to witness)? A. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendants' Exhibit A-164.)

3885

Mr. Button: This is dated May 21, 1897. (Reading):

"May 21, 1897.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: I wired you Thursday suggesting that I could go to Chicago if desired, and it was with a view to finding out from Mr. Keeler the Prospectus of the Indiana Powder Company in soliciting stock. I was partially successful although Mr. Keeler did not have the figures in detail. He had a memorandum which Mr. Rood had left with him showing the mill cost of powder at 57c.

per keg. This included the cost of plant aggregating, with the land, side track facilities and all other expenses to build the plant, a little less than $26,000.00 He submitted quotations on nitrate of soda, charcoal and surplus delivered at their mills and an estimate made by a practical powder man on the day labor necessary to produce 400 kegs; including a salary for Mr. Rood, the amount of which he did not remember, but thought
3887 it was $3,000.00. Added to these current daily expenses and including therewith 6% interest on the investment of $26,000.00 gave the mill cost of powder 57c. per keg. To this they proposed to add 10c. per keg for insurance, which was to be set aside as a sinking fund. Mr. Keeler thought this an exorbitant amount; $40.00 per day, or say $12,000.00 per year. I said to him: 'You have just had an object lesson where several large companies, one of them capitalized for nearly $400,000.00, after a very severe
3888 struggle, quit business because they were not able to stand the losses they sustained in meeting an 85c. price for powder. If one company of expert powder men could lose so heavily as to retire from business at 85c., how much faith can you have in a proposition from a little mill to produce powder at 57c.?' He did not defend very strongly on this question, but said that he would be willing to concede that it would cost 80c. to make and deliver them powder, but this price would be ample to cover all contingencies. He told me that Mr. Tally and two or three other bright business men, whom he considered thoroughly competent

to pass on the question, claimed that there was no doubt of their producing powder below 70c. per keg, and if the construction of the mills was properly governed, this price would meet all their losses. I asked him if he had attended any of their meetings. He replied that he had, and I drew out the fact that they were holding meetings in February at which Mr. Rood was present. I said: 'Mr. Rood is to be one-fourth owner in the 3890
mill. He has, up to the first day of May, been receiving cash for his traveling expenses, and a salary that covered all of his time, which was to be honorably bestowed in forwarding the best interests of his employers, and that during this time he had been using their money for travelling and hotel bills, and had given his services towards the building of a mill, pledging his ability to transfer the trade of his employers to the rival enterprise.' I said: 'As a business man you can judge of the honesty and 3891
fair dealing of such work, and I ask how much money would you like to entrust to a man who proposes to give you the benefit of such action?' He said: 'That is the one point that is weakest in this whole argument. It destroyed my faith in Rood, and led me to believe that as a business man, I owed it to you and to Messrs. du Pont to place this matter squarely before them.'

He said: 'The situation is practically this: I am in the coal business as a competitor of Tally and associates, who are engaging in this powder enterprise for the purpose of reducing the cost of their coal. From a business standpoint I cannot afford to give them

3892 *R. S. Waddell—Cross*

this advantage, nor do I wish to become a manufacturer.' I said I had no offers to make better than $1.25 per keg in carloads, and asked if he had anything to suggest. He told me that he would concede a cost price at the mills of 80c. per keg; that if we contracted powder to him there need be no cost for traveling expenses not salary of a salesman in looking after his business, provided he would share profits with him. He
3893 said: 'I think the manufacturer should have a large share of the profits on account of having carried the investment. Under the circumstances I think I should be entitled to 40% of the profits whatever they may be above the mill cost, say 80c.' I told him that he was entirely in error on this question, but I would hear his offer. He then gave me the proposition which I wired in substance as follows:

'Party estimates delivery cost eighty cents,
3894 leaving present margin forty-five cents. Proposes contract five years giving him forty per cent. of difference between eighty cents and car price. Would net now one dollar seven. Should eighty cents car price be reached, would then be optional with you to continue or cancel. Has five thousand stock. Indiana estimates will cost, including managers salary fifty-seven cents. Product contracted means no cost for selling. Chicago party claims investors certain of all margin above eighty and concedes sixty per cent. of his estimated profit to party furnishing capital. Wire you alone.'

Later I had your telegram reading:

'Tell Keeler his proposition will have con-

sideration. Think we can take care of him in some way. We can definitely instruct in about week or ten days.'

Keeler had gone home, but I visited his house and gave him your message, receiving his promise to wait until June 2nd. His option on the $5,000.00 stock in the Indiana Mills expires June 3rd, and he says there are a dozen men who would like to get it or more, if there was an additional stock to be issued. He told me the operators were very 3896
confident of success and from appearances he did not know why they should fail.

I asked him if Mr. Rood had made any statement to him of the amount of business he could control outside of the stockholders. He said yes, that Mr. Rood had showed him figures of a large amount of powder that he had sold and had told him that he could transfer every dollar of the trade to the new mill, if it were desired. Mr. Keeler said: 'Of course, I knew this was all pure bun- 3897
combe.' I told him Mr. Rood had an exalted idea of his own powers; that I remembered his having sent some little books containing his sales to Mr. Wheeler, President of the Hazard Company, who forwarded them to me with a complimentary letter. I footed the number of kegs that Mr. Rood reported he had sold and which were itemized in the books and it aggregated 38,000 kegs in excess of all that had been reported sold by the Cincinnati office for the year, and that included not only our direct sales, but all that had been made by sub-agents, and there were about sixty-five of these Agencies, several of whom disposed of carloads. I told

him that Mr. Rood travelled all week under our orders where to go to get orders, as outlined by the correspondence of the preceding week and by our knowledge of the trade, and that when he returned to the office on Monday he copied all of the orders we had received during the week from the order books, and made memorandum of all orders that had come to us through the mails. In this
3899 way he got not only all that we sold, but about all that the correspondence disclosed, and this included all orders that were countermanded, delayed or that were turned down by us because of poor credit of the buyer. It was his custom when anyone in our employ made a new customer (and I have personally made dozens of them), to visit the man in the course of his next trip and ask him if he had any objection to giving him his next order, and if the party assented,
3900 he considered him his customer, put his name down on the book not only for future business but for his original order. I mention this to show Mr. Rood's methods, now that he is attempting to influence men by showing his superior standing. He told Mr. Keeler that the Indiana Powder Mills would ultimately take 150,000 kegs from du Pont and 120,000 kegs from Hazard annually.

Mr. Keeler in his relations with me had been fair and honorable. I do not think he would stand strictly on the proposition he has made and believe he would accede to a counter-proposition somewhat similar to the one he has made. He was very pleasant and discussed the question solely from the standpoint of a coal operator who desires to pro-

tect himself from competition by taking advantage of a situation that has been presented to him and on which he holds an option. He expressed a preference to stay out of the powder business and is willing to do so either on a private deal or open contract, just as you may wish. I asked him how he thought the other interested parties would consider such a plan, and he said they seemed so enthusiastic and so thoroughly committed to the new mill that he did not 3902
think any arrangement would meet their approval, although there were two or three who might be open to such a deal. He spoke of Mr. Dugger, Mr. Zimmerman and Mr. Zeller, as three who would probably be ready to make a deal, and stay out of the new mill. Mr. Keeler asked me to see him or let him know the result, prior to June 2d, and he would delay that long.

I asked Mr. Keeler what the result would be if the retail price were placed below the 3903
present carload price? He said it would undoubtedly cause dissatisfaction among the miners, and he thought the price by the operators would have to be brought down to that figure. I told him it had been the policy of our Companies to stand by the operator in all labor controversies and that we would have been glad to preserve the nice profits the operator has made in the past, but that I feared action of this kind by the operators would bring upon them defensive action by the Powder Manufacturers that would equalize the keg and car price and perhaps lower both. When coal operators entered into a conspiracy with our salesmen to con-

fiscate trade of his Principals it would naturally be expected that the Principals would defend the endeavor to have the old brand of powder burned in the mines. The operators had counted themselves out as a 'buyer.' The question only remained to be settled, Could they count out the miner as a 'buyer'? and that seemed to me the only thing left for the powder manufacturer who has invested large sums of money in a legitimate
3905 business. Mr. Keeler said: 'Your proposition is a strong one and is entitled to respect.' I argued all the questions involved in a temperate manner and they were pleasantly accepted. I shall be subject to your direction if I can be of any further service in this matter.

Yours very truly,

R. S. Waddell, Agt."

3906 Q. Now that reflects your views at that time, doesn't it, Mr. Waddell? A. That reflects the views that were presented to the du Pont Company.

Q. Well, they were your views also, weren't they? A. Yes; I think that the operators should not have gone into a mill; that they were getting outside of their legitimate business.

Q. Now here is a letter—did you sell some powder to the Central Coal and Mining Company at Kewanee, Illinois? A. Central Coal & Mining?

Q. Of whom Mr. C. J. Pierce was the Secretary? A. I think I did; I can't recall.

Q. Is that your letter to him, is that your signature?

(Handing paper to witness.)

A. That is written by Rob. That is my name. Dictated by "R. S. W.," signed by Rob.

Q. It is dictated by you? A. Yes, sir.

(Same received in evidence and marked Defendants' Exhibit A-165.)

Mr. Button: This is on the letterhead of the Buckeye Powder Company:

Peoria, Illinois, August 26, 1903.

3908

Mr. C. I. Pierce, Secretary,
Central Coal & Mining Co.,
Kewanee, Illinois.

Dear Sir: Your esteemed favor 25th inst. received. It caused me much regret to have missed you at Kewanee.

Although our mills will not go into steady operation before September 10th, or possibly 15th, our product is being rapidly contracted, conditioned of course on our producing a good quality of powder. It will be necessary for us to make a good powder, as good as the best on the market, to establish a reputation for our brand. We have the mills, the experienced help and the material, and will guarantee this part of it. As we are favorably situated in relation to your mines, we will be pleased to do business with you. Messrs. duPont and the L. & R. Powder Company offered to purchase our entire output, thus expressing their confidence in our ability to turn out a good powder. We are following the list prices made by the Trust in quoting $1.35 per keg. We also have adopted their form of contract, which this writer originated, and it has been approved

3909

by coal operators throughout the country. I am sorry that an enforced trip precludes me from visiting Kewanee again.

We herewith enclose contracts in duplicate which we have signed. If they meet with your approval, kindly affix signature and return one copy to us. We based the rebate on your location being near our mills and on a favorable freight rate. With this rebate of 17½ cents per keg, it makes it net
3911 to you at $1.17½ per keg, delivered at your railroad station at Bryant, Illinois, and covers all the mines you own or may acquire in western Illinois. Please fill in the time that best suits you, one, two or three years.

Kindly regard our quotation as confidential, as it is beyond the limit. Our terms are sixty days, or two per cent for cash in ten days from date of invoice. We are in correspondence now with parties who would take a major part of our output, and it will
3912 be necessary for us to know in relation to this at your earliest convenience.

Very truly yours,
R. S. WADDELL,
Pres."

Q. What did you mean by saying your price was beyond the limit, $1.17½, Mr. Waddell? A. I don't say that. I say the terms that I gave him there, one, two or three years is beyond the limit.

Q. "Kindly regard our quotation as confidential, as it is beyond the limit." You referred to the term of the contract as a quotation? A. The whole quotation.

Q. What was it beyond the limit, the term of three years or the price? A. I don't know what I

referred to; I presume the whole proposition was beyond the limit.

Q. But you enclosed a printed form of contract that is the same as that used by the duPont Company, didn't you? A. We followed the Trust prices.

Q. Is it attached here? A. Yes, same thing.

Q. But you didn't get the business did you, at that time? A. Yes, I got the contract, but it was cancelled because I would not meet the price, the price of duPont.

3914

Q. And you found this customer to be one of those on Mr. Moxham's list which you had in your pocket which showed it was being furnished not at $1.17½ at that time, didn't you, but $1.20 at that time, do you recall that? A. I don't know anything about it. This mine that I spoke of was just opened at Bryant, Illinois.

Q. And a little bit later you sold him some powder, April, 1905, being the first powder you sold, and was at $1.08? A. 1905? What is the date?

Q. April 7, 1905. A. What was the date of the letter? It was long before that.

3915

Q. This letter is dated August 26, 1903. The order you sold on December 1, 1903, to the Central Mining Company, selling powder at $1.10. A. I don't recall.

Q. December 1, 1903. A. I know they notified me that that contract that they had made with me at $1.17½ was entirely too high; they had a better price.

Q. Did they make a contract with you at $1.17½? A. Yes.

Q. Is that among the contracts here? A. No. they never kept it, we never furnished any powder on it; they signed it; I would not meet the price.

Q. They were under a contract, weren't they, at that time with one of the Associated Companies?

A. I don't think they were, I don't think Mr. Pierce would make two contracts.

Q. Would you between now and the next session look up your books and see if you did not sell the Central Mining Company—whatever it is—Central Coal & Mining Company, some powder on December 1, 1903, at $1.10? A. I don't know whether I did or not.

Q. Won't you look it up? A. I will look it up.

3917 Q. When we adjourned, Mr. Waddell, we had just read this letter of yours to Mr. Pierce, who was the secretary of the Central Coal & Mining Company, Kewanee, Illinois. Together with the enclosure, being a printed contract which you requested that company to sign. This defendants' exhibit A-167 is the printed form of contract which you sent to Mr. Pierce, Mr. Waddell (handing paper to witness)? A. That seems to be written in lead pencil; I don't know what this is; we had blanks of that kind, I don't know whether these are the ones or not. He would not make it out in lead

3918 pencil surely.

Q. Well, is that the form of contract which you adopted and had printed at that time? A. When we started, we were following the form of the du-Pont Company.

Q. And whether that is the particular one you enclosed to Mr. Pierce, or which you referred to in this letter A-165, the contract you did enclose would be on that printed form? A. It would be in that form, but I think that was made out and returned to me in ink.

Q. Now, I show you this, and I wish you would state, Mr. Waddell, where the original is which you say was returned to you. A. I would not swear positively that it was returned. That is my impression. We never furnished any powder on the

contract, it was considered void because the price went down, and I did not follow it.

Q. You testified in that regard just before we adjourned, that you made a contract and it was cancelled because you could not meet the price of the duPont Company. What was the price of the duPont Company which you would not meet? A. Well, I don't recollect the individual prices of years ago, I could not give you the figures. The price went down and they gave me the opportunity to meet it, but I did not do so. 3920

Q. About what time was it that you cancelled that contract on account of the lower price by the duPont Company? A. I don't think—my recollection is that the contract was not formally cancelled, it just died; I did not furnish them powder under it; they did not order; they notified me that the price was lower and they did not order any powder. I understood the contract to be for such powder as they ordered from time to time would be—if they did not order any there would not be any delivered.

Q. That was what I was trying to get at. You say there was a notification to you, that the price had gotten to be lower on account of the duPont price. Can you fix the date approximately? A. Well, I went over to Kewanee personally. 3921

Q. When? A. And saw Mr. Pierce first.

Q. When was that? A. Well, that was very soon after we started.

Q. Yes? A. Or just before we started.

Q. Very good. A. It was along, I should think, in the fall of 1903 and then there is a possibility that I might have left in that memorandum with them there and that it was to be executed.

Q. This contract. A. I could not have left him that paper at that time, I don't recall definitely, but I should judge that is all there was on it.

Q. State what you do recollect, Mr. Waddell. A. Then later I called him by long distance 'phone—Mr. Pierce called me up and said he was ready to make the contract. Then I forwarded the contracts made out with that letter which you had.

Q. That is on August 26, 1903?. A. If that is the date.

Q. Very good. Then you got your contracts back, and then later—— A. I did not make any powder then until about October 20th, the first I
3923 made.

Q. Until the 20th. A. No, and in the meantime—in the meantime, the contract died.

Q. Then the cancellation was really before October when you furnished any powder, was it not? A. It seems to me that I furnished a few kegs for a trial; but I am not sure of that; the books will show what it is, but that is my impression now.

Q. Your books show that you furnished 100 kegs on December, 1903, at $1.10. Do you recollect that? A. I don't recall it, the amount or the price.
3924 That is the impression that I have, that I have furnished him a trial lot of powder.

Q. Now, what I am trying to get at is: When these lower prices by the duPont Company came in. The approximate date? A. If you could tell the price of the contract, I could tell you pretty nearly when it came in.

Q. Your letter says: "Your rebate is 17½ cents, which would make your contract price $1.17½." A. Then I furnished him at $1.10, is that what the books show?

Q. Yes. A. I suppose it was in between because of something which I did.

Q. Then you did originate some contract that was used by the duPont Company, didn't you? A. No, I don't think I originated it.

Q. Then your statement in this letter to Mr. Pierce is not correct in which you say:

Q. "We also have adopted their form of contract which this writer originated, and it has been approved by coal operators throughout the country." Is that true? A. I assisted in originating it, yes; I was called in to New York to explain and to go over the contract.

Q. I know, but before that, you had actually originated it, hadn't you? A. No, I did not; there was a committee appointed that had a number of 3926
contracts, and I assisted in originating that contract, that form.

Q. And it was approved by the coal operators throughout the country, was it not? A. I think so; they would not sign it if it was not.

Q. And consequently it was an arrangement for the sale of powder which they found satisfactory, was it not, Mr. Waddell? A. Sometimes; sometimes they did not.

Q. Well, they thought it so throughout the country, did they not, as you state in this letter? A. 3927
Well, throughout the Western states, but not in the East.

Q. So by "throughout the country" you mean simply the Western states? A. Yes.

Q. Is that what you desire to state you mean? A. They went out as far as Montana, I think that they went and made contracts out there.

Q. Then this statement is not entirely true, "We also have adopted their form of contract which this writer originated and it has been approved by coal operators throughout the country." Is it or isn't it? A. Yes, it is true. You can put your own technical interpretation on it and twist it around and make it untrue.

Q. It strikes me as very plain; I have not en-

deavored to twist around at all. It seems to me that you are the one that is doing that. You say "throughout the country" means throughout the Western States, is that what you say? A. I might have given geographical boundaries, but I did not do so; I used the general term, "throughout the country."

Q. And you say "which this writer originated?" means that you simply assisted in looking over some forms in New York in connection with the
3929 rest of the gentlemen, is that what you mean by that language, "which this writer originated"? A. No, I was called to New York to give my judgment in the matter.

Q. Won't you just answer the question: Is that what you mean by that phrase, "which this writer originated," you simply mean they were showing you some contracts which they had arranged, and asked our advice on. A. I had a half dozen forms and out of the half dozen forms this contract was originated.

3930 Q. Answer the question, will you please?"

Q. The question is, Is that what you mean by this phrase, that you, the writer, originated it in fact, or that you had not anything to do with it and you were simply asked for your advice? A. As to what I mean by this phrase is I took part in the preparation of it, yes.

Q. Now you also adopted the rebate system, did you not, Mr. Waddell? A. Followed exactly the lines of the duPont Company.

Q. And also you adopted the proposition about your quotations being confidential, did you not?" A. I think so, yes.

Q. You state here: "Kindly consider our quotation as confidential, as it is beyond the limit." Now you also state: "We are in correspondence now

with parties who would take a major part of our output and it will be necessary for us to know in relation to this at your earliest convenience." Who were the parties who were willing to take the major part of your output on August 26th, 1903, Mr. Waddell? A. We were in correspondence with four or five people. I had——

Q. Just who were they; what were their names? A. Well, the Sunday Creek Coal Company—one of the head men of the company gave me assurances—— 3932

Q. I didn't ask you what they said; I have asked you what their names were, Mr. Waddell? A. Well, the Saginaw Coal Company, Mr. ————, an old friend of mine, who was the general manager; the Sunday Creek Coal Company used about 100,000 kegs a year, the Saginaw Coal Company about 60,000 kegs a year. That is, the consolidation. Then with the Consolidated Coal Company of St. Louis, I had had conferences with them in regard to it.

Q. Now you state further in this letter: "Messrs. 3933
duPont and the L. & R. Powder Company offered to purchase our entire output, thus expressing their confidence in our ability to turn out a good powder"? A. Yes; that is correct.

Q. Is that entirely correct, Mr. Waddell? A. I think so; I had their written proposition.

Q. Very good; but that was under the circumstances in which they were to be connected with your company and were to exercise some influence over its operations and the powder it manufactured; is not that true? A. No.

Q. Oh, I thought you—— A. I owned 51% of it.

Q. You had? A. I was to own 51% of it.

Q. That is, you were to control it? A. Yes, that is right.

3934 *R. S. Waddell—Cross*

Q. I thought you had been maintaining here some time ago that that was the trouble, that they insisted on controlling it? A. That is what we split on.

Q. That was the principal thing you split on? A. No, no, that was not the principal, that was one of the items.

Q. One of them. But nevertheless they were to have representation on your Board of Directors, were they not? A. Two out of five, yes.

3935 Q. And they were to take your contracts themselves, the Laflin and Rand was to, was it not? A. I was to make a contract with the duPont Company and sell my output to the Laflin & Rand.

Q. Yes; then you think that is entirely equivalent to this statement: That the duPonts and the Laflin & Rand Powder Company offered to purchase our entire output, thus expressing their confidence in our ability to turn out a good powder? A. Yes.

Q. That is applying it to the Buckeye Powder
3936 Company, a concern which the duPonts had nothing whatever to do with at that time; you think that is perfectly true, do you, this statement? A. The du Ponts did have something to do with them; they owned them at that time?

Q. August, 1903? A. Owned Laflin & Rand.

Q. No, no—— A. Certainly, they owned—September, 1903.

Q. You misunderstand my question, Mr. Waddell; I say, at this time instead of having representation on your board as had been contemplated, instead of having at least 49% of the stock of the company, you had organized the Buckeye Company with which they weren't connected at all at this time, isn't that true? A. Yes.

Q. And you still think that that statement is ab-

solutely fair and correct, do you? A. I think so, yes; they had previously offered to purchase that.

Q. And as a matter of fact they never did offer to purchase the entire output of your mill under conditions that you would accept, did they? A. Yes, I would have accepted the conditions of the purchase, all right, but I wouldn't accept the conditions of putting my stock up in the Wilmington Trust Company, which the duPonts owned.

Q. Well, that was part of the scheme, wasn't it? 3938
A. Well, that was a separate item. I might have sold without putting up the stock.

Q. Now, I show you your invoice No. 16, in this book which I understand has been introduced in evidence—No. 1, it is marked for identification, P 67-W, and ask you if you didn't sell the Central Coal & Mining Company a hundred kegs of powder at $1.10 a keg on December 1, 1903? (Handing witness book.) A. (After examination) This is our bill—Central Coal & Mining Company, Kewanee, Illinois.

Q. And you so sold them, did you? A. I did; it 3939
was the trial lot that I referred to.

Q. At that time, you knew the duPont price was much higher, didn't you? A. No; I didn't know the duPont price.

Q. Had no knowledge about it? A. Didn't know the duPont price.

Q. Now, after the organization of the Indiana Powder Company, during the year '98 they extended their business very considerably, did they not, Mr. Waddell, the first year?

(Question repeated.)

A. Not according to my recollection. I think the first year they didn't, but I am not sure as to that.

3940 *R. S. Waddell—Cross*

Q. Well, did you write these two letters, one in February and one in December of 1898 (handing papers to witness)? A. Those are my signatures, yes.

(Letters received in evidence and marked Exhibit A-168 and A-169.)

Mr. Button (reading): A-169:

3941 "Cincinnati, Feb. 8/98.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

Mr. F. J. Waddell and Mr. M. L. Sternberger, of Jackson, Ohio, at the Grand Hotel last evening, and Mr. Sternberger made inquiry for this writer; said he wanted me to visit Jackson and spend Sunday with him;
3742 that there was a matter of considerable importance and he would be pleased to send Railroad transportation to me. In the course of the conversation Mr. Sternberger bragged considerably about the new mill; said it came fully up to their expectations and that Mr. Rood was shipping him 3,000 kegs per month, and the powder was giving satisfaction. F. J. said to him: 'You will probably want to build another mill?' Mr. Sternberger replied: 'Yes, that is what I want to see your brother about.' He further stated that he was the one who organized the Indiana Powder Co., got the capital together and that the Mill would have been

located in Ohio, only that they found the Ohio laws compelled them to place the Mills two miles from the public highway, and they could not find such a location near Jackson.

I think it will pay me to visit Jackson and hold a conference with Mr. Sternberger, who believes I would be open to such an arrangement as he made with Mr. Rood. He either expects to build a new mill and assemble other capital for the purpose, or he wants to unload his interest in the Indiana 3944
Powder Co. Sternberger is an exceedingly bright fellow; very much puffed up, but exerts a strong influence over other local operators. After seeing him I may have something additional to say to you. For the purpose of drawing him out, I will apparently fall in with his plans to erect a new Mill and if such a scheme is under way, and you wish representation, will leave the way open for you to get it.

Yours very truly, 3945

R. S. Waddell, Agt."

Well, now, Mr. Waddell, isn't it true that about the date of this letter, February, 1898, that the business of that company was considerably extending through that country? A. No, Sternberger was brave about it; there was nothing in it—all wind work.

Q. You think they didn't extend their business then? A. Not at that time, no; I didn't go to Jackson.

Q. Don't you recollect that they did during the year 1898 take on many other coal operators and

sell powder outside of the coal operators who were stockholders? A. No, I don't recollect that. My recollection of the thing—it is all pretty big memory—as to what a man did with his business; I just—the impression that I have of that business is that they continued pretty moderately supplying their own stockholders. Sternberger was one of them for some time. I think Sternberger sold to his friend Williard up at Superior a little powder, but it didn't amount to much, for a year or so, and
3947 then they spread out pretty largely.

Mr. Button (reading): A. 168:

"Cincinnati, Dec. 14/95.

The Hazard Powder Co.,
New York City.

Dear Sirs:

3948 We have your favor 12th inst., advising that Morley Bros. about three months ago purchased a carload of Blasting Powder from Indiana Powder Company at $1.25 per keg, delivered; that they have recently ordered another car but there is delay in getting it.

Mr. Talley made a social call at our office yesterday and in reply to inquiries stated they were making about 600 kegs per day and are now about 11,000 kegs behind on orders. Mr. Rood was in the City last week and called on us. He stated their average for Nov. was 547 kegs per day. They have delivered this year about 70,000 kegs by wagon at a cost of less than 2½ cents per keg. He is feeling very well over their busi-

ness and stated that he had purchased 4,000 kegs from the Equitable Powder Mills to fill orders that he was not able to meet from their mills. He did not mention the price. I was absent when he called, but get these figures from the office force. They have been doing a very nice business in Southern Illinois.

Truly yours,
R. S. Waddell, Agt."

3950

Q. Well, here in December, 1898, they had extended considerably, hadn't they? A. About a year after they were built——

Q. Well—— A. But they hadn't extended very much then.

Q. Southern Illinois, did he have any stockholders in Southern Illinois that you remember? A. Peabody was associated with him; he was the Southern Illinois end of it; I don't know just what the stockholders there were doing.

Q. At any rate, they were doing a very nice business in Southern Illinois at this time, were they 3951
not, December, 1898? A. Yes, but they could not supply their own people.

Q. Now in January, 1899, did you write this letter (handing paper to witness)? A. That is my signature.

(Letter is offered in evidence and marked Exhibit A-170.)

Mr. Button (reading): A. 170:

"Cincinnati, Jan. 25th/99.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

In regard to the method of fighting the

Indiana Powder Company. There are six places that I would attack. Three of these from a depot of supplies located midway between Brazil and Rosedale, Indiana. At this point I would locate a large magazine and either hire or buy a team to supply the mines of Mr. Tally at Fontanet and Carbon, where they consume about 25,000 kegs per year; Rosedale, where are located the mines of the Parke County Coal Co., and Otter
3953 Creek Coal Co.; and Brazil, in the neighborhood of which are located the mines of Zeller & McClellan and other stockholders of Rood's mill.

A first class man could be hired to sell powder direct to the miners, circulars could be issued and distributed, through the district, and I would recommend a retail price of 75c. per keg. Circulars could be printed announcing that the wagon would call at Rosedale and Mecca on Monday; Eureka
3954 and Fontanet on Tuesday; Carbon and other points on Wednesday; and the latter part of the week at Brazil mines. The longest drive would not exceed 20 miles as a round trip. Small portable magazines holding 200 or 300 kegs should be stationed at each of these points under the care of some merchant or employee. Sales to be made for cash only. We possibly would not sell a very great deal of powder, but it would fix the price for Mr. Talley, Joe Martin and others.

The other three points for attack would be the mines of the Superior Coal Co., near Jackson, Ohio; David Ingle, at Ayreshire, Indiana; and the St. Bernard Coal Co. at Erlington, Ky. The Jackson and Erlington

trade would be easily attacked. The assault on the Sternberger trade at Jackson should be carefully planned so as not to injure other Powder companies in that locality. This, however, can be readily managed. I would not consider a proposition to attack Mr. Talley without hitting Sternberger. The latter is a great promoter and is really the moving spirit in the growth and ambitions of the Indiana Powder Co. He enjoys a very handsome profit on powder and I believe can be made to suffer as much as any of them, except, perhaps, Mr. Talley. 3956

Whoever undertakes this work should manage it judiciously and I believe it will create a prejudice in the minds of other coal operators against Mr. Talley because of his action in going outside a legitimate coal business to antagonize powder manufacturers.

There is a possibility that Peabody of Illinois may also need attention and perhaps a little work with the Halliday mines or what is known as Big Muddy in Southern Illinois would not be amiss. I was in the employ of Halliday Bros. for a year and understand their weaknesses very well. 3957

The sooner you enter this field and execute the work the lighter the burden will be. It will serve two purposes: one, to regain your trade, the other as a discipline to coal operators to keep within the just limit of their business. I believe it will not cost as much as you anticipate, to accomplish all the results desired, and because the sales would not be very heavy I would recommend that the price be made low. The coal operator has three or four questions to decide:

1319

3958 *R. S. Waddell—Cross*

1st. Will he permit his miners to buy the other powder and continue work at his mines? If not, our price should be very low as the miner will be compelled and will consent to pay the operator a reasonable profit above our asking price.

2nd. If the operator decides to let the miners buy from us, it necessitates closing of their mill or forcing them into the foreign markets with the implied threat following it, that purchases of that brand will result in the destruction of profits for the operator who handles it.

3959

3rd. If it is decided by the operator to permit his miner to purchase the older brands, then he must furnish him the cash to do this. No accounts should be opened with any individual, either directly or through agents stationed at the different points. It should be purely a cash transaction.

I would recommend a severely low price at the start and not a gradual reduction. It would have the appearance of retaliation and be a severer discipline than if the reduction were gradual. Mr. Rood estimates his powder cost his stockholders less than 70c. I would take this into consideration. He may go into the retailing of powder by wagons in competition and the operator decide to discontinue the handling, leaving his miner to depend on the antagonized powder companies, with his preference in collections given to Mr. Rood. In that event it would be the outside companies against the Indiana, and the fight should be a short and sharp one.

3960

My reason for recommending a wagon ar-

rangement is that it will prevent the spread of retail prices to other mines and there will be no difficulty in keeping the fight within the proper limits of the stockholders of the Indiana Powder Co. I imagine after these six points are covered, there will be some small stockholders whose holding will be for sale before the trouble reaches them.

Yours very truly,

3962

R. S. Waddell, Agt."

Q. That was in January, 1899. Therefore up to that time there had been no attempt to sell powder direct to the miners, had there, Mr. Waddell? A. No.

Q. And this was your recommendation at that date, was it not? A. That was my recommendation and I would make the same today.

Q. And this was a recommendation that they sell to these miners at seventy-five cents a keg; did the du Pont Company ever adopt that recommendation? A. No. 3963

Q. The most they ever did was later to organize the Great Northern Supply Company and sell to the miners at $1.25 a keg, was it not? A. Yes, but they extended it beyond what they should have done.

Q. Oh! A. I was opposing there——

Q. Well, now just answer the question, Mr. Waddell; we will get to the Great Northern period later, A. All right.

Q. And this was the same suggestion that you had made three days after Mr. Rood resigned, was it not, a year and a half before? A. Same suggestion—the same one that the powder companies have used in Ohio.

3964 *R. S. Waddell—Cross*

Q. Ohio? A. Yes, and it was not new.

Q. Now, you also recognized the fact in this letter, do you not, Mr. Waddell, that the sale of a small amount of powder will fix the price for the rest of it when you say: We possibly would not sell a very great deal of powder, but it would fix the price for Mr. Talley, J. Martin and others? A. Yes, I think the miners would stay with the operators for the major part of it.

3965 Q. Will you not admit, Mr. Waddell, that the powder market is such that the consumers are so situated that if any one comes along and sells them powder in a certain district at a cut price that that demoralizes that district and that the rest of them have to come down, isn't that true? A. No, not always.

Q. It is not; did you write this letter in February, 1899, Mr. Waddell (handing paper to witness)? A. That is my signature.

(Paper received in evidence and marked
3966 Exhibit A-171.)

Q. Before reading this I will ask you if it is not a fact, Mr. Waddell, that the Great Northern Supply Company itself after it began selling powder at $1.25 never amounted to anything in particular in that district, isn't that true? A. No, they did amount to a good deal.

Q. Isn't it true that they never bothered Rood particularly or hurt his business particularly? A. Never bothered him! Why certainly not. They bothered him all the time.

Q. You think they hurt his business particularly? A. Yes, I do.

Mr. Button (reading A-171):

"Cincinnati, Feb. 27/99.

The Hazard Powder Co.,
New York City.

Dear Sirs:

Mr. Cannon, the Hazard agent at Charleston, West Va., visited our office today and reports that he met Mr. Rood and Mr. Talley at the Grand Hotel, this city. Mr. Rood 3968
told Mr. Cannon that they were just putting in the machinery to a little more than double their plant; that in a few weeks they will have a capacity to turn out 1,400 kegs per day and that he expected to market a good share on Kanawha and New River; that they have a freight rate to these points of 35 cents per cwt. and as their mills are located on the Big Four R. R., which is under the same management as the C. & O., that they will have special advantages for
the West Va. trade. Mr. Rood and Mr. 3969
Talley were here to see about machinery and left at one o'clock today. Mr. Rood told Mr. Cannon he would like to use his services for the sale of their product to the Kanawha and New River trade.

Truly yours,

R. S. Waddell, Agt."

Q. Did they enlarge their plant? A. What time is that?

Q. February, 1899. A. '99, February—yes, they did enlarge the plant.

Q. And then they went to selling the West Vir-

3970 *R. S. Waddell—Cross*

ginia trade on the Kanawha and New River, didn't they? A. It took some six or eight months to enlarge; that made about two years; that is my recollection, about two years after they started.

Q. Yes. A. Yes, when they retailed powder there they drove Rood out and he hunted other markets.

Mr. Button: I move to strike that answer out.

The Court: Yes, it is not responsive.

3971

Q. Now, did you write this letter in September, 1899, to the du Pont Company from Mr. Keeler, enclosing a letter from Mr. Keeler—or a copy of a letter from Mr. Keeler and a copy of your reply (handing papers to witness)? A. That is my signature.

(Papers offered in evidence and marked Exhibits A-172, A-173 and A-174.)

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Mr. Button: Reading A-172:

3972

"Cincinnati, Sept. 26th/99.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

Herewith I hand you copy of letter from Mr. Chas. F. Keeler of Chicago, to which he attaches the original contract we made with him under date of June 2nd, 1897. I have made reply to Mr. Keeler as per enclosed carbon copy; have also wired you message reading:

'Keeler writes returning contract canceled. In self preservation will provide

against further reduction by us while opportunity is open to him.'
and now confirm. If there is anything further you desire us to say to Mr. Keeler, we shall be pleased to have your advises and will act accordingly.

Yours very truly,
Enclosure. R. S. Waddell, Agt."

Q. Mr. Keeler's letter and your reply, you say 3974
you do not know whether those are the ones or not? A. I should think they were, if I attached them they are correct.

Mr. Button: I don't know that I care to read them at this time.

Q. Therefore Mr. Keeler, the original contract man as you have called him, who had made a contract for five years, only got tied up for two years, did he, Mr. Waddell? A. I don't know whether it was for five years or for two years, but I thought 3975
it was for five years.

Q. It was for five years, was it not, as shown by your correspondence that was read the other day? A. Well, I can't recall all that correspondence.

Q. Assuming that fact, which I think is shown by the record, and despite the fact that he had a contract for five years when he got around to it and didn't want to buy any more powder, he then sent the contract back, didn't it, and didn't buy any more? A. He didn't evidently——

Q. And that is the way most of these people got tied up under contract, wasn't it, Mr. Waddell? A. There were some men that didn't regard the contracts as binding and would buy outside, but nearly all of them—certainly all of Illinois, regarded them as morally binding.

3976 *R. S. Waddell—Cross*

Q. That is, any one within the immediate radius of the Buckeye Powder Company was sure to keep his contract, is that the idea? A. Well, there was a little higher standard in Illinois among the operators than there was in some other sections.

Q. Did you write this letter to the Hazard Company enclosing correspondence between yourself and Mr. Tenant (handing papers to witness)? A. That is my signature.

3977 (Papers received in evidence and marked Exhibits A-175, A-176 and A-177.)

Mr. Abbott: If your Honor please, I object; your Honor will pardon me, but I think that these letters, that is attached letters, should be read in connection with the others.

Mr. Button: I haven't the slightest objection; I am just trying to save time.

(Reading A-173 and A-174.)

"Sept. 26th/99.

3978 Mr. Chas. F. Keeler,
First National Bank Bldg.,
Chicago, Ill.

Dear Sir:

We have your valued favor of 21st inst., and regret to learn of the action you have decided to take in regard to powder supplies. We will forward your letter to Messrs. du Pont and await their advices in the matter when it is possible we may have something further to say to you.

Yours very truly."

"Chicago, Ill., Sept. 21/99.

R. S. Waddell, Esq.,
Gen'l Agent Messrs. E. I.
du Pont de Nemours & Co.,
First National Bank Bldg.,
Cincinnati, Ohio.

Dear Sir:

Your esteemed favor of September 20th 3980
received. Enclosed please find contract with your company returned canceled. Your construction upon the same leaves it without any benefit and entirely useless to me, as you say your contract provides that 'we guarantee, under conditions named, against any price made by ourselves in the Indiana district.' As you have made a $1.25 price and that by the keg, I feel that you are not keeping your agreement with me and I also feel at liberty to provide myself against your reduction as made while I have the opportunity of doing so, as you are liable to make your price away below $1.25, and it is a matter of self-preservation to me as well as to the other operators handling Trust powder, to protect ourselves. I have about 400 kegs on hand and as you have paid the freight on this powder I will not ask you to receive it back, but will sell it and account for it as agreed upon. Our relations in the past have been of the most pleasant character and I regret this step, and I will say candidly that whoever allowed powder to go to the men at $1.25 per keg in the block district has made a grand mistake. My consumption of powder after October [illegible]

3981

POOR COPY

3982 more than double what it has ever been before, with a prospect of a steady increase, and you are simply driving every man in the district that handles Trust powder to the same course that I am taking.

Yours truly,

Chas. F. Keeler.

3983 At the meeting in Brazil Saturday the miners claim du Pont had made a proposition to contract with them direct at $1.25 for five or ten years. Goodby.

Chas. F. Wheeler."

Q. All that means is that Mr. Keeler had found that the Great Northern Supply Company was selling to miners around there at $1.25 and he thought that you ought to reduce his price from $1.10 down to about seventy cents, so that his profit wouldn't
3984 be cut, isn't that it, Mr. Waddell? A. He states that there was a clause in his contract that we were to guarantee him against any price that we made in that district, and he knew that we were making the price too——

Q. And his price was $1.10 and the lowest price you made in the district was $1.25, wasn't it, and he put that interpretation on that situation in order to get out of his contract, didn't he? A. Well, he had a margin of so much and we didn't guarantee his margins.

Q. Take anybody's profit except his; that was the idea, wasn't it? A. Well, he was right about it I guess.

Mr. Button (reading A-175 and A-176 and A-177):

"Cincinnati, Dec. 2/99.

The Hazard Powder Co.,
New York, N. Y.

Dear Sirs:

Herewith I hand you copy of letter from Mr. R. S. Tennant, President and former partner of Mr. Talley in the coal business. He has a contract with Hazard at $1.10 3986
but some time ago refused to take supplies from us at this figure. Deeming that this is the opportunity to show firmness, and that Tenant is a lawyer and colleague of Talley, Marshall et al., he is the business medium through which we could state the case and that it can be handled better on paper than orally, I have written Mr. Tennant letter as per enclosed copy.

I will be out of the city major part of next week returning here Thursday or Friday. 3987
If you have any instructions please give them to me by the 10th inst.

Truly yours,

Enclosures. R. S. Waddell, Agt.
D."

(Copy)

Terre Haute, Ind. Dec. 1/99.

R. S. Waddell, Agt.,
Cincinnati, O.
Dear Sir:

I would like to have a conference with you on the Powder business. I believe all

3988 *R. S. Waddell—Cross*

the operators on the Vandalia R. R. would join me in the Agreement to buy all their supply of powder from you from now until the first of April next, if you will agree to sell us at $1.10 net and withdraw the powder houses from the vicinity of these mines. If it strikes you favorably would it be possible for you to meet me at Indianapolis for a conference?

3989 Please regard this as confidential.

Yours truly,

R. S. Tennant,
President."

"Dec. 2/99.

R. S. Tennant, Esq., Prest.,
Indiana Bituminous Coal Co.,
Terre Haute, Ind.

3990 Dear Sir:

I have your favor 1st inst. I leave Sunday morning for a trip into southern Illinois which will take me out of the City for about five days of next week. It would be impossible for me to arrange an interview with you before December 12th. I feel however that the efforts you suggest would be futile. One Powder Co., cuts a very little figure. The issue that has been made up is so far reaching and destructive that arguments count for nothing. The Coal operators of Indiana or a dominant faction have in effect attempted to absorb the business of Powder manufacturers whose machinery must rust while the coal operators

monopolize the powder business which this machinery was made to manufacture. Suppose this were extended to include all coal operators in the United States, millions of dollars invested in powder machinery would be wasted. I can see very clearly that conferences would be of no avail. To my mind powder manufacturers must contend for their rights and either defend their business or surrender it. Times are now very good and it is exceedingly fortunate that there is 3992
a good demand for powder, otherwise, matters would be worse than they are.

Judging the situation in the most hopeful way I believe the retail price of powder will never be better than it is at present in the Indiana coal fields. It may be much lower. No doubt it will result in retailing powder at the lowest carload rate and a contract for a term of years. Pennsylvania coal operators made the same venture and ruined a very profitable powder business for the best 3993
portion of the State. If all the powder in the Terre Haute, Brazil, Linton districts aggregates 200,000 kegs per year, and the net profit at retail prior to the building of Indiana Powder mills was 75c per keg, that mill has cost the coal operators $150,000 per year. Before the mill was built I suggested the sale of 51/100 of the stock to one or more of the powder companies and time will demonstrate that had this suggestion been heeded the action would have proved a wise one. It must be apparent that the powder manufacturers are losing nothing on what they may sell in Indiana. It is unfortunate that coal operators must

stand the losses resulting from destruction of retail profits which were very generally earned on the capital of the powder companies. The powder was not paid for until sold. It now looks like that either the powder companies or the operator in the powder business would have to surrender. It would have been vastly better that this occurred before conditions became absolutely permanent. In twenty years' experience I
3995 have never heard of a suggestion of powder manufacturers abandoning their business to people who are attempting to monopolize it and I do not believe such result will ever occur.

Regret that I cannot meet you next week, but if the 12th would suit you, would be pleased to confer with you and do all we can toward adjusting matters.

Powder companies will always do some business in the Terre Haute field and I do
3996 not believe they would part with their independence in selling any one they choose if they were guaranteed all of the business not represented by the Indiana Powder Company's stock. They cannot afford to play favorites, and after all what difference does it make whether they sell their powder at retail or by the car load. I have said all this in kindness to the operator. It is our mission to sell powder and we will be delighted as sales agents to have the trade of Indiana operators. These are merely personal arguments. The statements are plain and I hope you will receive them as coming from one who holds no moneyed interest in the powder business and who deplores the

unfortunate conditions in Indiana. Will be glad to hear your side of the case and if you request will meet you Tuesday 12th inst.

Truly yours,

R. S. Waddell, Agt."

Q. This is the same Tennant, Mr. Waddell, who has testified in this case? A. Yes.

Q. Whose deposition has here been read? A. 3998
Yes.

Q. And these were your views on the situation in December, 1899, were they? A. Yes, and are today exactly the same.

Q. About how the Indiana Powder Company had captured about all the trade in Indiana by cutting prices, hadn't they, in December, 1899? A. I don't know, December, 1899, that is about two years after they started?

Q. Yes. A. Yes, they began to spread out then, I think.

Q. Well, like all other new companies, they had 3999
seen fit to reduce the price and capture all the trade they could from the older companies, did they not? A. They resented the fight that we were making on them at that time.

Q. It strikes me from your letters, that you resented the fight that they were making on you, was not that the situation, Mr. Waddell, as shown by your correspondence? A. I never believed that the coal operators had a right to be in the powder business any more than the Standard Oil in the tobacco business.

Mr. Button: Will you please mark this letter?

4000 *R. S. Waddell—Cross*

(Same received in evidence and marked Defendants' Exhibit A-178.)

(Reading): "Cincinnati, Dec. 8, 1899.

The Hazard Powder Co.,
New York City.

Dear Sirs: Replying to your favor 6th inst. which came during this writer's absence. We desired some time to confer with
4001 Harder & Hafer and with Mr. Alward before advising you definitely, therefore asked the office to wire you as per our message 6th inst.

Harder & Hafer can buy powder at $1.10 from the Indiana Powder Co. It is evidently the intention of the Associated Companies not to meet any price made by the Indiana Powder Co. unless it be upon Miami brand, nor to vary the strict on contract conditions in and about Terre Haute. As
4002 nearly all the trade in that locality has been surrendered to Indiana Powder Co., Mr. Tennant having left us under a contract at $1.10, I think it would be better to turn this trade all over to Mr. Rood rather than wrangle with associates or lay the foundation for gambling and complaint on the part of the buyers.

I suggested a $1.10 price to Harder & Hafer because they have been such staunch friends of Hazard and are not favorable to Indiana Powder mills. My feeling is that we should either sell Harder & Hafer at $1.10 or not solicit their business. I will ask Mr. Alward's opinion before taking up the subject with Harder & Hafer. Three

or four thousand kegs per year will not help Mr. Rood much, although the freight is light, and by dealing fairly with Harder & Hafer there may come a time when we could sell them again. I will write you further after talking with Mr. Alward.

Truly yours,

R. S. Waddell, Agt." 4004

Q. Consequently this $1.10 price that the Indiana Powder Company had made was lower than your price at that day, wasn't it, Mr. Waddell, and you were asking permission to meet it? A. I understood they had a contract with Tennant for $1.10 from the preceding letter that you have read.

Q. I understand. A. I don't know as to prices, exactly.

Q. Possibly. A. I know that the other operators who were not in the Indiana Company but were 4005
located in the Indiana district, and whose miners were affected by this reduction to $1.25, resented our action there in lowering the price, or retailing powder, and they went to Rood. That drove them all into Rood's hands.

Q. Does not that indicate to you that he, Rood, had cut the price, as he says, "as nearly all the trade in that locality has been surrendered to Indiana Powder Company, Mr. Tennant having left us under a contract at $1.10"? That looks as if he had made a contract with the Indiana at $1.10, doesn't it? A. No, I think he left us with a contract of $1.10.

Q. "I think it would be better to turn this trade all over to Mr. Rood rather than wrangle with as-

sociates——" and you say "Harder & Hafer can buy powder at $1.10 from the Indiana Powder Company." That looks as if your price had been more than that theretofore, doesn't it, Mr. Waddell? A. Their price had been up, I think, to June 2, 1897—up to that time the price in that district had been $1.25 and I made a contract with Keeler at $1.10.

Q. I am talking about December, 1899, is not
4007 that true from this statement, "My feeling is that we should either sell Harder & Hafer at $1.10 or not solicit their business"? Have you any doubt that your price to that concern had been more than that at that date, from that statement? A. I don't know what that was; I had sold two years before that at $1.10 to Keeler.

Q. I understand, but that was at his request, because he said he didn't want to go in with them, is not that correct? A. Yes, and we cut the price from $1.25 to $1.10 at that time in that contract.

Q. Whose price? A. The price of the Associated
4008 Powder Companies at $1.35.

Q. And that was before Mr. Rood had ever made a price to anybody, wasn't it? A. I don't know whether he made a price or not, it was before he made any powder.

Q. Or, rather, it was at the time that he had made a contract with his stockholders to sell them at $1.10, wasn't it? A. With his own stockholders.

Q. Well, now, you don't know whether that Keeler contract was before or after, or rather, you do know it was after that arrangement made by Mr. Rood with his prospective business, don't you? A. Yes, I think it was after.

Q. Well, I show you a letter of December 11, 1899, and ask you if you wrote that (handing witness paper)? A. That is my signature.

Mr. Button: Please mark it.

(Same received in evidence and marked Defendant's Exhibit A-179.)

(Reading): "Cincinnati, Dec. 11, 1899.

The Hazard Powder Co.,

New York City.

Dear Sirs: Yours 8th inst. regarding Harder & Hafer's trade is received. This business will naturally go to Mr. Rood at $1.10 and I should prefer to let it take this course rather than offer Harder & Hafer a rebate of five cents and ten cents per keg. It may be that they will conclude to buy from us at $1.25 per keg without contract. That of course is their privilege. I will await reply to the letter. We mail them today before deciding as to the order you have on file. 4010

Yours truly, R. S. Waddell, Agt."

Q. This is Exhibit A-179. Consequently your price to this concern mentioned in the last letter I read was $1.25, was it not, Mr. Waddell? A. Yes, or $1.10 on the contract. 4011

Q. Now, in the next month or two in February and April, 1900, did you write these two letters (handing papers to witness)? A. That is my signature (indicating). I don't know about this (indicating). Somebody else has written this; I do not make an "R" that way (indicating).

Q. Well, do you know whose handwriting——

Mr. Abbott: Will you have that one marked, Mr. Button, so that we may know which one he is talking about?

Mr. Button: Mark that one April 11, 1900.

(Same received in evidence and marked

4012 *R. S. Waddell—Cross*

Defendants' Exhibit A-180.)

Mr. Button: And this also of February 9, 1900.

(Same received in evidence and marked Defendants' Exhibit A-181.)

Q. In regard to Exhibit A-180, you say you are in doubt about your signature there. Won't you look at the rest of the writing there and state whether it is not in your handwriting, this memorandum on the bottom (handing paper to witness)? A. Possibly, if I read the letter I could recollect it.

4013

Q. All right, look it over. A. (reading) I think I wrote that letter, and somebody else signed it for me, it is just such a letter as I would write.

Mr. Button: This first one is A-181, dated February 9, 1900, to the Hazard Company. (Reading):

"Dear Sirs: Two or three days ago we had a letter from R. S. Tennant, requesting shipment of 100 kegs temporary supply to Silverwood, Ind., where he has a new mine just opened. I declined to ship except he has a carload order; then he must pay the freight from Indianapolis. He orders a carload, 400 kegs. This would indicate that Tennant is not in harmony with the Indiana Powder Co., or that the latter have withdrawn their $1.05 price to him. They were giving him 5% discount from $1.10; 30 days time. We send you formal order for this to-day. Mr. Tennant wires us to rush this and as it is one F grain we presume you can give reasonably prompt shipment.

4014

Very truly yours,

R. S. Waddell, Agt."

Q. Consequently, if the other letter does indicate that you had a contract at $1.10, with Tennant, this shows that the Indiana were offering him at $1.05, doesn't it? A. Five per cent. discount for cash, yes.

Mr. Button: The other letter, April 11, 1900 (reading): "Messrs. E. I. du Pont de Nemours & Co., Wilmington, Del.

Dear Sirs: I have wired you message this date reading: 4016

'Indiana Powder Company proposition last week to operators: Latter become profit sharers above a figure covering cost production, salaries, expenses, losses, and small percentage on capital. With guarantee cost to operators shall not exceed one dollar and probably be eighty-five cents. Particulars mailed.'

and now confirm.

Mr. Alward met Mr. Wm. Archbold, a coal operator near Evansville, Ind., and learned that this offer had been made to the operators near that city. He stated it was his understanding that the offer was good for other operators and I assume that this is the basis on which the powder business is to be conducted by Indiana Powder Co. It means that the coal operators of the state who are not in Indiana Powder Co. are to pool their business in favor of the Indiana Powder Co.; that the profits resulting from the manufacture of powder are to be given to the operators after a sufficient amount has been retained by the Indiana Powder Co. stockholders to cover their cost of manufacture, expense, salaries, profit and loss, and 4017

explosion losses, with a small percentage additional for the stockholders; the Indiana Powder Co. to guarantee that the price shall not exceed $1.00 per keg and probably be 85 cents.

Mr. Alward met Mr. Tennant on the train Monday night and was told that he believed the Powder question would be settled within one hour after the committee returned to Terre Haute on Tuesday. This means that
4019 if they fail to get a seventy-five cent price from you, they will accept an eighty-five cent to one dollar price from Indiana Powder Co.

Mr. Archbold replied to the Powder Co. that he had enough trouble in the coal business to employ all of his time and capital; he was not hunting for any in the Powder field. I think it is safe for you to conclude that the Indiana coal operators will pool their issues with the Indiana Powder Co.
4020 on the basis indicated in my telegram.

I believe you are already informed that the Indiana Powder Co. is putting in two additional wheel mills.

Truly yours, R. S. Waddell, Agt.

(The proposition is for 5 years.)"

Q. This is in April, the 11th, 1900, to the du Pont Company. Now, you never did make the 75-cent price, that is, the du Pont Company, did they, Mr. Waddell? A. No.

Q. And this was a proposition by Mr. Rood and his associates to sell powder at from 85 cents to one dollar to every coal operator in that country, wasn't it, practically? A. Well, it was the same

proposition as the Ohio Powder Company exactly.

Q. I don't know why you need to go back ten years every time you answer a question, Mr. Waddell. A. Mr. Rood knew the proposition of the Ohio, when they failed, were in failing circumstances, and he adopted the same methods.

Q. And this is, then, within a week or two of this time where it was shown that the du Pont's prices were $1.10 and $1.25 without contract, wasn't it? A. I don't know what the prices were, I could not give them to you from memory. 4022

Q. This is back in April, 1900, about a year and one-third after you began to sell powder to the miners and indicates that that operation had discouraged and injured Mr. Rood very much, didn't it? A. Yes, it had discouraged him, he was willing to take 85 cents for the powder instead of $1.10.

Q. Discouraged him so much that he was putting in two additional wheel mills in April, 1900? A. I don't know when they were building that, my letters would indicate at the time that I knew.

Q. I will ask you to look at some of these, July 31, 1900 (handing papers to witness)? A. That is my signature. 4023

Mr. Button: Mark it, please.

(Same received in evidence and marked Defendants' Exhibits A-182 and A-183.)

Q. Now, in the summer or during 1900 and 1901, Mr. Waddell, was not Mr. F. J. Waddell at your office at Cincinnati? A. I think he was, I know he was there in 1901.

Q. There appear to be some letters during September, 1900, signed in your name with the initials "F. J. W.," and they set the conditions out there. Will you look at them and state whether they were signed with your authority or knowledge? A. I

could not tell you that; I know that that is Fred's signature or my signature by Fred; he wrote it himself, and he did his own thinking; I would not go over all that he said perhaps. He was there, an independent thinker, and had been general agent in the Southern States, occupying an important office.

Q. Did you sign those two letters, one September 28th and the other November 7th (handing papers to witness)? A. That is my signature.

4025 Q. November 7th? A. That is my signature.

(Letters received in evidence and marked Exhibits A-184 and A-185.)

Mr. Button: Reading A-185:

"Cincinnati, Nov. 7/00.

Messrs. E. I. duPont de Nemours & Co.,
Wilmington, Del.

4026

Dear Sirs:

While at the Ocean City Club last evening where we received the election returns, I met Mr. Rood, Mr. Talley and Mr. Sternberger. The two former were the guests of Mr. Sternberger who is a member of our club.

I had quite an extended chat with Mr. Rood. He reported that his business is very satisfactory; that they have been running constantly and have had a ready market for all the powder they could make. He told me his average output of Dynamite is about 9000 pounds per day but that he has not operated his plant constantly. He stated

that he finds the demand good and that he has been making some money on dynamite.

Mr. Talley is rather belligerent and Sternberger puts on a very independent air. I did not discuss the Powder business with either of them.

Mr. Rood talked quite freely. He does not attach much importance to the adverse work of Great Northern Supply Co.

Truly yours, 4023

R. S. Waddell, Agt."

(Mr. Button interrupted his reading of Exhibit 182 with the following question, which he began at this point.)

Q. That was a cut price, July 31st, 1900, wasn't it, Mr. Waddell, in Kentucky? A. $1.20.

Q. In Kentucky? A. Rash had a price of $1.10.

Q. I know, but—— A. He was a stockholder and director in the Indiana Powder Company. 4029

Q. I know, but he was selling. The statement in this letter is that Rash was retailing or was selling powder at $1.20, I suppose, powder he bought from the Indiana Powder Company. Now, my question is, was this $1.20 not lower than the price that the du Pont Company was charging in Kentucky at that date? A. What is the date, please?

Q. July 31st, 1900. A. I don't know what we were doing down there.

Q. Well, here is Baird's letter; it is dated July 23d: "Since I last wrote you, Mr. Rood of the Indiana Powder Company has been here canvassing the coal mines—do you know what success he had in this city? He also canvassed the mines in Ken-

tucky in a radius of fifty or eighty miles of this city. He told me that he sold five or six cars of powder in Kentucky. Whether he did or did not is more than I know. He also told me that he sold the John Ingle Coal Company some powder. I asked Ingle if he bought any and he said 'no'; but I rather think that he did, as his brother David is the V. P. of Indiana Powder Company. I write this so you will know what is going on in this locality. If there is any cut in prices I want
4031 you to keep me posted and give me the benefit, for I cannot hold my trade if other parties get du Pont powder cheaper than I. Please give me your views on the subject and oblige." Well, Rood was then selling or trying to sell powder through Kentucky at that date, was he not, Mr. Waddell? A. I think I stated at that time that I didn't believe his statements that he had been—in the first letter that you read there.

Q. No, Mr. Baird said that he didn't believe his statement in regard to Ingle was true? A. As I
4032 recollect the first letter you read was my statement that I didn't believe Rood; of course, I am just listening to it; it is pretty difficult.

Q. My question, Mr. Waddell, wasn't what was said in the letter; I am asking you now——

Mr. Abbott: That is it.

Q. Of course, it is it; it was not what you said in the letter; I am asking you as a fact whether you know whether Rood was selling through Kentucky at that time? A. No.

Q. You don't know? A. No, I cannot tell you now.

Q. I don't see anything in this letter which I have read that indicates that you didn't believe

it at that date. I will read the letter again: it is short: "Herewith I hand you copy of letter from Mr. L. M. Baird, Evansville, Indiana, advising that Rood has been canvassing the coal trade of Evansville. He appears to have gone to Mr. Baird for the purpose of sending some information to us. We are not able to verify his reports of large sales in Kentucky unless they have been made to Reinecke Coal Company and others in the vicinity of Madisonville. We are told these sales were 4034
made by Mr. Rash, one of the Indiana Stockholders, and the price was $1.20." Then you did know he had been selling in the vicinity of Madisonville? A. No, I knew Mr. Rash had been selling there and I wasn't able to verify Mr. Rood's statement.

Q. All right.

(Mr. Button reads Exhibit A-185 at this point.)

Q. Had Rood gone into the dynamite business, 4035
too, Mr. Waddell? A. Yes.

Q. Do you know when he began that? A. No, I don't; his son built a dynamite plant.

Q. Now, you say in regard to these letters signed by your brother that sometimes you disagreed with what he wrote, is that what you mean? A. Yes, we didn't always agree; he expressed his own views, made his own arguments, acted independently of me.

Q. Well, do you know that the price that was being charged by the Indiana Powder Company through that district in December, 1900, was uniformly five cents below the du Pont price? A. No, I don't know that.

Q. Won't you read that letter and see if you can refresh your recollection upon that subject?

A. (After reading.) This refers entirely to trade that I knew little or nothing about down in Southeastern Kentucky, Tennessee and Alabama, trade that had been handled by Fred—I am not familiar with it all.

Q. You mean that there was trade being attended to right there in your Cincinnati office and you weren't at all familiar with it? A. The Cincinnati office was a consolidation of the Cincinnati territory in Chattanooga; my brother was
4037 brought there to handle the Chattanooga end of it; he was more familiar with that and I didn't interfere with his business any more than he did with mine.

Q. Then there was such trade being handled right there in your own office that you were not familiar with, wasn't there, in 1900? A. Oh, I might have been familiar with it in a general way; I presume these matters may have passed before me.

Q. You are not familiar enough with them to
4038 even say whether your brother was giving the right interpretation—the right information about it at that date, are you? A. No, I can't recollect.

Q. And this despite the fact that you are perfectly familiar with the entire condition of the powder trade in the United States as you have testified to here repeatedly? A. Well, I am in a general way, but to take a specific date and a specific price to one customer—I cannot tell that.

Q. That is not what my question was, Mr. Waddell. A. No man can remember that.

Q. My question was whether as a uniform thing the price in December, 1900, made by the Indiana Powder Company was not five cents lower than the du Pont price? A. Not a uniform thing, no.

(Letter last referred to is marked Exhibit A-186 for identification.)

Mr. Button: Reading A-184:

"Cincinnati, Sept. 28/1900.

Messrs. E. I. duPont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: 4040

Our mail of the past few days has conveyed to you information of cutting in price on Indiana Powder direct and through Hazard and duPont agencies at Louisville, to many Coal Companies. Among these I will mention—

The Taylor Coal Co. Beaver Dam, Ky.

The Pittsburgh	Coal	Co.	All of Pittsburgh, Kentucky.
The Victoria	"	"	
The Pitman	"	"	
The Peacock	"	"	

4041

There are perhaps a dozen other cases now on record, and letters out from Mr. Semple of Louisville to all of the coal trade of Kentucky. It is a question whether the Associated Companies will sacrifice all this trade or meet the prices, thus provoking a powder war. I dread to see this condition, particularly in view of the heavy demand for powder.

The Great Northern Supply Co., is not organized to conduct a carload trade, nor is it in position to court the trade of the operators, as it has antagonized it. Under existing circumstances, I beg to repeat a recommendation that I made a year or two

ago, that, The Associated Companies all maintain prices on their respective brands, and set aside one mill, (preferably Phoenix) which shall be authorized to make powder and conduct the war now provoked by the Indiana Powder mills: The Associated Companies in their own private way, to stand in and share the profits and losses of the Phoenix business. Where they are about to lose trade to Indiana let them ad-
4043 vise Phoenix, and if preferred let Phoenix sell the powder for account of the powder Company whose trade is menaced. It would be better, however, to make the Phoenix Company wholly independent and furnish it information whenever it is essential to have trade defended. Good discretion and a vigorous fight with this mill, would save The Associated Companies a vast amount of money, because The Phoenix would have its limits and would be on an exact level with
4044 the Indiana Mills.

I would like to take charge of the marketing of their product for The Associated companies and conduct this fight against the Indiana Powder Co. in this territory. It is the only common sense way of meeting this issue and I wish The Associated Companies would lease these mills from their present owners and have them operated by some one under the direction of one or all of The Associates. This would narrow the fight to two brands The Indiana and Phoenix. What objection could there be to some individual like myself leasing the Phoenix mills and operating them as an independent plant? There would be no fear

of collusion, for nothing could be proved: But a very large amount of money could be saved by letting The Associated Companies maintain their prices on their own brands.

I hope you will consider this idea, for to me it seems the most reasonable solution of the question that must be settled very quickly and efficiently.

Yours very truly,

4046

R. S. Waddell, Agt."

Q. Did they ever lease you a Phoenix mill, Mr. Waddell? A. No.

Q. And they didn't carry out the slightest suggestion of yours, did they? A. No, they cut the prices generally.

Q. They what? A. They cut the prices generally over the territory.

Q. Well, now, you know that is not true, don't you, Mr. Waddell? A. No, I know it is true; the price went down to ninety cents. 4047

Q. This very letter that I have just read you says: "Our mail of the past few days has conveyed to you information of cutting in price of Indiana Powder direct and through Hazard and du Pont agents at Louisville to many coal companies." By that you meant that the Indiana Powder Company was selling direct at cut prices and also had taken on your Hazard and du Pont agencies and were selling it through them, didn't you? A. Yes.

Q. And at cut prices? A. That is one day. Now take the next day's letters or the next month's letters and you will find that I had the trade back again.

Q. You know the prices never went—— A. Just the same old story—see-sawing.

Q. See-sawing as in 1901 to 1906? A. See-sawing the price down; that is what they did.

Q. Where there wasn't any see-sawing, but the cutting was always by the new companies as it always is? A. If Rood had cut the price alone he would have had all the trade, but he didn't.

Q. You said he had it all in Indiana there in one of these later letters? A. Yes, around Terre Haute he had the advantage of it.

Q. By cutting it? A. We were obnoxious there.

4049 Q. You say: "Our mail of the past few days has conveyed to you information of cutting in prices on Indiana powder direct through these agents." Is this September 28th? Won't you look at these letters of September 4th, 20th and 27th, signed by your brother, and state whether or not those are the letters that you referred to here as being the ones that convey information of prices? A. I don't know whether those are the letters or whether mine, or a lot of other letters. I wrote daily to the Hazard Powder Company and to the du Pont

4050 when I was at the office sometimes as high as six or seven letters a day, but always one, but I only find a few of them here.

Q. Well, now, in the year 1901, you take the same position, do you, about letters signed by R. S. Waddell; Agent, F. J. W.; you don't know anything about them? A. Fred was independent of me in his actions. Unless I would know the subject I couldn't tell you.

Q. Well, about Mr. Foreman, per F., are you responsible (handing witness letter) for those letters? A. Foreman is a bookkeeper.

Q. Well, there is a letter signed by you of August 21st, is there not (handing paper to witness)? A. That is my signature.

Q. And another one of October 18, 1901. A.

The signature is mine, but the memorandum down there is somebody else.

Q. That is the letter of October 18, 1901? A. Yes.

Q. And October 25, 1901, that is your signature (handing witness letter)? A. That is my signature.

Mr. Button: We will have these three marked, please.

4052

(Letters admitted in evidence and marked A-187, A-188 and A-189.)

Q. And one of October 18, 1901 (handing witness letter)? A. That is my signature.

Q. And December 23, 1901 (handing witness letter)? A. That is my signature.

(Letters admitted in evidence and marked A-190, A-191 and A-192.)

Mr. Button: (Reading) A-189.

4053

"Cincinnati, August 21, 1901.

Messrs. E. I. duPont
de Nemours & Company,
Wilmington, Del.

Dear Sirs:

Referring to our application of last week asking for special price for F. A. Blackwell & Company, Henderson, Ky.—we have been tendered an order by Blackwell & Co., for immediate acceptance, conditioned on our being able to name them a better price than $1.25 per keg.

As soon as the question has been deter-

4054 mined as to whether or not we can name this special price, please wire us and we may be able to hold the order in the meantime. They have been selling Indiana powder since that company has been cutting our price.

Yours very truly,

R. S. Waddell, Agt."

4055 Q. Consequently in August, 1901, the Indiana Powder Company had been previously cutting your price, hadn't it? A. Part of the time, yes. I wanted to take the trade back on the special rate.

Q. What? A. I wanted to take the trade back on a special price rate.

Q. That is, you wanted to get down somewhere near their price, didn't you? A. I wanted especially to get the business.

Q. It had been your business heretofore, hadn't it? A. Yes, I think we—well, we had had it alternately.

4056 Mr. Button (Reading Exhibits A-186 and A-187.)

"Cincinnati, Oct. 25th, 1901.

Messrs. E. I. duPont
de Nemours & Company,
Wilmington, Del.

Dear Sirs:

Messrs. W. B. Belknap & Company of Louisville Kentucky, (our agents) request a special price of $1.25 per keg for the Ould Grocery Company of Morton, Va.—and believe that they will be able to sell these people at that price. Their salesman informs

us that the Norton Coal Co., and the Ould Grocery Company, both of Norton, Va., are buying Indiana powder at $1.25 per keg.

We know that the Norton Coal Co. had a contract with the Indiana Powder Company expiring next March, but did not know the exact price.

Yours very truly,

R. S. Waddell, Agt." 4058

Q. Well, now, there your special price was $1.25 to meet the Indiana price of $1.25, wasn't it? A. That was what the salesman reported, yes.

Q. Well, you were not requesting permission to do anything more than come down to the Indiana price, were you, at what you understood it to be in this letter? A. I was requesting permission for the special price that would hold the business—whether it was—I never was a cutter.

Q. And your judgment that in October, 1901, was that all that would be required would be the same 4059 price which the Indiana Powder Company had made, was not that it? A. I wanted the price that would take the order.

Q. That is not an answer. A. And whether it was the same or a lower price, I couldn't tell.

Q. That is not an answer to the question, Mr. Waddell; I wish you would answer it. A. Let me have it.

(Question repeated.)

A. Well, I don't know in any particular case.

Q. I am talking about this case. A. Whether it was required or not?

Q. I am talking about this particular case that you wrote about on that day. A. That is what

4060 Belknap's salesman told Belknap and Belknap wrote me, I cannot tell you——

Q. Don't get away from the question, Mr. Waddell. My question is that your judgment was that all you needed was a price which was equal to the Indiana price, which you understood to be $1.25—I don't care whether it was $1.25 or something else. A. I didn't have any judgment in the matter at all; I gave the du Ponts exactly what had been given me; that was Belknap's statement of what their
4061 salesman told them would be required, when I asked him. Now I had no judgment about it.

Q. That is, you had no judgment as to whether the Indiana price was $1.25 or not, is that what your recollection is? A. I don't know anything about it.

Q. Well, you did have some judgment on the question of whether you would get the trade at equal prices, didn't you? A. No, it was what Belknap wanted and I wanted to get it for him.

Q. Then your sub-agent or commission agent
4062 down there evidently understood that was all that was necessary, didn't he?

Mr. Abbott: If your Honor please, I think that is improper.

The Court: Yes.

Mr. Button: (Reading A-188.)

"Cincinnati, Oct. 18/1901.

Messrs. E. I. duPont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

We asked Mr. Alward to call and discuss the Powder and Dynamite trade with

Emmons, Hawkins & Co., wholesale Hardware dealers at Huntington, West Va., who handle several carloads of Indiana powder and Indiana dynamite annually. Mr. Hawkins is very friendly to duPont powder. All of their shells, both Black and Smokeless are loaded with our brand. They stand ready at any time to meet the Indiana price on duPont Black powder and Hercules dynamite to change their business to us.

The Indiana price on Blasting powder is 4064
$1.10 per keg. I do not know the price on dynamite. That end of the business is so disgusting that it does not merit attention. Any time we attempt a sale of dynamite it causes friction, so we let it alone as far as possible. We can, however, re-gain the trade of Emmons, Hawkins & Co., if you think it advisable to make them a $1.10 price. Mr. Alwars recommends that we sell E. H. & Co., say 3,000 kegs at $1.10 per keg to be taken as their requirements de- 4065
mand. This would run them about eight or nine months.

Truly yours,

R. S. Waddell, Agt."

Q. That is in October, 1901, and that shows that you could get a customer away from the Indiana at equal price, doesn't it, Mr. Waddell? A. Emmons, Hawkins & Company were our agents, and had been for many years; mutual, personal friends of mine, and I think I could hold that trade at equal price.

Q. An exception, is that what you mean to imply? A. What is that?

4066 *R. S. Waddell—Cross*

Q. Did you mean to imply it was an exception? A. Yes.

Q. And you seriously maintain, do you, Mr. Waddell, that the du Pont Company was cutting the price of the Indiana Powder Company at that time? A. I know we alternated, yes, sir.

Q. You do? A. Certainly I do.

Q. Can you remember one instance in which you did? A. No, I don't remember an instance of the
4067 Indiana Powder Company selling, and I could not give you instances except as they are recalled here; but I know there were lots of them. They had a big trade over in the Pocahontas field and I took it away from them.

Q. Originally their trade? A. No, it was originally——

Mr. Button: Your counsel wants me to read these notations which you say you did not make, and I will read them on the bottom of the exhibits: "Emmons H. & Co.
4068 were ex-du Pont agents and late customers. Nothing 1900. Sold them 400 kegs 1899; 400 kegs 1898; nothing kegs 1897. In 1896 we sold them several carloads."

Q. Do you know anything about these notations? A. I don't know about any notations.

Q. And you say it is not your handwriting? A. I suppose it was handed to the bookkeeper or somebody else and he got hold of the letters and wrote on the notation.

Q. Now, you spoke of one instance which you recalled in which they made a price of 90 cents, I think, to the Washington Fuel Company. Where was that? A. It was at Farnsworth, Indiana.

Q. And you stated—— A. (Interrupting) That

4069

was conditioned on the Fuel Company being willing to retail their powder to their miners at $1.25.

Q. That was another suggestion of yours, wasn't it? A. No.

Q. I show you a telegram (handing paper to witness). A. I don't think so.

Q. (Continuing) Dated August 31, 1899, and ask you if you sent that telegram? A. I don't know whether I sent it or not. If I have it I probably knew of the sale at Farnsworth, it is the same thing.

4070

Q. If you don't recollect that, I will ask you if this is your signature, August 31 (handing paper to witness)? A. That is my signature, yes.

Mr. Button: Will you mark this, please?

(Same received in evidence and marked Defendants' Exhibit A-193.)

Here are a couple more I have not read. October 18th, this is No. A-192. (Reading.)

4071

"Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:—

I have a conditional order in hand that has been tendered to us by Thos. Henderson & Son, Ashland, Ky.—2500 kegs blasting powder if at $1.25 less a rebate of fifteen cents per keg; 2% for cash for ten days, to be taken as their next requirements demand. They have a supply of Indiana powder purchased to last them perhaps until the first of December as the Indiana Powder Co. have their order for 400 kegs now

en route from mills. If you can secure a $1.10 price to Henderson & Son, the same that they are paying Indiana Powder Company, please let me know as quickly as possible so that I can accept this order and bind the deal with them. They wish to be advised of our action in the matter as early as possible.

Truly yours,

4073 R. S. Waddell, Agt."

Q. Another exception—that you could hold trade with that concern at equal prices? A. They were good, loyal agents of ours.

Q. Another exception? A. Yes.

Mr. Button: This is dated December 23, 1901.

"Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

4074 Dear Sirs: Enclosed I hand you copy of a letter from Mr. Alward commenting on Indiana Powder Company's efforts to secure small trade.

Truly yours,

Enclosures. R. S. Waddell, Agt."

Mr. Alward's letter to Mr. Waddell is:

"Columbus, O., Dec. 20, 1901.

R. S. Waddell, Agt.,
Cincinnati, O.

Dear Sir: I called to see Messrs. Long & King of Bellair to-day who should be

ready for a car about now. You understand they merely operate a mine belonging to the National Steel Co. and mine coal for the exclusive use of the National Steel Co.

The mine has been closed for a couple of months. The Steel Plant is using Natural Gas. It is expected that they will again operate the mine commencing some time in January or February.

Long & King are two laboring men. I was told they were reliable parties at the time I first sold them and the way they have been paying their bills is satisfactory. 4076

Mr. Rood for the Indiana Co. has called to see them twice with his $1.15 quotation. This I merely mention to show that the Indiana Co. are making a very close canvas of the trade. Long & King have never been solicited by any Powder Co. except Hazard and Indiana.

Very truly,

Alward." 4077

Q. Now, that language about Rood's calling to see them twice with his $1.15 quotation—does that refresh your recollection in any manner as to whose prices were lowest there, Mr. Waddell? A. No, it don't. I don't know anything about the items on particular days and particular people.

Mr. Button: Now this letter, A-193, dated August 31, 1899, to the du Pont Company:

"Dear Sirs: I to-day mail you letter from Mr. Keeler asking for powder at such a price as will enable him to retail at $1.25 per keg. Here is where your independent

4078 *R. S. Waddell—Cross*

mill, if you had one, would do good execution. If Kolsen, Keeler and others, independent of the Indiana Co. could be made a price of 85 cents on the condition that they should retail powder at $1.25 to all their miners, it would play havoc with the miners of Talley and Minshall and there would be more dissatisfaction than ever. This will force the break in retail prices while the consumption of Keeler and Kolsen would be
4079 small. This is a suggestion that is covered by Mr. Keeler's letter.

Truly yours,

R. S. Waddell, Agt.

(I wire the suggestion but you will no doubt conclude that time will do as well thro Gt. North.)"

4080 Q. Consequently you did make a suggestion of this kind of an arrangement which you say was made with the Washington Fuel Company, didn't you, Mr. Waddell? A. If you will give me the date of the Washington Fuel and compare it with this I——

Q. You gave me the date from your testimony on your direct examination as the latter part of 1899 or 1900 or first part of 1900, I think, in Volume 12, page 1680. A. Pardon me, you can get it quicker——

Q. I have got it right here. (Reading.) "Q. What was it that you knew about special prices that were made to that company? A. I knew that a special price had been made of 90 cents a keg. Q. I mean under what circumstances was that special price made? A. When was it? Q. Yes, when was

it? A. That was about the latter part of 1900, or the first of 1901, as I recall the date, and was made with relation to the contest that was going on in that district with the Indiana Powder Company Q. Well, now, then, stated the conditions under which those special prices were made? A. There was a condition that they should sell powder to their miners at a lower price than the State agreement fixed. Q. What was the amount that the State agreement fixed? A. $1.75 a keg. Q. And what was the price that was made a condition to this consumer that he should sell to his miners? A. He should sell that at $1.25 a keg." You say that the Washington Fuel contract was the latter part of 1900 or the first part of 1901. This letter is August 31, 1899, consequently you did make that suggestion, didn't you? A. I don't know; I don't know the date, the exact date of the other, it has not been fixed yet. 4082

Q. Would not you judge from this language of this, Mr. Waddell—just read that letter in which you say "This is a suggestion that is covered by Mr. Keeler's letter." And then your memorandum at the bottom of the page where you say "I wire the suggestion, but you will no doubt conclude that time will do as well thro Great North." Won't you look at that and then state whether this is an original suggestion of yours or not? A. This suggestion was made as it states was made in Keeler's letter. I don't know whether it was an original suggestion or a later one or when it came in without fixing the date. I know that I made the suggestion. 4083

Q. And you don't know that this was the first time that that suggestion had been made to the du Pont or Hazard Companies? A. No, I don't know that.

4084 *R. S. Waddell—Cross*

Q. Now, then, is this the telegram, I show you again, I showed it to you a few moments ago, that you referred to in this letter? A. Let's see the date, it bears the same date and I should guess that it was, I don't know.

Q. You cannot have any doubt about it, can you, Mr. Waddell? A. I will state here that I wired the suggestion and I presume that is the suggestion.

4085 Mr. Button: Will you mark the telegram?

(Same received in evidence and marked Defendants' Exhibit A-194.)

Mr. Button: This telegram is dated Cincinnati, Ohio, 8/31/1899. "To E. I du Pont & Co. Why not make Keeler & Kolsen a one eighty five price conditioned on their retailing at one twenty five to meet competition. Would cause dissatisfaction throughout district and break down retail prices hastening conclusion. R. S. Waddell."

4086 Q. That $1.85 is a mistake, isn't it, it means "85 cents," as per your letter, is that right? A. I don't know as to that.

Q. Your letter says it is 85 cents. A. My letter is right, whatever it is.

Q. Therefore, I will ask you again whether after reading that telegram you have any doubt but what this is your original suggestion to your principals? A. My original suggestion?

Q. Yes, and by that I mean this idea of selling some powder at a very low price, 85 or 90 cents, on condition that they would re-sell it to their miners at not to exceed $1.25, whether that was not originally suggested to your principals by yourself, that is what I want to know. A. I don't know.

Q. And after reading this letter and this tele-

gram you cannot say is that correct? A. I know that in that letter that I suggested it, that it be done, I don't know whether that is the original suggestion, I may have suggested it before.

Q. Then you still have doubt on that subject? A. I don't know anything about it.

Q. You thought so much of the suggestion on August 31, 1899, that you thought you had better wire it instead of writing it. A. Mr. Keeler had written me and I noted the Keeler letter and concluded I would wire it. I used the wire freely. 4088

Q. Now, when was that Indiana Powder Company purchased? A. They sold out to the Powder Company in January, 1902.

Q. Immediately, well, within a month or two after these letters that were mentioning prices at $1.10, $1.15 and $1.20, wasn't it? A. I don't recall those, those you held, the letter, and I did not get a chance——

Q. Haven't you any independent recollection of the prevailing prices immediatey before the Indiana sold out? A. General price, open price was $1.10, and I recall it, but there were specials of $1.05, $1.00 and on down to 90 cents. 4089

Q. And this 90-cent price, that is the only one that you could recollect, and this was the one of the Washington Fuel Company, wasn't it? A. Now, that is all I recalled just at that time; I don't remember the people who had them.

Q. Now, then, the amount of this Indiana contest which you testified to is this, isn't it: That you made all of these suggestions about it, that is, you suggested they sell to the miners, you did that, didn't you? A. I suggested that they follow the same rule that they had followed in 1886 over in Iowa.

Q. You said that several times now, Mr. Wad-

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4090 dell, and I understand it now, but you did suggest that they sell to the miners, didn't you, yes or no? A. I did.

Q. And you suggested that they follow and work along those lines against the Indiana Company, is that the meaning of it? A. They are not original with me, that is Mr. Colvin's suggestion, he originated that.

Q. I thought it was one of yours. You stated
4091 that in your letter. A. I stated that on a letter that I had been down looking up sites down there near Danville and then I wrote that letter.

Q. Didn't you write on April 28, 1897, the day the contract—or that Mr. Rood resigned—as follows on the subject—— A. Recommending the building of a mill.

Q. This is from your letter on page 4600 of the record, which letter was marked as an exhibit, but I will have to find the number in a few minutes. Didn't you write this: "Your policy has not been outlined, but I believe the most wholesome lesson
4092 would be to institute the methods of Shamokin, Pennsyvania. Erect a mill by one of the companies near Terre Haute—about the junction of the two railroads, then run a powder wagon through the villages of Carbon——" A. Powder wagon?

Q. Didn't you suggest the building of a mill down there to do that? A. Yes, and I had been down there and three or four weeks before that —yes, six weeks before that, and hunted up the sites and showed Mr. Colvin the sites when he came out a few days later.

Q. You suggested this, didn't you? A. I did not originate the suggestion.

Q. Then you suggested that you see Mr. Talley and try to buy 51 per cent. of the mill, didn't you? A. No, I don't think I suggested that, I think that

was Colvin's suggestion. I could not suggest what the Hazard Powder Company would do; I think I took the credit for that suggestion, however, in writing the du Ponts; but the offer would have to come from my principals, and not from me. 4093

Q. Certainly. They would have to authorize it, and I am asking who suggested it. A. No, I think Mr. Colvin suggested that, but I tried to get the credit for it with the du Ponts, or rather I mentioned it in a letter.

Q. Now, let us see about that. A. I noted that as you read the letter the other day. 4094

Q. You noted that you took the credit for it? A. Yes, that I wrote in my letter reporting to the du Ponts and said that in this conversation with Mr. Talley I had recommended that 51 per cent.—that was agreed upon between Mr. Colvin and I at the hotel before we went down there.

Q. Then you were taking credit that you were not entitled to, is that the idea? A. No, we had arranged what it should be and I was quoting what I said to Mr. Talley, and in that it made me responsible for having originated it here, and I just as soon take the credit as to have someother man have it. It is a thing that I was there to do, that was my duty, it is what they were paying me for. 4095

Q. I think I can find the letter. Do you recall one in which you made two suggestions, the first was that they sell to the miners and the second was that they should buy this 51 per cent., do you recollect that letter read here the other day? A. I recollect I did both, but whether in one letter or separate letters, I don't recollect now. Usually I wrote a separate letter as I said generally, but sometimes I would speak of two.

Q. Then you suggested that Keeler contract, did you not; he had written you and you wrote that to

your principals and suggested that they do it? A. I sent it to them and asked them their pleasure in the matter.

Q. And you urged this fighting as was read here, didn't you? A. Urged it?

Q. Yes. A. No, I don't recall that I did that.

Q. Don't recall that? A. I sent it to them and asked them their instructions.

Q. Then you made a long proposal, that they sell to the associated powder companies through one
4097 agency out there, didn't you, to save expenses? A. That letter on economy for the people?

Q. Yes. A. Yes, and give the people the benefit of the price.

Q. Then on repeated instances, you urged that they sell powder to the miners at 75 cents or 80 cents instead of $1.25, didn't you? A. That is to the miners of the stockholders of the Indiana Powder Company only.

Q. And you suggested, at least in some instances, the making of these contracts on condition that the
4098 consumer would re-sell to his miners not to exceed $1.25, didn't you? A. No, I don't recollect that I originated that.

Q. You recommended it in some instances, as we have just shown here? A. That letter there recommended it, yes.

Q. Now, going back several days to the time when you said that you never made any suggestions when not asked for, do you still make that statement, Mr. Waddell?

Mr. Abbott: If your Honor please, I have no recollection that the witness has made such a general statement as that. He has made the statement in reference to prices and matters of that sort, and I think coun-

sel should be required to point out specially.

The Court: If you challenge it, yes.

Q. Did you testify as follows a while ago: "When they asked my judgment of a condition, I would give it to them. Q. Only in response to a request from them? A. Why, I think so; I don't recall any other—— Q. During the twenty years you have no recollection of any voluntary suggestion you made to your principals on these subjects? 4100
A. I don't recall any. Q. Not one? A. No. Q. You wouldn't be surprised to find such a suggestion from you unasked for? A. I don't know; I don't recall any; I don't know whether I would be surprised or not."

Mr. Abbott: I don't think that comes within counsel's suggestion at all.

The Court: Read the question now that is objected to.

(Question repeated by the reporter.)

4101

A. No, I have never made such a statement.

Q. Well, do you now recall that you made such suggestions which you don't recollect then? A. I recollect that independently of the Powder Company and in every other way I try to do my duty all the time; and I may have done the thinking; or I may have gotten lots of suggestions from others, I don't know how these questions came up; certainly, I gave them the very best I had.

Q. When you testified on direct examination that the price was raised at the end of this time from 90 cents to $1.25 you intended us to understand that these prices had been, as a general thing, cut down to 90 cents, didn't you, Mr. Waddell? A. I did not say that.

Q. I know you did not say that, but didn't you intend us to infer that? A. No, I did not intend you to infer anything, you make your own inferences, I had intended to say that that was the low limit and then we went away up to $1.25.

Q. Now, then, do you recollect having stated anything on that subject in the Government case? A. No, I don't know whether I was interrogated on that or not, specifically.

4103 Q. Page 156: "Q. How long before the Indiana Company had its mills built? A. Several months. Just after the formation of the company Mr. Keeler was asked to take stock in the Indiana Powder Company and notified me of it. I went to Chicago and as an inducement for him not to take stock I offered him a contract for five years at $1.10 per keg, and upon instruction from Eugene du Pont I signed it. That was the price at which the Indiana Powder Company started off their sale of powder. It went down as low as 80 cents a keg until the time we purchased the Indiana. Q. When
4104 was that? A. That was in the latter part of January, 1902; purchased the Indiana and Northwestern at the same time." Do you recall that statement? A. Yes.

Q. Who was this 80-cent man? A. Mr. Maurice Sternberger.

Q. When? A. I can't give you the date.

Q. That was about 1894 or 1895, wasn't it, as we read the other day when we were discussing the Phoenix and the others? A. No; in 1894 he had a 75-cent price—that is in the Phoenix fight; but Maurice was selling around the Southern part of Ohio, and he had a low price, so he told me; I don't know, I didn't see his bills that he—I based that statement on what he told me.

Q. You based that statement that the price went

down to 80 cents a keg simply on the proposition that someone had told you one instance in which they had it? A. Yes, Maurice Sternberger had been my agent for a number of years; he was a prominent man, controlled about fifteen or eighteen coal mines and I had a good deal of faith in what he said.

Q. And you swear he said it, do you? A. What?

Q. You swear that he said it? A. Swear that he said it? 4106

Q. Yes. A. Oh, yes, I do.

Q. When was the date that he had the 80-cent price? A. I don't know.

Q. You mean that it was about 1901, don't you, immediately before the fight of the Indiana—before Indiana sold out, immediately before, wasn't it? A. I don't know when it was.

Q. That was about what you said, wasn't it, "it went down as low as 80 cents along until the time we purchased the Indiana"? A. Until the time we purchased?

Q. "Until the time we purchased"? A. Until— 4107
well, that "until" might have been a year before that, it might have been a month before that or it might have been a day before that, I don't know. What is the date there?

Q. That is what you meant by that sentence, was it? It might have been in 1897 then? A. No, it could not have been then.

Q. Or 1898? A. No, I think it is along towards the latter part of the fight that it went down, but I don't know the date.

Q. But by that statement, "It went down as low as 80 cents a keg until the time we purchased the Indiana," do you mean to tell us that you didn't intend to have inferred at that time that the 80-cent price was a general price? A. No.

4108 Q. You didn't have any such intention? A. No; I didn't intend to let anybody—give anybody any inferences, I intended to say what I did.

Q. You didn't mention the fact that it was only to one customer, and you knew nothing about it except what he told you at that time, did you? A. I did there just like I am doing here, replying to the questions put to me. If that question was put to me I answered it.

4109 Q. I didn't put that question to you, nor did I put the question to you on your direct examination here in which you said the price went down to 90 cents. A. Somebody did.

Q. It was your own counsel. Now, then, what price was paid for the stock in the Indiana Powder Company? A. I don't know; never heard.

Q. Do you know who suggested that sale by the du Ponts or Hazard Powder Company—where they got a chance to purchase it, or whether the proposition came from Mr. Rood—from the other side?

A. I don't know; I didn't know anything about
4110 it at all until after it was done.

Q. You don't know whether they were in reduced circumstances at that time, do you? A. The Indiana?

Q. Yes. A. No, I don't know anything about their business.

Q. On the contrary, you know they were not, don't you? A. I don't know anything about it.

Q. You know that they were pretty prosperous, don't you, at the time they made this trade with the du Ponts and Hazards and others? A. No, I don't know that either.

Q. You know nothing about it? A. I know nothing about it.

Q. Mr. Waddell, you heard the testimony I have read from your direct examination in regard to the

contest against the Indiana Powder Company. Did you intend us, from that testimony, to understand that the Indiana Powder Company was reduced to such circumstances, by competition or otherwise, that they were obliged to sell out to the du Ponts or any one else? A. It is such a long question, I will try to answer it in this way: That I didn't know what the circumstances of the Indiana Powder Company were except what Mr. Rood told me. May I state what that was? 4112

Q. Well, wait a minute. Do you know the date of it? A. Yes; just after he sold out.

Q. I mean can you tell what month it was? A. No; I should think he sold out in January, it was along—I went to Wilmington about April; just before I went to Wilmington. Rood told me why he sold out and that I would be very glad to tell you if it would conform with the question. As to the other, I do think that the struggle that we made against the Indiana Powder Company, not on a segregated territory definitely set aside nor was the territory at the beginning what it was at the close. 4113 It began with the confined trade at Terre Haute. We went in there and made a fight against him on the retailing of powder and it spread him out, and his territory extended to the limits that it occupied at the time he sold. Now, at that time, outside of the trade that Rood reached, the prices were maintained strictly.

Q. My question is whether—what you intended to be the understanding from the testimony you gave on your direct examination in these regards was: Did you intend us to understand from it that we had reduced the Indiana Powder Company to such circumstances that they had to sell out, or didn't you? That is a simple question, Mr. Waddell? A. Well, the——

4114

Q. Yes or no, did you want us to understand that or not? A. I want you to understand just what I said, that is all.

The Court: I know, but he wants an explanation.

The Witness: I can't tell what you are going to——

The Court: Don't you understand the question? Did you purpose by your answer to convey that understanding?

4115

The Witness: You have got it just right——

Mr. Abbott: If your Honor please, I think the question is rather argumentative and there are so many conclusions there that I think that the witness is entitled to explain.

The Court: He may explain, but he must answer and then he may explain; of course, I mean if the question permits of an explanation, if in the witness' judgment it is necessary.

4116

A. I will say no, then, with the explanation——

Q. Well, as long as you explain it, but not something else, Mr. Waddell. A. That it was not the financial end, but it was because Mr. Rood was unable to renew his five-year contract with the coal operators who had had—his stockholders who had had all the struggle with the mining question, the retailing of powder to his miners, and his stockholders refused to renew for another five years; and his five years was almost up and he had to get out of the business.

Q. That is what he told you, and you referred to a while ago? A. Yes, sir.

Q. Do you mean to say that you claim to say that was what he said to you? A. That was what was in my mind.

Q. And now you have got it off your mind? A. That is what was in my mind and that I told you I knew.

Q. Mr. Waddell, do I understand it to be your present position that there was no trade association from 1891 to 1896? A. No; there was a trade association during that period; there were districts 4113
where it was not in active operation constantly, but they held meetings all during that time, and throughout the general country they were associated the same as they always were.

Q. Do I understand that you have any desire to modify your testimony which you gave several days ago to the effect that the association and members of it as a unit made a contest against the Phoenix and the Chattanooga and the Southern? A. No, I think there was an agreement in regard to that district, and that they conferred with each other and co-operated and yet at the same time 4119
they competed with each other because of the confusion they got into; there was constant competition between the powder companies, all of them, because of conflicting orders to different agents.

Q. Then your understanding is not entirely in accord with what your counsel has stated here a few minutes ago, that the Association was entirely broken up during that time?

Mr. Abbott: I didn't say that.

A. Entirely absorbed and disbanded? No, I don't think that was the case.

Mr. Abbott: I didn't say that, Mr. Button.

4120 *R. S. Waddell—Cross*

A. (Continuing) I think they held together.

Mr. Button: Then I misunderstood you, Mr. Abbott.

Q. Now, when was the Birmingham Powder Company organized, Mr. Waddell? A. I think that was about 1898; I am not sure as to that.

Q. And they operated in territory that your brother F. J. Waddell was particularly familiar
4121 with, did it not? A. Yes, he was more familiar with it than I was, although I knew something of it.

Q. And most of the correspondence from the Cincinnati office in reference thereto was conducted by him? A. From the Cincinnati office? No, I think not. I think he was in California at the time of the Birmingham fight.

Q. And in 1898? A. I don't know; I don't recall.

Q. I think you must be mistaken about that, Mr.
4122 Waddell. A. I don't recall just exactly there, but my impression is that Fred had a good deal to do with that.

Q. I wish you would look over a little correspondence that seems to be copied in this book and see whether you are—which purports to have been signed by him and state whether you are familiar with it, whether you can refresh your recollection as to who was corresponding about the Birmingham fight and as to what the situation in regard to particular prices in that district was (handing book to witness). A. Of course, these letters were written by some one other than myself; I don't know anything about the letters; the contents of the letters—never saw them.

The Court: Does it refresh your recollection as you look at it?

The Witness: Only as to the date. The letters don't indicate that they were written from Cincinnati.

Q. Well, look at the one on page 259, No. 121. A. Oh, yes.

Q. That was from Cincinnati? A. That is mentioned there, and the date appears to be Cincinnati. 4124

Mr. Abbott: If your Honor please, I object to the stating of the contents of these letters.

The Court: He cannot do that, of course. The witness may look at it. You needn't mention out loud, Mr. Waddell, you can look at it and the question is whether or not it refreshes your recollection on the subject about which you are being interrogated.

Q. The witness had stated there was nothing 4125
to indicate it was from Cincinnati, that is what that question was? A. Yes, that letter that you mentioned indicates it was from Cincinnati.

Q. Well, now, look at that again. Do you know anything about what prices were being made by the Birmingham Powder Company in November, 1898? A. The only thing I know about——

Q. One minute. I didn't ask you what you knew. I asked you did you know it in November, did you know that in the month of November? A. No, I was not familiar with that detail.

Q. That is what I asked you. A. No.

Q. Won't you look at page 270, No. 130, and state whether or not you know anything about the prices that were being made in February 1, 1899, by the Birmingham Company? A. No.

Q. Now, I wish you would look at No. 144 on page 285 and state whether you have any recollection of writing a letter of which that is a copy. A. No, I have no recollection beyond what the book says, I have not any independent memory of it.

Q. Now, will you look at No. 148 on page 289 and state whether or not you have any recollection in regard to the prices made by the Birmingham Powder Company in November, 1899? Then, Mr. Waddell, you are not prepared to testify as
4127 to the exact prices in that district, and who made them, are you? A. No.

Q. Was that mill built for the purpose of being sold out to the du Pont Company? A. I don't know whether it was, I don't think so.

Q. Well, some of these mills were, weren't they? A. Well, I never knew of mills that were built for that purpose, no. I never heard anyone declaring any such idea.

Q. Never did? A. No.

Q. Well, do you know just when the Birming-
4128 ham mill—some stock in that company was purchased? A. Yes, I know about the time the mills were bought.

Q. About when was that? A. Well, it was towards the latter part of the nineties. I cannot remember the exact date.

Q. Very well. A. It was bought by Mr. Hamlin.

Q. Now, you have spoken of a couple of trips that you made to the Pocahontas district, so-called. Where was that located, Mr. Waddell? A. The Pocahontas district was on the Norfolk & Western Railroad, between Huntington, West Virginia, and Pocahontas, Virginia, about 175 or 200 miles east of the Ohio River.

Q. And the operations there were in bituminous coal? A. Bituminous coal, yes.

Q. And about how many mines were there in that district? A. At the time I visited it last, about—there were about forty companies in the field, some of them had two or three mines each, I should judge.

Q. And they pooled, that is, they had some mutual arrangement among themselves, didn't they? A. They had a selling agency, but not a pool.

Q. Known as the Pocahontas Coal Company? A. Pocahontas Company, I think it was. The name may have been "Coal Company." 4130

Q. And that took in at the date of your last trip, about all the operations in that valley? A. No, not all of them, no, sir; United States Steel Company went in there with a number of mines. Some were outside of the Pocahontas Company.

Q. Now, that inquiry about that Pocahontas trip was drawn out by your statement, as I recollect it, that you went down there and made—together with a representative of the King Powder Company in 1902, July 14th, and made practically all of the list of contracts that appear in evidence here, being the last exhibit in this Moxham list, 4131 was that correct? A. No, I corrected that testimony. I first went there with a representative of the King Powder Company about June, 1897—Joe French, and we made a contract with all those people, King, Hazard and du Pont, for five years, which terminated in June, 1902. I again visited the valley at—first I mentioned that I had gone with Joe French of the King Company, but it was with Pickard of the King Mercantile Company, which was the du Pont and Laflin & Rand Company, selling King output, and we renewed the contract in 1902 for three years.

Q. Now, you have corrected your testimony again to the effect that your first trip was in 1897. A. Yes, I stated the other day 1899, I think.

Q. Your statements were as follows: Your first statement was that you took a trip in 1902, your first trip along in 1899 with a certain gentleman. Your correction was that the two trips, the dates had been quite correct, but you made a mistake in one of the people who accompanied you, that is the correction you made. Now you still further change it, saying that trip was two years earlier still. A. My impression was that all of the contracts were three-year contracts, that would be
4133 1899, 1902 and 1905, but in looking at the record, rather at the minutes of the meeting, where I was authorized in 1897, I found in the minutes I was sent there in 1897 for five years, the first was a five-year contract.

Q. Then your statement, a few minutes ago, that you had already corrected your testimony was not quite correct, you now desire to correct it, is that what you mean? A. I want to get it correct.

Q. You say now you desire to change it in that regard? A. I desire to say that I went there in the
4134 summer of 1897 with Joe French, the first visit, and made the contract originally with about thirty or thirty-five companies for five years. My impression was when I testified before, that it was for three years.

Q. Five-year contracts? A. They expired in 1902, and when I was at Wilmington, Del., in 1902, I left in July, 1902, and went to Cincinnati, and then was joined by Mr. Pickard and went over and renewed contracts for three years up to July, 1905.

Q. Now, if we get it straight, your first trip was 1897, and you made five-year contracts; and went there in 1902 and you made three-year contracts? A. Yes, sir.

Q. In each instance with some representative of the King Powder Company? A. Well, it was not the King Powder Company, it was the King pow-

DARK PAGE BLEED THRU

der, but not the King Powder Company.

Q. Now, on this first trip the negotiations for those contracts were with the Pocahontas people and they had begun before Mr. Rood left your employ, hadn't they? A. No, I think—I am very sure that Rood left our employ about February or March 1, 1897, and the contracts with the Pocahontas people were made—along about June, 1897.

Q. The correspondence shows, that we have produced here, that Mr. Rood left your employ April 30, 1897; I know contracts were made later, but my inquiry is, were not the negotiations leading up to those contracts begun before Mr. Rood left you, and in fact begun by Mr. Rood himself while in your employ? A. I don't remember as to that. 4136

Q. Therefore—— A. I think not, because the contract system was not in vogue at that time.

Q. That was just the point of your testimony, wasn't it? A. No, I was giving this as a part of the great volume of contracts.

Q. And it is for that reason that you think that it is impossible that that situation could have originated before the contract system came into vogue, as you understand it and as you have just stated it, is that correct? A. That is a little bit muddy to me, how is that again? 4137

Q. (Repeated by the reporter.) A. If you are talking about individual contracts, or contracts with a customer, that means one thing and if you are talking about a system that we have enumerated all together for contracting the whole of the country, that is quite a different proposition.

Q. I understand. A. I made the contracts, individual contracts, as I have testified, for special amounts and for specific—carloads and for a dozen carloads and whatever it may be or might be, but that was not the system, general plan of the rebate system.

4138 Q. You are talking about something else, Mr. Waddell? A. No. I want to get clear on that. There is a distinction between making individual contracts and adopting the system by the associated powder companies.

Q. Very likely. And fixing the general plan. Very likely. A. And I know Mr. Rood was not with us when that general plan was adopted.

Q. My question is whether these Pocahontas contracts originated as the results of the contract sys-
4139 tem as you call it or whether they did not have their origin prior to that date? A. There may have been correspondence or talk of the separate contracts in there, but the system was adopted by the Powder Association as a general plan——

Q. I have not asked you about that. A. And I made application to them for the Pocahontas powder privilege of applying the system to the Pocahontas field, then I have made one——

Q. I may have misunderstood your testimony, Mr. Waddell, but I gathered from it on your direct
4140 examination, that these contracts would not have been possible in the absence of this association scheme of contracts, and that they were the direct result of it, is that your present statement? A. We were prohibited from contracting future supplies of powder all agencies.

Q. Then your statement, what is it? A. We had to go to the principal to get a right to make a contract for a carload.

Q. You continually talk about the general situation and I am talking about this particular Pocahontas contract. A. These were made in the summer of 1897 after I had applied to the Powder Association through the Hazard and du Pont Companies and had been granted the authority to make them.

Q. Possibly. Don't you recollect that negotiations in regard thereto had been going on for several months previous thereto? A. Not for that kind of a contract, oh, no.

Q. But don't you recollect that Mr. Tierney and the people who were running the Pocahontas Syndicate demanded that you come down there and make some contract with them so that they could know what they were going to get it for? A. There may have been local arrangements for the Pocahontas 4142
field, but it is not the system I am talking about.

Q. But is it your statement, that you and this representative of the King Company had allotted to each one of you certain particular contracts—companies which you could contract with by the association? A. By the association?

Q. Yes. A. No.

Q. The fact is, that you and Mr. King's representative went down through that valley, is it not, and solicited all the business and left it to the particular customer to say who he would make a con- 4143
tract with, was not that the situation? A. No, I will give you the situation.

Q. Very good. A. The way the contract was made: Joe French and I went through the Valley, and we there found customers that had been using Chattanooga, du Pont, Hazard and King powders. Under the rules of the association, it was the company that sold the largest amount of powder during the preceding two years, that was allotted that customer. We could not decide who these customers belonged to, and it was a question down there how we would make the contracts. I think the first contracts were signed, when we found a customer for three different powders, we made him sign three different contracts, one with the Hazard, one with the du Pont and one with the

4144 Laflin & Rand, or else it was two contracts. When we go back to Cincinnati, Mr. O. E. Peters, that is Mr. Peters of the King Powder Company, discussed the question of how we would divide up these equities. I had an equity of the trade of a customer that he had sold the most to and he would have an equity in my trade and that would be furnishing a customer with two kinds of powder. Our discussion down there with the coal companies developed the fact that a company would like—a
4145 coal company would like one brand of powder. Mr. Peters and I agreed to exchange our equities; I would give up my equity in the Lick Branch trade and he would give up his equity in the Algoona trade. We split the customers up and each received definitely Hazard or definitely du Pont or definitely King, and they remained that way and that was the agreement in Cincinnati.

Q. Very good. Well, all of that situation does not answer what I asked you. I asked you if the association had definitely allotted particular cus-
4146 tomers to you and other particular customers in the King Company. A. Well, they gave——

Q. Did they or didn't they? A. They had not in just that way in the association—they gave us the privilege to contract Hazard, du Pont and King, and to contract the Valley.

Q. Well, you testified the other day, that is the same trade that you mentioned two or three times having visited with Mr. French in '99 or 1902, Mr. Waddell, and you stated that you divided the territory between the Hazard and the du Pont Companies, the associates, and after the mix-up—you said that was one of the rules of the Association, that was the guide and you said that to indicate your knowledge of the contract system that you mentioned that obtained in the Pocahontas field.

That was in the year 1897. So you didn't mean by that, that the association itself had divided up the trade there, did you, Mr. Waddell? They left it to you and the King Company to come down there and see what you could do on it. A. No, that is not the way I put it, they gave the right, as they did in all their minutes, to one company if one company had a right to contract; where two companies were in a field they gave a right to the two companies, or if there were three companies, to the three companies to contract, and they authorized 4148
the Hazard and the du Pont and the King Company to contract the trade in the Northwestern district, and they left it to the judgment of the different companies.

Q. As a matter of fact, you were down there in the summer of 1897 and met the members of the Boards of Directors of all these concerns, didn't you? A. Yes.

Q. And they talked to you, these men there, they inquired of you and talked over the general situation there? A. Yes.

Q. The discussion with them was whether it 4149
would be better for them to build a mill or make a contract for a certain period with your company? A. I don't remember about the mill; but I do remember that we talked over. This came up perhaps in the argument that I made.

Q. My question was whether you remember talking over the building of a mill? A. No, I don't recall the building of a mill, it may have been suggested.

Q. Do you remember Philip Goodwill, do you remember him? A. Yes, he was president of the Goodwill Coal & Coke Company.

Q. One of the concerns in that valley? A. Yes, sir.

Q. Don't you remember writing this letter in April, 1897, and enclosing it in a letter from him (handing paper to witness)? A. That is my signature, I may have done so.

Mr. Button: Will you mark that, please?

(Same received in evidence and marked Defendants' Exhibits A-195 and A-196.)

Q. And this is one of yours in April, 1897, upon
4151 the same matter (handing paper to witness)? A. That is my signature.

(Same received in evidence and marked Defendants' Exhibit A-197.)

Mr. Button: This Exhibit No. A-195:

"Cincinnati, April 10/97.

Messrs. E. I. duPont de Nemours & Co.,
Wilmington, Del.

4152

Dear Sirs:

Herewith I hand you copy of letter received from Philip Goodwill, Mgr., G. C. & C. Co.

The Mr. Tierney to whom he refers is J. J. Tierney of Pocahontas. When the Norfolk & Western R. R. failed and the coal company was broken, the operators in the Bramwell District selected J. J. Tierney as a referee or arbitrator of all differences that might arise between the Companies. His decision is final and he is the natural custodian of all information the operators in that district will tell of their affairs.

Mr. Rood is now in that vicinity and I have asked him to ascertain what Companies are paying expenses of unloading and making this in the nature of a rebate on powder. It may be we can get some information as to the methods of our competitors through Mr. Tierney. So long as coal operators buy powder at $1.30 per keg and sell it to their miners at $2.50 per keg in cash or labor, they have very little to complain about. I have written Mr. Goodwill as per enclosed 4154
copy, which I hope may meet your approval. If anything further should develop I will write you.

Truly yours,

R. S. Waddell, Agt."

Now, Mr. Goodwill's letter to you was April 7th and it says '89.' I guess that is a misprint for '97'.

"Goodwill, W. Va., April 7/89. 4155

R. S. Waddell, Esq., Agt.,
The Hazard Powder Co.
Cincinnati, O.

Dear Sir:

There is not an operator in the Flat Top Field but who is strongly of the opinion that the present price of Powder is entirely too high, when compared with the exceedingly low price of coal and coke. In fact, so general is the opinion throughout the field, that there are already rumors to the effect of the operators concentrating their purchases to

one good standard company. I think the idea is to purchase the powder through Mr. J. J. Tierney, Prest. of the Pocahontas Co. He no doubt will represent the above facts to one or two standard companies and the one with whom the best arrangement can be made will doubtless secure the trade. If something of this kind cannot be effected, the operators will no doubt erect a mill of their own at some central point in the field.

4157 Something of this kind will have to be done unless the Powder Combination will agree to deliver powder here say $1.00 per keg, but when some of you are asking $1.30 and $1.35 (for there are two prices being quoted) we feel at the present low prices of coal and coke it is entirely too much. I have also heard that some Powder Cos., while they bill the powder at Combination price, there is a private understanding or agreement upon a certain rebate in the way of bear-

4158 ing part of the expense for unloading &c., so that if this be true, some of the parties to the Combination are breaking faith with the rest of you.

I think if you are Mr. Rood is contemplating a trip to the field, it would be well to see Mr. Tierney.

I give you the above facts for what they are worth, and would suggest that it would be well for you to be on the *alert*.

Truly yours,

Signed—Philip Goodwill, Gen. Mgr."

Q. Now, don't you recollect that that was the

origin of these contracts, this suggestion of Mr. Goodwill's, in April, 1897? A. I don't know that it was the origin of them; it may have been. I don't know what the origin was.

Q. So that was at a period prior to Mr. Rood's resignation, wasn't it? A. What is the date of that letter?

Q. April 7th. A. April 7th?

Q. 1897? A. Yes.

4160

Mr. Button: Your answer to it is April 10th, 1897:

"Mr. Phillip Goodwill, Gen. Mgr.,
Goodwill, W. Va.

Dear Sir:

Your favor 7th inst., received.

No doubt the very low prices which ruled on powder during the past year have created the impression among men who do not understand the cost and risks of powder 4161
manufacture, that the present price is excessive. If the cost of raw material and the labor which enters in to a keg of powder were the only items of expense, there might be some foundation for this impression. The danger and expense of explosions, the cost of freight, handling and storage, the general expense of manufacture, the large capital required, and the long time intervening from the purchase of raw materials until cash returns for the goods are received, are sufficient to make the present price inadequate for a profitable business. The fact that Powder companies employing a capital of nearing a half million dollars wrecked their business and sacrificed their

4162 mills, ought to be a suggestion of what can be accomplished by selling powder at $1.00 per keg.

The rate of freight on powder to Norfolk & Western district is about 25 cts. per keg and nothing could be saved on the raw material when the other items of manufacture are considered.

The Phoenix mills at Kenova withdrew
4163 from your market when powder reached 95 cts. per keg because they could not stand the losses. Others withdrew at $1.00. Our companies sunk hundreds of dollars in defending their trade and selling your operators at uniform prices with other districts. We supplied you powder for months delivered at Bramwell for less money than the raw materials cost us at the mills. Sacrificing freight and many other expenses. Now when prices are made uniform and you are on a fair basis with other districts and the
4164 powder manufacturers are endeavoring to get cost for their product, dissatisfaction arises. They know very well that any one who, understands the powder business would not invest a dollar in a mill at present prices. I do not believe that powder can be made and delivered to you at $1.30 per keg and net the manufacturer 10% profit considering the exigencies of the business for a term of three years. However, if it should be the desire of the coal operators in your territory to solicit a lower price on Blasting powder I will be pleased to submit a request of this kind to our Principals, who I am sure will give any reasonable request fair consideration. I would suggest

however, that no mention be made of the building of a mill.

Permit me to suggest that the Powder Companies would be very willing to exchange profits on powder with the coal operators. I believe you are purchasing powder say at the extreme price of $1.30 per keg and selling it at $2.50 per keg. Your powder is delivered at your mines and most of it is sold before the Powder Companies are paid for it. It nets say $1.25 per keg 4166
profit. If this be correct I venture the assertion that you make more than four times as much profit as do the manufacturers who take all the risks in the business. After a powder plant is wiped out by explosions two or three times, a number of lines are paid for, the business from the inside does not have the same glowing appearance that it has to an outsider.

I thank you for suggesting that we confer with Mr. Tierney and I will ask our Mr. Rood to call on him. Anything we can do 4167
to aid the operators in the N. & W. district in getting uniform prices and the lowest rate that the manufacturers can afford to make in the district, it will be a pleasure to respond.

Truly yours,

R. S. Waddell, Agt."

Exhibit A-197 is to the du Pont Co., five days later, April 15, 1897:

4168 *R. S. Waddell—Cross*

"Cincinnati, April 15/97.

Messrs. E. I. duPont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

Mr. Rood returns this morning from the Pocahontas district and reports that nearly all of the operators associated with the Coal
4169 Pool expected Mr. Tierney to obtain some concession in the price of powder. About one-half of the operators are independent of the Coal Pool and do not hold it in high esteem. The Coal Pool members use about 26,000 kegs of powder per year, while the outsiders use from 25,000 to 30,000 kegs probably a little more than the Coal Pool. Mr. Tierney did not put the subject in the shape of a threat of building a powder mill. He had my letter, and about the only criti-
4170 cism he could make was that they had reduced the retail price of powder from $2.50 per keg to $2.00 and would now only made 70c per keg instead of $1.20, as I had stated in my letter.

Mr. Rood stated that Kings and Phoenix had gone through the valley, and withdrawn from that market when powder reached $1.00 per keg, and they did not return to get any business or take care of the operators, until a few weeks before the advance in prices when King entered the district to recover lost ground, preparatory to getting the advance price.

Mr. Tierney was seeking charity, rather than assailing the Powder companies. His

argument now is the low price of coal and the difficulty they have in getting to market. I furnished Mr. Rood some arguments before he left here, and which he gave to them. The principal ones were regarding the retail price of powder, if the operators should build a mill and become competitors; the Powder manufacturers of course would have to deal with outside stores and the retail price to miners would go down to a very small margin, thus destroying all 4172
of the present profits.

The second point was that the FFF grain alone was used in the Pocahontas district. A mill cannot make one grain alone, and the same freight rate that shuts us out of the valley at less than the present price, would shut their mill out of the foreign trade for the coarser grains of powder. If they were compelled to work over the grain of powder that could not be broken to suit their coal, their powder would cost them more than we 4173
are now asking for ours.

I think we have 'taken the wind out of their sails' on this question. There is, however, one very bad feature on which I write you a separate letter, thinking you might have use for it apart from the subject herein discussed.

Yours truly,

'H' R. S. Waddell, Agt."

Q. Don't you recall that subsequently you made your trip up there and threshed the whole matter out with the Board of Directors in open meeting there, Mr. Waddell, in response to these sugges-

4174 tions that have been made by, first by Mr. Goodwill and then by Mr. Rood, whom you sent up there? A. I got reports from all the sources I could get information, and I went up in that summer.

Q. A simple and ordinary business proposition, discussing with that Board of Directors whether you would make your price such as to satisfy them or not, was not that all there was to it? A. No, I had specific directions from the Hazard and duPont
4175 Companies, specific orders to go with Joe French, who was supposed to be a strong competitor of ours, and that we had been authorized to contract the valley, my recollection is, at $1.30, less a rebate of 15 cents a keg, provided we could get them all to sign, and that is what we did. I was not there to thrash out and fix prices, I had authority——

Q. Did you write this report of that trip on July 14, 1897, from the Bluestone Inn at Bramwell, West Virginia (handing paper to witness)? A. July 14, 1897, that sounds about right; I suppose
4176 that is my letter. We met in Tierney's office, I know that.

Q. And they were there, weren't they? A. Representatives of all the companies came in.

Mr. Button: Will you mark this, please?

(Same received in evidence and marked Defendants' Exhibit A-198.)

Mr. Button: This letter is dated July 14, 1897, and is to the du Pont Company:

"Dear Sirs: It required a full day yesterday to reach an agreement with the Directors of the Pocahontas Company and to prevent a long series of arguments being added to our contract.

They had plans and estimates on a pow-

der mill in the office and some of the members thought they were wasting their opportunities to build a mill and were selling out too cheaply. One of the Directors said 15 cts. was not enough as he is now offered an outside powder of standard make at $1.15.

I questioned the fact that he could get the powder and he replied "I have the $60. paid me by the man as a rebate and he has my promise that I will take the car of powder and must take it. In signing the contract he excepted one car of 400 kegs. It was a hard matter to get him to assent to the contract and to sign it. We had to recognize the importance of the Pocahontas company by making a contract with them in which we agreed to make contracts with the individual companies. I tried to break the force of this by drawing a weak instrument, but they added to this paper. 4178

I think it will make weight in our favor.

It required nearly a whole day to shape this and we only executed five individual contracts. 4179

Tomorrow we go to Elkhorn, Ennis, Maybury and South Fork. The next day to Northport. Will be here until Saturday or Sunday.

Address Bluestone Inn, Bramwell, West Va.

Will send one copy of the agreement tomorrow. The other three copies will follow later—one each for du Pont, Hazard, King and Pocahontas Company.

Truly yours, R. S. Waddell, Agt."

4180 Q. Now, that was a perfectly open discussion, there, wasn't it? They were prepared to take either choice they saw fit, weren't they, Mr. Waddell? A. No; oh, no. We had the contracts sent to me, printed from the East, printed forms, and I filled them in at $1.30 less 15 cents; that is all the price I had; therefore there was nothing to discuss, the question was of getting them to sign.

4181 Q. You didn't understand me: They were at liberty, at perfect liberty to go on with either suggestion, to build a mill there or sign these contracts, weren't they? A. Certainly, they put all the pressure on us that they could get, they wanted to lower the price, that is the idea.

Q. Then are you sure you did not make a contract in 1899? A. Oh, I made a good many propositions, I was there, I think, I called on all of the trade of the Cincinnati office at least once a year and probably four or five times a year.

4182 Q. Well, now, are not you mistaken in saying you had a five-year contract, didn't it simply run to 1899 (handing paper to witness)? A. I thought it was a five-year contract.

Q. Is that your letter (indicating)? A. This is 1899—June 22, 1899. Yes, my recollection was, it was a five-year contract, but I was there several times.

Mr. Button: Mark them.

(Same received in evidence and marked Defendants' Exhibit A-199.)

Q. So, as a matter of fact, you renewed this contract in 1899, as you now recollect? A. I don't recollect—I only recollect being there once with Joe French and once with Mr. Pickard. There is a possibility that I may have been there twice with French.

Mr. Button: Well, possibly, I will read part of this without reading it all.

Mr. Abbott: Better read it all.

A. (Interrupting) Read it all.

Mr. Button: All right, this is June 22, 1899. "Messrs. E. I. du Pont de Nemours & Co., Wilmington, Del. Dear Sirs: Mr. French and this writer held a conference with the directors of the Pocahontas Coal 4184
Company at Bramwell, West Va., at 9.30 a. m. on 20th inst., and exchanged views on the powder question.

We submitted our figures on freight; the fact that Mr. Justus Collins, a part owner in the Indiana Powder Co., declined to use his own powder and insisted on getting Hazard at $1.15 net; we showed that the quality of our goods is far superior to the powder quoted them from Pennsylvania. We submitted a statement of freight rates 4185
showing the low net cost at the mills; argued the question in the best way we knew how and stood for a renewal of the contract at $1.15.

The Board went into executive session and we retired to the hotel. At 11:30 they sent for us and we had another round for nearly an hour, when we all adjourned for lunch. At two o'clock we resumed hostilities. When we found definitely that the contract could not be renewed at $1.15 I made a proposition of $1.12½ net for *one year*. This was promptly and firmly declined. Then Mr. Tierney stated that the Board were not fully united on the ques-

4186 tion, but a majority had considered it carefully and they would make us an offer of $1.10 net subject to 2% discount for a contract running three years. Mr. French and I conferred and accepted the proposition. There were some conditions imposed. The Board handled Mr. French pretty roughly in regard to his sales to Indian Ridge and others.

4187 They inserted a clause in the new contract specifying definitely what companies should be tendered the contract and that if either of the Powder companies, (and they referred particularly to King) should sell or rebate to others in that district who did not take the quantity of powder covered by the Pocahontas contract, such powder company would be released from their contract with the Pocahontas Company, and the others involved should take up the trade. Mr. French begged to have Indian Ridge

4188 accepted and the Board were unanimous in deciding that he should notify Indian Ridge that the price should be $1.30 per keg and if he varied it, the contract with the King Company was ended.

I herewith enclose to Wilmington to be forwarded to New York four copies of the contract which now bear the signature of the Pocahontas Company and the King Powder Company. Please have these executed in the same manner as the old contract, copy of which you have,—forwarding same to me when completed.

Mr. French was thoroughly convinced that we could not contract at $1.15 and was not certain that we could make a contract

at any price. I am very hopeful of shutting out Shamokin, but there are four companies whose owners are stockholders in the Shamokin Powder Company. They may stick to Shamokin Powder although we will try to win them on this new deal.

You will note that the Empire Coal Company is omitted from the list of companies with whom we may contract, and the Browning mines have been included. 4190
We lose Empire for du Pont and gain Browning for Hazard.

During 1898 the Pocahontas Coal Company field was furnished with the following powder:

Hazard and du Pont...23040 kegs
King 26540

Excess of ..... 3500 for King

This was due to our loss of Shamokin and Elkhorn Companies and for a portion of the 4191
time, Greenbrier and Louisville; the two latter being Justus Collins' mines. We also lost two carloads on account of delay in shipment. The orders were cancelled and they took the powder from King. I think we got our full percentage of the trade when we consider that Indiana Ridge used 1600 kegs and should not have been included in the deal for Kings.

I hope this will all prove satisfactory to you.

Very truly yours,

R. S. Waddell, Agt.

H. Enclosures."

Q. Well, then, on that date the coal companies were rather dictating to the King Company what prices they should take and some other concern, weren't they? A. Yes, Indiana was in there then.

Q. And it is also true in this connection then in 1899 that you had some discussion as to prices there, didn't you? A. They had given me a rate; if you look at the minutes you will find it somewhere; I didn't make any prices.

4193 Q. You had a conference. A. We were authorized to make $1.15 if we could, and if we couldn't to come down to $1.10; I would never have made it otherwise. The contracts had to be signed by the principals.

Q. Certainly. A. I could not sign a contract.

Q. Well, without referring to this correspondence, do you not recollect, Mr. Waddell, that the Pocahontas situation did not have its origin in this situation which you determinate a contract system? A. I know definitely, it did.

Q. Is that system in vogue in April, 1897? A.
4194 No, the contracts were not made in April, 1897.

Q. I understand that. But was the contract system in vogue in April, 1897? A. No, no, there was a committee appointed in 1897 to get up the contract system.

Q. And you know well enough, that these very contracts would have been made whether they had ever had a contract system or not, don't you, Mr. Waddell, on account of the pressure that was being brought to bear by that Pocahontas Company? A. No, I don't know that they would have been made; I don't know what would have been done; I know that we were not contracting generally. I never had any such contracts.

Q. Now, you stated the other day, Mr. Waddell, that when the Indiana Powder Company was sold

out, you had some conversations with Mr. Rood? A. Yes—no, a good while afterwards, not immediately.

Q. Did he tell you how much he got? A. No.

Q. Didn't know anything about that? A. I never heard of it until afterwards, a good while afterwards; I think I got that information from the Hazard office in New York.

Q. When did you first learn that the company had been sold? A. I think I saw it in the paper about the time it was sold, or a few days afterwards. 4196

Q. When was that, in January, 1902? A. It was in January, 1902.

Q. Didn't you say in the Government case that you—didn't you testify as follows—I will read your testimony—at page 902: "I talked with Mr. Rood about the fight that they had made against the Indiana and when he was president of it, and the same kind of a fight they were making against me——" A. Against me, that must have been after 1903.

4197

Q. "I went into the matter that he had sold out and did pretty well and that he was out of the business. Q. And did pretty well? A. Yes. Q. You were thoroughly conversant, of course, with that transaction? A. No, I wasn't. Q. In which he did pretty well? A. No, I wasn't. Q. You knew that he did pretty well? A. No; I didn't know it. I had heard remarks about it." When was it that you learned that he sold out and did well? A. It is apparent that you are relating what occurred after I built my mills in 1903. The conversation that I had with Rood about his having sold out was some time after the sale was made. I first got the figures according to my recollection now of what was paid for Indiana and Northwestern after

4198 *R. S. Waddell—Cross*

I went to Wilmington in 1902; and I got those figures from an employee of the Hazard Powder Company.

Q. Well, you knew about it before you testified here, didn't you, on this occasion, you have known of it all the time you have been on the stand, haven't you? A. I know what the rumors were then, but I could not tell you today what price was paid for it.

4199 Q. You could tell us that he did pretty well, couldn't you? A. That is what he said he did, pretty well.

Q. Well, you knew it, didn't you? A. I certainly knew he was doing well to make his powder at 80 cents and have a contract to buy it from the stockholders at $1.10, with no freight charges, that is always paying business, that pays you a profit of 30 cents and you could not lose money on that proposition.

Q. Who was Mr. McBlair? A. He was the general agent of the Hazard Powder Company in St.

4200 Louis.

Q. Did you know him? A. Yes; right well.

Q. How long had he been general agent in St. Louis? A. I don't know how long.

Q. It was for a period of some years before 1902, wasn't it? A. Yes, sir.

Q. He had been selling the du Pont and Hazard powders, hadn't he? A. No; I think he was not agent for the du Pont for a good many years.

Q. Meacham was agent for the du Pont. McBlair was the Hazard Powder Company agent, is that right? A. Yes; I don't know when he got the Hazard agency.

Q. Mr. Eugene du Pont died about this time, didn't he? A. The latter part of February, 1902, I think.

4201

Q. Mr. Colvin was getting pretty old at that time, was he not? A. No; he was about 58.

Q. About that time you learned that Mr. T. C. du Pont and Mr. Pierre S. du Pont had come into the business, didn't you—about March, 1902? A. Yes, sir.

Q. You also knew Mr. Rice of Chicago, didn't you? A. Yes, sir; I knew Mr. Rice.

Q. Then about that time you came to the conclusion that it was time for you to go into the powder business for yourself, about March or April, 4202
1902, didn't you? A. I had no thought of it at that time.

Q. It never entered into your head at that time, did it? A. No; I was under contract for five years with the du Pont and Hazard Companies.

Q. Do you remember going to this Great American Handicap Meeting in Kansas City, in April, 1902? A. No, sir. There was no such meeting held at that time.

Q. When was it held? A. In 1901.

Q. You are sure about that? A. Yes; I am quite 4203
sure.

Q. When did you locate that date? A. I have not located it, but I am quite sure I didn't go to the Grand American Handicap after Mr. Eugene du Pont's death.

Q. In the Government suit, you said that you did not know whether it was in 1901 or 1902, didn't you? A. Yes; but after I got off the stand I thought it over.

Q. That is what I am inquiring about. How and when did you locate the date since that time? A. I knew that I did not go to the Grand American Handicap after Eugene du Pont's death.

Q. Well, how did you know that? A. Well, young Eugene came to Cincinnati and went with me in a party to the Grand American, and things

were very much unsettled after Eugene du Pont's death. I know it was a year prior, it must have been.

Q. Then when was it, in April, 1901? A. It was prior to 1902, I should say about April, 1901.

Q. And at that time you were—April what? A. April, 1901.

Q. And at that time you knew perfectly well that a good many of these mills had been built to sell out to the du Pont Company, didn't you? A.
4205 No; I never knew a mill built to sell out to the company.

Q. Well, in April, 1901, had you determined to go into the powder business yourself? A. No; I say I was under contract signed the 1st of January, 1900, for five years, expiring the 1st of January, 1905.

Q. And that prevented you having any such thought, did it? A. Well, I had no thought of going in, I would not have left Eugene du Pont under any conditions. I admired the man very much and
4206 do yet.

Q. Well, do you recall seeing Mr. E. S. Rice at this meeting of the American Handicap whenever it was? A. Rice had a party there from Chicago.

Q. Did you see him? A. Why, oh, yes; I saw him.

Q. Talked with him? A. Oh, occasionally I spoke to him; I did not have any communication with Rice very much.

Q. Didn't you talk with him at that time about building a powder mill? A. No.

Q. No conversation with him on that subject whatsoever? A. None whatever. Rice was the last man on earth I would talk with on any business proposition; he and I had been enemies for years.

Q. So you are very sure you said nothing to him about it? A. Yes.

Q. What were you down there for Mr. Waddell? A. At the Grand American?

Q. Yes. A. I took two carloads of expert sportsmen there to contest for prozes during the week of shooting. I attended all tournaments, Grand Americans; I participated in th shoot.

Q. Don't you recollect asking Mr. Rice to wait for you one night when you were going back from those grounds to the hotel? A. No.

Q. Because you wanted to talk to him? A. Going back from the hotel? 4208

Q. That you wanted to talk to him on the way back from the grounds to where you were stopping? A. No.

Q. Didn't you discuss the powder business with him? A. Oh, no; not with Rice.

Q. Didn't you complain to him about the situation at Wilmington since T. C. and P. S. du Pont had come into the business? A. They did not come in until a year after that.

Q. Then you did not? A. Certainly not.

Q. And that you were not permitted to do things 4209 that you wanted to do in Cincinnati, didn't you complain to him about that? A. No, no; I should never have consulted a thing like that with Mr. Rice.

Q. And finally did not you propose to Mr. Rice, that you go and he go in together and get Mr. McBlair of St. Louis and build a powder mill? A. No.

Q. You did not at that time? A. No; I knew McBlair hated Rice as much as I did; it would have been the last combination in the world.

Q. But did not Mr. Rice say to you that he did not care to go into that business, that he had had all the experience in the powder business that he cared for? A. No.

4210 Q. And had been as near its manufacture as he cared to be, didn't Mr. Rice say that to you? A. No; he is still in it.

Q. And then did not you discuss the question of what kind of powder you wanted to make and stated at that time it was blasting powder? A. No.

Q. And is not it true that Mr. Rice said to you that he objected to the manufacture of powder or going into it, didn't say that? A. No discussion
4211 at all with Rice.

Q. And didn't you reply to him that it would be unnecessary to manufacture any powder, that you would manufacture prices? A. No.

Q. Didn't say that to Mr. Rice? A. No.

Q. And that you could shortly sell out to the du Pont Company at a large advance? A. No; no such discussion.

Q. And didn't you discuss with him how well Mr. Rood had done by following a similar course? A. And that Rood had sold out? No; he didn't sell
4212 out for a year after that. I didn't have any talk with Rice.

Q. That depends upon whether this meet was in April, 1901, as you say or whether it was in April, 1902, doesn't it? If you should happen to make a mistake on that subject, then it would be after the Indiana sold out? A. I certainly would not talk—I had no conversation with Rice.

Q. Had no talk with Mr. Rice of that sort whatever? A. Not in any year under any conditions.

Q. You have got a copy of that five year contract made in 1900, have you? A. I think I have; I know that it was cancelled during 1902.

Q. That was in November, when you tendered your resignation, wasn't it? A. No; Mr. du Pont came in early in 1902 and said that the Hazard

and du Pont Companies desired to cancel their contract. I said that was all right, and then the contract was cancelled by mutual consent. I think I have a copy of it.

Q. Did you write this letter? A. That is my signature.

(Letter referred to and dated Cincinnati, March 19, 1902, is marked Defendant's Exhibit A-200, and read to the jury as follows):

The Hazard Powder Co., 4214
New York.

Dear Sirs:—

Until the present there has been no opportunity to write you as promised. I presented my case to Mr. T. C. du Pont, Prest., in the kindest way it could be stated and have agreed to hear his comments in two or three weeks.

Let me briefly group a few facts under two headings, that indicate my views:

One Side of the Case: 4215

Chattanooga Mills were purchased, Mr. Connable placed in control under direction of Mr. Haskell. They were given a large share of our trade.

Birmingham Mills purchased and placed under management of a favorite of Mr. Haskell imported from New York and was awarded nearly all our trade in Birmingham district —250 kegs per day,—say 75,000 kegs per year.

Kings product purchased and its distribution placed under management of another favorite of Mr. Haskell imported from Maine, located within a minute of our office, and awarded thousands of kegs of our trade per year.

Indiana Powder Mills purchased and placed under management of.....(?) Directed by .....(?) Official advices have not reached me, but if rumors are confirmed, this harmonizes with the preceding and closes the chapter.

The Other Side:

1st. We occupied this territory years prior to most of the above opposition and during the competition in original hands, by hard work
4217 we built up a business, resisting L. & R. and all other companies and it was chiefly by our efforts that the purchases of the above interests were made possible.

2d. We hold an acquaintance with the trade, formed by twenty years competition and constant study of trade relations, while Mr. Haskell's representatives, chosen as our rivals were total strangers.

3d. We had offices; an organization as a basis on which to build; and the willingness and
4213 ability to work, as a means of advancement in a business to which I am devoting the best years of my life.

4th. Our fidelity, industry and business character have not been impeached.

5th. Much more might be said on both sides.

Queries:

A hundred questions suggest themselves. I note only a few.

(a)—If it were the object to market the product of Birmingham, Kings and Indiana, can strangers do it better than a man in the district who won and held the business over *all* competitors for many years; or would strangers cause less loss of trade to com-

panies already in possession of the business? —or could it be done cheaper by new, independent and untried force with no organization?

(b)—If the object were to antagonize and force a division of du Pont and Hazard trade and the destruction of the Cincinnati Branch would I be chosen?

(c)—Has there been no unfair, unjust and secret discrimination against me in all this management and its direction? 4220

(d)—Would you expect a man of fair intelligence and a sense of just dealing, to permanently submit to such treatment and what it implies?

I am going to break into the powder business and kindred lines. How, when or where, need not be discussed. It would appear from late object lessons that the "Lord helps the man who helps himself," and by the co-operation of friends, who desire it, I am assuredly competent to present an organization and management that will command respect. 4221

I have tried to be fair and reasonable with old friends. In every aspect by grievance seems well founded.

Very truly yours,

R. S. Waddell, Agt.

Q. That was within two weeks, about, after Mr. T. C. and Mr. P. S. du Pont came into this business? A. It was a while after; I don't know just when they came in.

Q. Then it is true, is it not, that in March, 1902, you had it in mind to go into the powder business? A. No; not definitely. I was trying to get some measure of justice from the Hazard and du Pont Companies.

4222

Mr. Button: I move to strike that out.

Q. My question was whether that was not your purpose at that time to go into the powder business? A. No; I was under contract at that time.

Q. I see your language is "I am going to break into the powder business and kindred lines. How, when or where need not be discussed." A. That is right.

Q. That is not true then, your statement which you wrote to your principals? A. Yes, it was true.

4223

Q. And they had been in the business two weeks and you put that up to them, didn't you? A. The Hazard Powder Company was in business long before I went with them.

Q. Very good. But you knew that those two men had been in there about two weeks when you put this proposition up to them, didn't you know that? A. No, I don't know, I didn't know who was in.

Q. Didn't you know when Mr. T. C. du Pont and Mrs. P. S. du Pont went into the business? A. No; I knew in a general way that they had been negotiating to come into it; but I didn't know when they went in.

4224

Q. You didn't? A. Eugene du Pont died the last days of January and I never heard anything more about it.

Q. Therefore this statement was untrue in your letter, "I presented my case to Mr. T. C. du Pont, President, in the kindest way it could be stated and have agreed to hear his comments and proposals in two or three weeks?" What was he president of? A. President of the company; I was there at Wilmington about two or three days before that.

Q. Just a minute ago you said you didn't know at this date that Mr. P. S. du Pont and Mr. T. C. du Pont was in that business, didn't you? A. No, you misunderstood me; I did not know what date they took charge there.

Q. You knew that they were in charge of this business, didn't you? A. About three or four days before I went to Mr. T. C.

Q. Within two or three days after you learned they had taken this business, you put this proposition up to them, then? A. It had been put up to them long before that.

Q. It was a threat by you to go and build a mill, wasn't it? A. No, it was not.

Q. It was a statement made by you that you would go into the powder business because you 4226
discovered "The Lord helps the man who helps himself," did you not say that? A. They had taken all my trade away from me throughout that country there and left——

Q. What trade had they taken—your trade? A. The trade of the Cincinnati office and they had taken and given it to the Laflin & Rand agent when they had not been able to keep it before and I had all of the trade and then when Birmingham trade was taken away from me and turned over to the Laflin & Rand—they had taken away all of my trade. 4227

Q. Again will you state whether you had it in mind in March, 1902, whether you had it in mind to go into the powder business? A. No, sir.

Q. At the time along then when you went to Wilmington? A. No; I was trying to force a settlement, and adjustment and get them to give me some share in the business that they had taken away from me. They had taken the trade that I had always had and had given it to others who had not earned it and I was seeking to secure some slight recognition at their hands.

Q. Then it was not true that you intended to go into business? A. No.

Q. Then it was not true that you were going to "break into the powder business and kindred lines?" A. No, sir. You misinterpret my meaning entirely there.

Q. Did you think there was any chance of their misunderstanding it at that time? A. Yes; they called me on to Wilmington and made me the general salesman of the United States to adjust matters with me.

4229 Q. And to prevent you from going out into the powder business? A. No; to treat me fairly; they had taken all my trade away from me by these deals.

Q. Who were the friends who were at this date willing to co-operate with you in building a powder mill? A. I didn't have any one particular in mind; I was not going to build a powder mill—that was not the question. I was going to break into the business in some other way, get into it so that I could do business.

Q. You say here, "and by the co-operation of friends who desire it, I am assuredly competent to
4230 present an organization and management that will command respect." Who were the friends? A. I don't know.

Q. How did you know that you had any friends who desired you to go into the powder business? A. Well, I had a general idea that I had a few friends left out of several thousand that I had cultivated; and I had the general opinion that there was a few that had faith in my ability.

Q. Then you say, "By the co-operation of friends who desire it, I am assuredly comeptent to present an organization and management that will command respect." When you said that you had not consulted those friends in regard to the matter? A. Oh, no, no; it was a discussion between myself and my principal.

Q. And I suppose that you state that this statement in this letter, then, is entirely true? A. Yes, sure.

Q. Then if this meet, the American Handicap happened to be in April, 1902, you did have it in mind within two weeks before that time, the going into the powder business, didn't you, Mr. Waddell? A. No, not that at all, no thought of it; I was under a written contract with my company.

Q. But do you still say when you wrote this letter you had no thought of going into the powder business? A. No thought of building a powder mill at all—never occurred to my mind. 4232

Q. What did you mean by the language, "I am going to break into the powder business and kindred lines"? A. I don't know what the thought was in my mind when I wrote it; I wanted to get a better action than I did in Cincinnati; they had broken my business down and taken it away and given it to people that could not do it themselves. I wanted to get a better deal than I did.

Q. You knew that Mr. T. C. du Pont and P. S. du Pont knew particularly about this at that time, didn't you? A. I didn't known what they knew at all. 4233

Q. You went to Wilmington within a few weeks after the date of the writing of this letter? A. Mr. du Pont wrote me as he said he would.

Q. Did you go to Wilmington within a few weeks of this date? A. Well, I don't know when it was; it was along in the spring of 1902 that I went to Wilmington; I don't know the date. That was March, was it?

Q. March 19, 1902? A. I think I was in Wilmington about May.

Q. As general sales agent? A. Yes, in name but not in fact.

1411

4234 Q. But you familiarized yourself during the succeeding months with all the contracts and relations of the du Pont Company with others, had you not? A. No, no; I never did anything—I knew the contracts of the du Pont Company, of course; I had to know that, of course.

Q. You learned all about that during that peiod? A. Oh, no; I knew very much about it before I went there.

4235 Q. One of the things you did during that period was to assist Mr. Moxham in getting up a list of all the contracts with various consumers of powder, was it not? A. That was along in the fall; yes.

Q. Oh. When did you begin the work at his request? A. I think he came to me shortly after the purchase of the Laflin & Rand Powder Company, along in September perhaps and asked me to get him up some data. I didn't have it all there and I sent to Edward Green's office in New York to get it.

4236 Q. What you got up was these exhibits known as Moxham's exhibits and is the list of contracts that have been talked about here? A. The clerks in my office got the information and I assembled it.

Q. Under your direction? A. Yes.

Q. And you were perfectly familiar with it? A. Well, no; I can't say I was perfectly familiar with it; I saw the list and read it over and checked it over.

Q. Well, were you or were you not familiar with it? A. Well, that depends upon what you call "familiar." If you asked me to repeat them I could not do it.

Q. You knew how many contracts there were, didn't you? A. I knew there was several pages of them; I never counted them.

Q. You knew the date they were, didn't you? A. I knew most of them I think.

Q. You knew when they would expire, didn't you? A. No, I can't say that I did. I read the lists over as the stenographer brought them in.

Q. You knew how much powder was ordinarily consumed by each of those people, didn't you? A I figured that up in that letter I wrote Pierre du Pont, and put it in there.

Q. And you knew when they would expire? A. No; I can't say that I did. They were on the list; but I don't know that I ever read that part of it. 4238

Q. Mr. Moxham consulted with you pretty freely about the making of that list and what recommendations he should make in regard to it did he not? A. Well, he asked me about the list, if I could prepare him a list of all the contracts of all the powder companies in the United States; and I told him we didn't have such data in the du Pont office; that the only place where all of the contracts were filed was in Ed Green's office. He got me entrance to Green's office and I got that there.

Q. My question was whether he consulted with you freely on the subject? A. No, I don't think 4239 he consulted with me.

Q. Are you aware that as a result of that list Mr. Moxham took the position that the price of powder had not kept pace with the advance in the price of other commodities during the few preceding years? A. I didn't know it while the list was being prepared. I knew it after he sent me a copy of his sheet.

Q. That was the first time you knew the view that he held? A. Yes, I never saw his speech until after it was delivered.

Q. Didn't you yourself advise him on that matter, and recommend to him that the prices should be advanced? A. He wrote me a letter.

Q. Did you or didn't you? A. Well, yes, with

4240 this explanation: He wrote me a letter asking—calling my attention to the schedule No. 6, I think it is, page 20 and so on, which was then separate from it, in which he had figured out, or the auditing department——

Q. Have you got the letter? A. No, you have got it.

Q. What is the date of it? A. Well, I don't know the date; he wrote the same letter to Rice and to F. J. Waddell and Mac Blair and other agents, ask-
4241 ing them what they thought of prices——

Q. I am not interested Mr. Waddell just at the moment just as to what other agents advised him. I want to know whether or not you recommended to him to advocate an increase in the price of powder at that date? A. I recommended this: That the price of powder had been $1.25 per keg and that the schedule that he had referred to showed that the net price in the central district with which I was most familiar was $1.14 per keg and that I thought a fair and reasonable price would be $1.25
4242 per keg for the central district and that ten cents advance I would favor. He recommended ten cents advance, and if the finance committee would furnish the money to attend to outside competition, he would recommend that that be done. I didn't do that.

Q. Now, you have added the element that if the finance committee would furnish the money; you didn't mention that the other day when you talked about the finance committee did you? A. It is mentioned in Mr. Moxham's speech—I am simply quoting from the last clause of his speech.

Q. Did you testify as follows in the government suit, page 214 volue one: "Q. Between the meeting of October 11th or immediately prior thereto, and up to December 19th, what, if anything, did

you do under the direction of any of these officers, with reference to the collection of data? A. Mr. Moxham told me he had been appointed chairman of a committee to report to the adjourned meeting, regarding the state of trade, and he desired to consult me as to whether or not I would advise an advance in the price of blasting powder. I said, 'Yes, we have bought in the Indiana and other outside mills, and I feel an advance should be made to recover our investment.' I believed the price was low enough to stand an advance. He consulted the 4244
other general agents in the west and sent me copies of his letters to them asking practically the same question. They agreed to the advance and recommended it." A. Yes, from $1.14 to $1.25.

Q. Well, it was this advance of ten cents a keg? A. Of ten cents a keg, yes.

Q. And that eventuated sometime during December, 1902, did it not? A. I think the annual general meeting was held on the first of October or the tenth of October and in between that adjourned meeting and the nineteenth of December, that the advance was made. Mr. Moxham asked me what 4245
my judgment would be and I said that I thought that $1.25 was a fair price for powder and that is my judgment to-day.

Q. Well, then, you knew in November, 1902, that there was a very good prospect of an advance in the price of powder did you not? A. No—well, I didn't know what the prospect was; I knew that December 19, 1902, the advance was made.

Q. Well, you had been working for some weeks prior thereto in getting up this data from Mr. Moxham and talking with him about it? A. Nothing but that list of contracts. I didn't talk with Mr. Moxham or discuss the question with him. He did his own thinking.

Q. Well, didn't you say at one time that you helped Mr. Moxham prepare this speech? A. Well, I prepared the data for it, but so far as the wording of his speech is concerned, I never prepared it.

Q. I know, but you helped him settle upon the ideas that were to be put into that speech, didn't you, Mr. Waddell? A. Those exhibits that went with it, upon which his speech was founded, I helped him prepare.

4247 Q. And you helped him formulate the arguments that he made in that speech, Mr. Waddell? A. No; I didn't.

Q. Didn't you discuss it with him at all? A. I don't think that I did. I may have mentioned it; he may have mentioned some of his arguments, but I didn't write his speech by any means.

Q. I didn't mean that you did. But didn't you consult with him very freely about the whole matter? A. I answered any question Mr. Moxham asked me and he frequently sent for me to come to his room. I didn't go of my own accord.

4248 Q. Undoubtedly; at any rate in the midst of this agitation for higher prices and on November 25, 1903, you sent in your resignation, did you not? A. Yes; but that wasn't what I assigned was the cause of my resignation by any means.

Q. I dare say, but you did send in your resignation on that date did you not? A. Yes; for several different causes.

Q. And then you had come to the conclusion that it was a good time for you to break into the powder business hadn't you? A. No; when I had thought of it several times I had come to the conclusion that I was about down and out and they came to me and they asked me to cancel my contract, which I thought was good up to the first of January, 1905. I didn't feel very pleasantly about it; I acquiesced in it as they requested it. I thought they were

going to push me out. I think so still; and as a preparatory move, and I considered it very seriously, and I thought I had reached that time in life where I ought to have a business of my own for myself and boys.

Q. As a preparation for putting you out of the powder business you think they brought you to Wilmington so that you could learn all about the internal affairs of their company for three or four months; do you think that was the first step? A. I didn't go to Wilmington to learn the business. 4250

Q. Do you think it was the first step they took to put you out of business; would you now say you believe their purpose was to put you out of the business? A. I don't say it was their purpose; I felt that it was not just the proper thing for them to come to an old and reliable man whom they were advancing and ask him to rescind a contract.

Q. What salary did you draw at Cincinnati immediately previous? A. $9,000 a year.

Q. And what salary did you draw when they brought you to Wilmington? A. $10,000. 4251

Q. And they made a contract then for how many years? A. Didn't make any contract at Wilmington.

Q. They made a contract with you for three years—$10,000 the first year, $11,000 the second and $12,000 the third, didn't they? A. No contract at all.

Q. Passed letters on the subject? A. No letters.

Q. Passed letters on the subject did you? A. No.

Q. That was the arrangement, wasn't it? A. Mr. T. C. du Pont asked me about what I thought would be a fair salary. Well, I said, "I am beginning here new—new work to me; I have been to a con-

4252 *R. S. Waddell—Cross*

siderable expense in getting on here, breaking up my home which I had for eighteen years——

Q. I didn't ask you what he said, Mr. Waddell; I asked you if that was the arrangement? A. You asked me what the talk was. I am trying to tell you.

Q. You needn't tell what the conversation was you had on the matter. A. It all ends into it; it is all part of it; he said, "I think you are entitled to some advance and how would $10,000 do for
4253 the first year?" I said, "All right, now am I to carry this added load and other burdens that are coming on me through coming down here permanently?" He said, "no, I think you ought to have say for the first year, while getting started and organizing this department, $10,000 and then say $11,000 for the next year will be I think fair, and then say $12,000 for the time that you might remain with us after that." It was indefinite, there was no—I got paid monthly; I had no contract at all.

4254 Q. Then the arrangement was for one year you were to get ten, the next eleven and the next twelve? A. If I remained, yes; and everything was alright and satisfactory. I presume they would have paid me.

Q. That was the agreement, wasn't it? A. Well, there was no agreement about it; there was no contract made; that was the rate of wages that they were going to pay me, were willing to pay me.

Q. You mean you started in without any agreement at all? A. Why, he said he would pay me $10,000 a year and he did.

Q. Did you testify in New York, "I entered the service at Wilmington, Delaware, when they raised my salary to $10,000 the first year, $11,000 for the second and $12,000 for the succeeding years.

I wasn't under contract at Wilmington except from month to month." A. That is so.

Q. Very good. That was the arrangement, wasn't it? A. That is the arrangement; that is what I am stating here.

Q. Then you did have some understanding that you were to stay there for some protracted period, didn't you? A. No, I didn't. From month to month I said the contract was.

Q. Very good; but you at least provided for three years? A. Yes, he told me that he would advance my wages if I remained there; he didn't know that I would leave. 4256

Q. Oh, of course not. Well, now Mr. Waddell, you had in mind at that time to build a powder mill, didn't you? November 25th, 1902, when you resigned? A. The day I resigned——

Q. Did you have it in mind; that is my question? A. The time I wrote that letter I had it in mind that I was going to build a powder mill.

Q. And you knew that these prices were pretty apt to be advanced, didn't you? A. No, I didn't. 4257

Q. And that was one of the things you were relying upon for your success, wasn't it, that this Association that you knew about would keep the prices up there? A. No,

Q. You didn't rely upon that at all? A. No; I just relied on my ability to build up a new business; that was all.

Q. You had observed for the last ten or twelve years, had you not that every time these powder companies got together and tried to adjust prices that new companies had sprung up had you not? A. When the prices were put up to a very high limit, they were.

Q. Well, up to the limits that we have discussed here within the last few days? A. And I had also

4258 *R. S. Waddell—Cross*

observed that when the new mills were built the prices went down, the fight came on.

Q. And that also these companies had some arrangement made with them after a few years; you had also observed that fact had you not? A. I had observed that they had wrecked the companies and bought them in, yes.

Q. Wrecked them? Did you write this letter to Mr. Moxham, November 10, 1902, some two weeks
4259 before you resigned (handing letter to witness)? A. That is my signature.

(Letter received in evidence as A-201, and read to jury as follows):

"Wilmington, Del., Nov. 2, 1902.

Mr. A. J. Moxham,
President,
Office.

4260 Dear Sir:

In reply to yours this date, I can give you those who possibly might promote a Consumer's powder plant in the Cincinnati district in the event of an advance in price.

Sloss-Sheffield Steel & Iron Co., Birmington, Alabama, consumes 40 M to 50 M kegs per year.

Tennessee Coal, Iron & R. R. Co., Birmingham, Alabama—Chattanooga Powder Company contract.

M. P. Davis, Charleston, W. Virginia, at various interests, consumes 20,000 kegs per year and influences 50 M kegs additional.

George Lewis, Mgr., Chesapeake Mining Co., consumes 10 M kegs per year, influences 25 M kegs per

year additional. Would combine with Davis for the mills in Kanawha and New Rivers, West Virginia.

Bramwell-Pocahonatas Coal fields, on Norfolk and Western Railroads. It is difficult to say who would be the leading spirit of the Tierney Syndicate. I would judge that Mullen of the Shamokin Coal Company would influence this organization, as he is a heavy stockholder in the Shamokin Powder Company, Shamokin, Pa., which has made a success. The Tierney Syndicate consumes 75 M kegs per year. 4262

Usually it requires an organizing spirit to promote such enterprises and these have generally been furnished by powder manufacturers, who have in the past failed to recognize the importance of interesting their best men in the business with themselves.

Any good man who has a fair knowledge of the business, and some understanding with the trade, can get all the capital required, either by assembling smaller coal operators or from an independent source, to build half a dozen mills, if he so desires. 4263

This view of the question has been entirely overlooked.

Had there been a closer co-operation between manufacturers and their best men, and in lieu of increased salaries some effort been made to interest the men in making investments with their principals, there would have been fewer competitive plants.

The powder business has been conducted by close corporations, and they have produced a regular crop of competitors with mushroom mills for sale, and for which the close corporations have paid fabulous prices.

If you will permit me to suggest, I would say that suppressing dissatisfaction inside present powder

4264 *R. S. Waddell—Cross*

organizations and fortifying against future troubles of this kind will send fewer men abroad to organize belligerent forces.

It would surprise you to know the number of inquiries and offers that good powder salesmen receive during a year, to take the leadership of a competing organization. They have been in the past largely held by sentiment. This is no longer a magnet. Truly yours,

4265 R. S. WADDELL,
Gen'l Sales Agent."

Q. Now, that was two weeks before you resigned, was it not, Mr. Waddell? A. That is my reply to Mr. Moxham's request.

Q. I will read his request if you want to detail it; is this it (indicating)? A. That is right; that was sent to all the agents, general agents in the country. I expressed my views and it is exactly what I think to-day.

4266 (Last-named paper received in evidence and marked Exhibit A-202.)

"Nov. 10, 1902.

Mr. R. S. Waddell;
Gen'l Sales Agent.

Dear Sir:

Will you kindly give me a list of such consumers in the Cincinnati territory who would be the most likely ones to start up a Consumer's powder plant if cause were given them to do so, e. g., if they objected to an advance in price. To the extent of your knowledge kindly give me the number, their names, the amount of powder they would likely consume

and such other information as would guide me in the premises."

Q. Now, then, were you referring to yourself as one of the men who should be taken into the business and given a share of it in this letter, Mr. Waddell? A. No, not particularly I didn't refer to any one; that was the general proposition.

Q. You had yourself in mind in making that suggestion? A. I had in thought Mr. Carnegie's method of interesting his head men in the business.

Q. Just answer the question Mr. Waddell did 4268
you have yourself in mind as one of these best men to whom a share of the business should be given at that date? A. Oh, no.

Q. You didn't? A. I was discussing the general proposition.

Q. You were perfectly aware at that date of the fact that the manner in which the powder business had been conducted had been such as to produce a regular crop of competitors with mushroom mills for sale and for which the close corporations have paid fabulous prices; you were familiar with that, 4269
weren't you? A. I had in mind there the Kellogg mills. Kellogg was private secretary of the Laflin & Rand. He built the Phoenix plant.

Q. The Phoenix mills? A. Yes.

Q. You mean that one mill was a regular crop of mushroom mills? A. They had three of them.

Q. Those were the regular crop, that is the regular crop of mushroom mills that you referred to? A. Well, take Rood, Rood was one of them.

Q. You wouldn't except Birmingham, would you, Mr. Waddell? A. I never was in the Birmingham mills; I don't know them.

Q. But you had them in mind, didn't you when you wrote this letter? A. No, that Birmingham mill was built by Green and Riley.

Q. They were powder men, weren't they? A. No, they weren't; they were merchant men—grocers.

Q. They had done the same thing before hadn't they? A. I think one of them perhaps had been interested.

Q. Well, was the Birmingham mill one of those you had in mind in making this comment? A. No, I don't think so; I think I had in mind Rood's mill. That was the most recent one and Kellogg's mill, I knew that.

4271 Q. And which ones had been bought out for fabulous prices after they were killed? A. Kellogg.

Q. Which others? A. I don't know.

Q. Rood? A. I don't know what Rood's price was; I may have known at that time; it was late in the fall of 1902; I think I did; that is, I knew the rumors of what he got.

Q. How long after this letter was written was it that you made a definite proposal to Mr. T. C. du Pont that he take you into his powder business? A. That I made a definite proposal to Mr. du Pont?

4272 Q. Yes. A. I never made a proposal to Mr. du Pont in my life.

Q. I see. A. He may have to me.

Q. At any rate, you did send in your resignation and then you had an interview with Mr. T. C. du Pont, did you not? A. He sent for me to come to his room and I went in, he asked me to remain with him.

Q. Wait a minute, I haven't asked you what he said. A. Yes.

Q. It has been so long since we heard your statement in regard to what was said there that I would like to read a page or two here—your direct examination, page 1819, reading: "Q. Now, when you tendered your resignation what, if anything transpired, what, if anything, was said to you by

any officer or representative of the interests which you had hitherto represented? A. Mr. T. C. du Pont asked me to come to his room when he received my resignation, and—— Q. Did you go? A. I did. Q. What was the result of your visit to Mr. T. C. du Pont? A. The conversation between us in which he said that—— Q. Then relate the conversation. A. He said he regretted that I was going to leave them and asked me if I wouldn't consent to remain, that he thought possibly the differences between the departments could be adjusted, and I told him I thought not. He then made me a proposition. Q. What was that proposition? A. It was oral; he said if I would drop the matter, remain where I was, that he expected to have the organization of the company complete in a short while and he would give me $25,000 of the preferred stock which he expected to put on the market at seventy dollars a share and $25,000 of the common. I asked him what the common was worth. He said nothing, until it will be issued, but it is a good thing to lay in the drawer of your desk and when we put it on the market it will go to par, we hope. I declined the offer and told him that I would prefer to go into business for myself and establish a business for myself and my sons and I thought it was the proper time to do it, too. Q. Now, what did he say in answer to that statement made by you? A. He asked me what kind of business I was going into. I told him I thought I would build a small mill. I thought I had been with the company long enough to earn that right and to have a little business of my own. He agreed with me; said he thought I had. He then made me another proposition—whether it was at that interview or one held a day or two afterwards I don't recall, but there was another verbal offer made by

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him. Q. What was that proposition? A. He recommended that I go to New York City and establish a firm—R. S. Waddell & Company. The company would be the Powder Company—the du Ponts. We were to be brokers for the purchase of soda, importation of soda and all mill supplies, raw materials, not only for the du Pont interests but for others who were associated and to whom we could probably sell. Q. What did you say in
4277 answer to that proposition? A. I told Mr. du Pont that I knew nothing about the importation of soda; that I didn't want to learn a new business, at my time of life, and I didn't want to go to New York City and engage in the brokerage business and declined the offer. Q. What then, if anything, did you say to him concerning your plans or did he say to you? A. He asked me about what size mill I expected to put up; I told him one with a capacity not to exceed kegs per day, that I didn't expect to produce that quantity at the start, probably 400 to 600 per day, but later I wanted the
4278 plant to grow to a capacity of probably 1,200 kegs per day. He said, 'Well, just let the matter rest for the present, continue on in your duties, you have suggested in your resignation that you would be willing to remain over thirty days until we could instal your successor. Remain here a while and we will make you another proposition.' I did so." And then you went on to tell about these propositions to go into the powder business which were formulated in these written proposals? Now, then, as I understand it, there were three separate, distinct proposals made to you, one to pay you $50,000 at part in stock, another that you go to New York into the brokerage business, and the third and last that they join you in the powder business; is that correct? A. Yes; there

were three or four of those joining propositions in the powder business.

Q. I know; and the joint powder enterprise took the form of several different kinds of proposals, that is what you mean? A. Yes.

Q. Well, now, then, when was this powder business proposal made, how long after your resignation? A. Why, I should think it was about the first or second week in January.

Q. As long after it as that? A. Yes.

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Q. Six weeks? A. I resigned the last of November and I stayed over the whole of December. Of course the holidays came on and he didn't make me the other proposition until after the first of the year and I don't know whether it was the first——

Q. Was there any writing or any correspondence between you in reference to these other two proposals, that he gave you stock or that you should go to New York as a broker? A. No, those were verbal.

Q. Between Mr. T. C. du Pont and you? A. T. C. du Pont.

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Q. Well, now you testified about those matters in the government case, did you not Mr. Waddell? A. Only the papers, only the written documents, I wasn't asked in regard to the other.

Q. You said nothing, you testified nothing in that case about these other two proposals that you now say were made to you? A. I don't think the question was put to me at all.

Q. Namely, that he should give you $50,000 of stock or would help you or said to you to go to New York to buy their soda for them; you said nothing abut those two proposals in the government case, did you? A. I don't think a question of that kind was put to me.

Q. Well, you said nothing about it on that oc-

casion, did you? A. I don't think I did; I don't recollect it.

Q. And you realize the importance of having it appear here that they offered you $50,000 worth of stock to keep you in their business down there, do you not? A. No, I don't realize the importance of it.

Q. Do you realize that that would indicate that they thought you were a pretty valuable man? A. No, I don't think that they thought that.

4283 Q. Was there any consideration that you were to pay for that stock? A. No.

Q. They were simply to give you $50,000 worth of stock? A. Well, there was some more conversation about that.

Q. Oh. A. That related to other people. Mr. du Pont said that he was going—that he expected to give—I don't think that he said that he had given or had mentioned it to the other people, but he expected to give $25,000 of stock to Mr. Haskell and $25,000 to Mr. Patterson, Charles Patterson and mentioned that he included me with the others.

4284 Q. Yes, but he was going to give $50,000? A. No, the common wasn't worth anything.

Q. Yes; that is the other point; that you realized to be of importance about that testimony did you not Mr. Waddell as showing that that was watered stock, as you claim? A. Pure water, yes, that is all it was.

Q. That is why you testified to that conversation, isn't it? A. Oh, no, I testified because I was asked the question.

Q. And no other reason I take it; not because it was true? A. Absolutely true.

Mr. Abbott: If your Honor please I think this is altogether without justification.

The Court: The last question perhaps was.

Q. Well, now in this government case you were pretty insistent yourself in putting in all the information about these negotiations with Mr. du Pont, were you not? A. I didn't have a word to say in the government case; Judge Scarlett handled that entirely.

Q. Didn't you insist upon putting in all of these negotiations over Judge Scarlett's protest? A. He didn't protest as I understand it. 4286

Q. Weren't they put in with the specific statement that it was done at your request, with a statement on his part that he didn't see why they were material? A. I don't remember such a statement on his part.

Q. If so, why didn't you put in all the negotiations that you had with Mr. T. C. du Pont at that time? A. I put in all that—those papers were put in in explanation to an answer that I had made, and you wouldn't let me explain the answer in the government case, and in further explanation of my answer I pushed in those papers, and I couldn't put in any thing verbally unless I were asked a question and you didn't ask me. 4287

Q. Do you recollect in the government case, page 927, Vol. 2, "These papers relating to these powder negotiations were produced by the witness on the stand and asked by him to be placed on the record in explanation of his examination by Mr. Graham is now offered in evidence by the government." Under our objection; do you remember producing those and requesting that they be put in the case? A. In explanation of my answer.

Q. You requested it? A. Yes.

Q. Went right down through all of this corre-

4288 *R. S. Waddell—Cross*

spondence and these various propositions in regard to this partnership in a powder mill? A. Yes.

Q. And you put them all into that case? A. Written propositions there.

Q. Now, in testifying to the conversation, these negotiations with Mr. T. C. du Pont, you went into it at some length in the government's suit, did you not? A. Just as far as he asked me I went in.

Q. Was there any specific question here on your direct examination as to those three separate propo-
4289 sitions, some kind of a question here that you were asked there, wasn't it? (No answer).

Q. What was done after your resignation? A. I couldn't tell you sitting here what the questions were there and what the questions are here. If you will read them to me I will tell you, may be they are the same.

Q. Vol. 1 page 217, of the government case, did you testify as follows: "After I handed in my resignation, on November 26, 1902, Mr. T. C. du Pont asked me what business I was going into. I
4290 said, 'I am going to build a powder mill.' He told me he would like to go in with me, that is, the du Pont Company, I said, 'I would be very glad to have you.' He said, 'You remain there idle another month and I will make you a proposition.' He made me a proposition which I declined. He made me another one, and that was declined. I think there were three or four propositions made, and negotiations continued." A. I mentioned those other propositions and gave him a chance to ask me about them.

Q. Oh, this is what you mean by the nitrate and the stock propositions—three or four other propositions? A. Three or four other propositions.

Q. You know that is not so Mr. Waddell, when you are talking about these two or three different

powder mill propositions in this answer? A. I don't know what I a mtalking about there but I know the questions were not put to me about any other except——

Q. Now, let us see the rest of it: "Mr. Hillis as general counsel and I had some correspondence and he presented contracts that were written up, providing that I should take 51% of the stock of the new company and the du Ponts or Hazard, or Laflin & Rand, the varying contracts that he drew, should be 49%. These negotiations continued up to the 4292
second day of February, the day I left, and I expected and believed, from all of the conversations and the papers that were submitted and the negotiations that had continued up to that time, the time of my walking out of their office, that they would be my partners in the powder business, in this mill that I was going to build. It was the first of February, and I purposely wanted to bring the negotiations to a head at that time, the first of the month, they had been pending for over two months. I knew, and the papers so stated, that is, the correspondence and conversations so stated that I 4293
would not be a party"—and so forth.

Q. Now then that was your statement of this proposition at that time, was it not Mr. Waddell? A. As far as I was permitted to make it; you shut me off on cross examination and you wouldn't let me tell and then I got it in, my explanation of my answer, all that I could get in.

Q. You are in the habit of getting things in that way, is that what you mean, sort of an expert witness? A. I wanted to explain my answer but you wouldn't let me do it.

Q. There is no objection; do you see any objection to any of your talk here on any of these pages until where you said this? A. I don't know.

Q. Just look at it and see; you said we would not let you talk—any objection appear there? A. I remember Mr. Graham kicked like everything about these papers going in.

Q. Are there any objections there when you are telling about this conversation that you can pick out? A. About the conversation—I wasn't interrupted on that conversation.

Q. You were? A. Not in that statement I made, that one page statement.

4295 Q. Then you stated there, did you not that when your resignation was sent in he called you down, you immediately began to negotiate about this powder mill proposition, isn't that the meaning of your statement? A. After I handed my resignation in on November 26, 1902, Mr. du Pont asked me what business I was going into. That I have related to-day.

Q. You meant it was six weeks after you handed in your resignation, do you now? A. "He asked me what business I was going into"—yes. "I said

4296 I am going to build a powder mill. He told me he would like to go in with me, that is the du Pont Company." That was later on when he made that proposition to me in that matter, but he had made me two or three propositions before that. "I said I will be very glad to have you. He said you remain idle another month." He didn't say that; that is a misprint.

Q. What? A. Be idle, I don't know what words were used there, but he didn't tell me to remain idle.

Q. That part of it is unimportant. A. "Another month and I will make you a proposition. He made me a proposition, which I declined. He made me another one, and that was declined. I think there were three or four propositions made and negotiations continued."

Q. Now right there, what subject do you say those negotiations were about? A. We were talking then about the written propositions I put in.

Q. To go into the powder business with him? A. To go in with him.

Q. Very good. A. "Mr. Hillis as general counsel and I had some correspondence, and he presented contracts." (Part of the same thing.) "that were written up, providing that I should take 51 per cent of the stock of the new company, and the du Ponts or Hazard, or Laflin & Rand, the varying 4298
contracts that he drew" (he drew them) "should take 49 per cent. These negotiations continued up to the second day of February, the day I left, and I expected and believed from all of the conversations and the papers that were submitted and the negotiations that had continued up to that time, the time of my walking out of their office, that they would be my partners in the powder business, in this mill that I was going to build. It was the first of February, and I purposely wanted to bring"——

4299

Q. Then as I understand it this was your statement of what happened about this time in the Government case, was it not Mr. Waddell? Was this your statement at that time? A. Yes; but not in reply to the same question that you put to me today. The conversation came up in different ways.

Q. The principal differences are in your answers here and the ones that you gave in the Government suit? A. No; my statement here was on direct examination giving me an opportunity to state the whole matter. The statement that I made there was on cross examination limiting me to an answer in answer to a question.

Q. You didn't find any objection here, did you? A. Oh, no; I didn't in there; I just told the story.

4300 *R. S. Waddell—Cross*

Q. And in all of them, do you find the slightest suggestion in there of these other two propositions that you say were made to you? A. No; no one ever asked me about them.

Q. They were important propositions, weren't they? A. No; I don't think so; I turned them down promptly.

Q. Again on page 915 you refer to it, did you not? "No; with this explanation: When I tendered my resignation to Mr. du Pont he asked me what
4301 business I thought of going into. I told him I thought I should build a little powder mill. 'What capacity do you want to make your mill?' 'About 1200 kegs per day' and so on." There again you mean that you intended to have it understood that that conversation took place five or six weeks after you resigned, and two other important propositions had intervened, was that what you wanted us to understand at this other occasion? A. I don't want you to understand that those other propositions were important at all, I didn't regard them
4302 so.

Q. Did you want us to understand that they intervened and also five weeks intervened before he said that he would go into the powder business with you, when you gave this testimony? A. Yes; he strung me along 5 or 6 weeks.

Q. Did you want us to so understand when you gave this testimony in the Government's suit? A. I wanted you to understand that he had made me these propositions I swore to there.

Q. And immediately upon your resignation, didn't you? A. Oh, I didn't say that, no.

Q. You wanted us to understand it, didn't you? A. I don't know how you get your understandings. I just simply said that between the time of my resignation and the second of February when I

left—I stayed with them 2 full months. In that time he asked me to remain over, it says in the book "idle," "you remained there idle"—attended to your duties, "and we will make you a proposition." He strung me along 30 or 40 days before I got it.

Q. I understand that is your present statement Mr. Waddell? A. Yes; and it was then.

Q. Is there anything in that book so far as you can recollect regarding these other two propositions? A. No; I wasn't asked about them. 4304

Q. Do you remember stating this in New York: Did your letter of November 27th having been called to your attention—page 57: "Q. When was this as to this letter? A. Within a few days afterwards. Mr. Abbott: What letter are you referring to? Q. This one of November 25th, that we have been talking about with him. Did you have these negotiations? With any one besides T. C. du Pont? A. The first proposal was made by Mr. du Pont to me in writing." Now did you so testify? A. Yes.

Q. You say this conversation was then two or three days of November 25th, did you not? A. Yes. 4305

Q. And now you say it wasn't until six weeks after and are both statements true? A. No; you misinterpret what I said. I didn't say that these preliminary conversations and I haven't testified here that these preliminary conversations took place in January. That is the time that the written documents, the formal agreements prepared by Mr. Hillis were submitted, in January.

Q. Didn't you say here a few minutes ago that he never took up this proposition to go into the Powder business with you until four or five weeks after you resigned? A. No; I didn't say that.

Q. You didn't say so? A. No; I didn't say so; you misunderstood me.

4306 *R. S. Waddell—Cross*

Q. Now what did yo' ay. Did he take it up immediately? A. Tha' t. stimony that you read to me——

Q. Did he take it up immediately? I am asking you now what the fact is. A. Let me go over that——

Q. No, answer my question; we don't need to go over it all again. Did he take it up with you immediately after your resignation? A. He sent for me to come to his room.

4307 Q. When? A. Several days after he received my resignation, probably a day or two or the next day, I don't know just when.

Q. On that occasion did he take up the question of going into the powder business with you? A. No.

Q. When did he take it up with you? A. He said it was my—just what I said here: "You remain here and I will make you a proposition." Now that was not made right at the time, it was made subsequently.

4308 Q. That was the first meeting? A. It was.

Q. Is that all that he said there? A. No; I don't know about that; I am not sure but he said at that meeting about the stock arrangement; and within a day or two or three days later he suggested this opening up—it may have been a week later, I could not tell you the hours, but I know on that occasion early in December he made me a proposition to go up to New York and open this brokerage office in which they would be my partners, and which he did subsequently open.

Q. Now, then, that does not answer my questions? A. You want the consecutive date——

Q. No, I want the first date on which he said he would go into the powder business with you? A. Oh, well—that was along in January, the occasion

on which he said he would go into the powder business with me. He said early in December, "You remain here;" and he had made me these other two propositions.

Q. Yes. A. "You remain here and attend to your duties and I will make you a proposition."

Q. On what subject? A. He didn't tell me.

Q. So you didn't know that he had it in his mind to go into the powder business with you until January? A. Not until he presented this agreement. 4310

Q. Until January? A. That is right.

Q. Consequently your statement in New York that within two or three days after November 25, 1902, he called you in and you had this conversation in which he proposed to go into the powder business—consequently that statement there is not true, is that correct? A. I don't think you quoted that properly.

Q. I read it to you.

Mr. Button: I am not required to read it all again? 4311

The Court: Oh, no.

A. You left out something.

Q. "When was this as to this letter? A. Within a few days afterwards. Mr. Abbott: What letter are you referring to? Q. This one of November 25, 1902, that we have been talking about with him. Did you have those negotiations? With any one besides T. C. du Pont?" And then you went on and stated as I have read. Was that true? A. What have you read? That is the question about it, what you are quoting to me.

Q. Do you want me to read it all over again?

A. I don't think the statement is made in that

4312 statement that I said in there in that he immediately upon my going into his room submitted written propositions to me to go into the powder business. I don't think I ever made any such statement.

Q. That is my question: "Do you mean that when he first took the subject up he handed you a written proposal? A. No; there were negotiations. I went in—Mr. du Pont asked me to come into his room when he received my resignation, and
4313 he asked me why I was going to leave." And then you detailed this conversation. Among other things in the conversation that you told him at that time was that you wanted to go into the powder business did you not and he said that is all right and asked you how much money you wanted and you said $75,000 cash. He told you he thought you had earned the right, did he not on that occasion? A. Yes.

Q. And if you wanted to manufacture he would make you a proposition, is not that the proposition
4314 substantially? A. Did I say I wanted to manufacture, did I use that word, that I wanted to manufacture?

Q. He said wait and we will see—I don't know as you say exactly to manufacture? A. I think so.

Q. "And I said, 'I would be glad—" I better read this: "And he said, 'I think that you have earned the right Mr. Waddell to have a business of your own, and it is perfectly proper that you should provide for your family in this way. We would like to have you remain with us, but if you feel like you ought to go, we would like to join you in this enterprise,' and I said, 'I would be glad to have you do so, but Mr. du Pont, I don't want the business to go into the hands of a powder association. I want it to be entirely independent, and, in order

to make it so, I must own 51 per cent of the stock.' And he said, 'We will agree to that. You remain with us. You don't have to go at once. I see by your letter that you are willing to stay further.' 'Certainly I am.' 'You go on with your duties just as you have.' " A. My duties.

Q. Very well. You detailed that statement of the conversation that occurred within four days after your resignation in November, didn't you Mr. Waddell? A. I don't know how many days it was; I can't recall the days. 4316

Q. "When was this as to this letter? A. Within a few days afterwards. Mr. Abbott: What letter are you referring to. Q. This one of November 25, 1902, that we have been talking about, with him. Did you have those negotiations with any one besides T. C. du Pont? A. No one except T. C. du Pont. Q. Who began them? A. The first proposal was made by Mr. du Pont to me in writing. Q. Do you mean that when he first took the subject up he handed you a written proposal? A. No; there were negotiations. I went in—Mr. du Pont asked me to come into his room when he received my resignation—" and you gave the detail of this conversation? A. Yes. 4317

Q. Is that correct? A. That is, in the main, correct? That is as well as I could relate it four times in succession—exactly the same thing. I may leave off a cross to a "t" or fail to dot an "i".

Q. Well this date was within a few days of November 25th, was it not that you detailed this conversation in New York? A. That I detailed that to you in New York?

Q. In this testimony, you place it as within three or four days of November 25th, 1902, did you not? A. That is when he first sent for me; yes.

Q. Very good. A. When he first sent for me it might have been two days after.

4318 *R. S. Waddell—Cross*

Q. And of course you wish to be understood that both these other transactions, these other proposals, were prior to any suggestions of going into the powder business, don't you? This one about being a broker and about getting 50,000 of stock?

Mr. Abbott: He didn't say that. Counsel interprolates that he has already said that.

Mr. Button: I asked him if he wished to be so understood.

4319 Mr. Abbott: He said directly to the contrary, your Honor.

The Court: Be fair with him.

Q. I understood him to say exactly that. He details this conversation, I suppose in the order, on direct examination and I have read it. His first proposition was to give him 50,000 of stock; his second was that he go to New York as a broker; and his third, a few days later, is the date which I understood from his direct examination he was to

4320 go into the powder business. A. Yes.

Q. That is his testimony on direct examination. And now my question is: Do you wish to be understood that these other two propositions preceded this conversation with Mr. T. C. du Pont in which you talked over this partnership arrangement? A. That is my recollection of the sequence in which these propositions came; I may have been mistaken; one may have been ahead of the other. My recollection is—they were verbal, and I have nothing to refresh my memory, and it is ten years ago—but I think the first proposition was the stock. That he would give me stock. Now that may have been made within a day or two, or three days or five days and may have been that much before the next one. The next one in the order was to open this

brokerage business. Then it seems to me that there was a good long time that I walked the floor and waited on him and he came with his further written proposition. Now there may have been——

Q. Is this an answer to any question, Mr. Waddell? A. There may have been negotiations along between there, verbal negotiations about powder business; I don't know as to that, I don't recollect; but before I got the papers in concrete form—in the form of a contract, that came in in January, and I don't know whether it was the first week or the 4322
third week in January.

Q. Do you mean to say you didn't undertake in the Government suit to detail all of your negotiations with Mr. du Pont, Mr. Waddell? A. I didn't undertake anything except to answer the questions as they were propounded to me.

Q. Didn't you undertake to give the complete situation between you and Mr. T. C. du Pont in that Government suit? A. No; I did not.

Q. Then did you not undertake in New York, also, to give a complete story of your relations with 4323
Mr. T. C. du Pont pending your resignation? A. I undertook to give a straight reply to your question.

Q. Didn't you understand—didn't you undertake to detail all of those relations during that period up to the time you resigned ? A. All that you asked me about I told you.

Q. And didn't you undertake to tell all that occurred between you and Mr. du Pont during those months on that occasion? A. No No; I didn't undertake to do anything of my own accord.

Q. But there was no suggestion in it as to these other two propositions, was there, anywhere? A. That I suggested any there?

Q. Yes, in New York or the Government suit? A. I did not.

4324 Q. Now, then, what corporation was it that Mr. du Pont was going to give you $25,000 of preferred stock in and $25,000 of common stock in? A. I don't know.

Q. He didn't tell you? A. Didn't tell me anything.

Q. Do you know of any corporation in existence at that time, in which the du Pont Company was interested, that had any preferred and common
4325 stock? A. I don't know what they had; he didn't mention any of the stock, but merely mentioned the fact that he was going to put the preferred——

Q. One minute, I didn't ask you that. I asked you if you knew of any such corporation? A. I didn't know, no, sir; I didn't know anything about it.

Q. Did you know of any such corporation in existence at that time that had preferred and common stock? A. I didn't know what their stock was or any of the corporations.

Q. Well, don't you know that there was no such
4326 corporation in existence at that time? A. No; I don't know it.

Q. And don't you know, it was not until six months later than that, that the powder company, with its preferred and common stock, was contemplated? A. Oh, I knew that the powder company was contemplated a good while—when they bought the Laflin & Rand I knew they were going to centralize the whole business.

Q. You knew in October, 1902, that it was contemplated to form the E. I. du Pont de Nemours Powder Company with preferred and common stock? A. I didn't know anything about the E. I. du Pont de Nemours Powder Company; but I knew the purpose was to concentrate all the interests owned by the Laflin & Rand and the du Pont, into one.

A. (Continuing): Now, what form it would take, or what particular company it would be I didn't know.

Q. Then you didn't know what he was talking about, did you? A. No; he was doing the talking; I didn't know.

Q. Then you didn't know that the common stock would not be good for anything, did you? A. Well, I knew that that is what "common" meant; common meant "water" to me.

4328

Q. Didn't you testify a few moments ago it was absolutely worthless? Now, what common stock were you talking about when you made that statement? A. I know that common stock as it is issued, as understood with preferred, the preferred represents the capital, and the common represents the water; and when he used the two in connection, I jumped at the conclusion perhaps.

Q. So that statement in your testimony was simply a conclusion you jumped at? A, That is right.

Q. And you never knew any common stock, I take it, that was worth anything intrinsically, is

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that what you mean to say? A. Well, after you pay a dividend on it, it is worth something.

Q. Did you ever know of any common stock that was worth something intrinsically? A. When it was first issued?

Q. Yes. A. Not in my experience, I don't know of any such, when it is issued in connection with the preferred.

Q. When was the Powder Company organized? A. I don't know.

Q. You stated the date in your declaration, didn't you? A. I didn't state anything in the declaration.

Q. That was not one of the facts which you gave to your counsel? A. They may have gotten it off of the record; I don't know.

4330 *R. S. Waddell—Cross*

Q. You don't remember giving it to them? A. They probably got it out of the Government record; I gave them those books, and they probably got the dates there.

Q. You know well enough, it was not organized when you left Wilmington, don't you, on February 2, 1903? A. I didn't know that it was organized.

Q. You never had heard of it at that date, had you? A. I had heard about a good many things.

4331 Q. Had you ever heard of the Powder Company at the date you left Wilmington? A. I don't know that I had.

Q. I understand that one of the principal objections Mr. Waddell, possibly the principal one, that you found, to these proposals that you go into the powder business with Mr. du Pont or the du Pont Companies, was the fact that they desired to have you put up two per cent of the stock of your company with the Wilmington Trust Company; is that correct? A. That was one of the objections, only one, though.

4332 Q. Was not that the principal one that you found to those proposals? A. No, I think not, not the principal one.

Q. Do you not recollect that you so stated in the Government record? A. I may have referred to it in some one of the papers as being the principal reason, but there were several of them.

Q. But I am trying to find out what the principal thing was that you split upon. On page 917 of Volume 2, did you not testify as follows: "XQ. Three things that you split on? A. Not only the different contracts, but there were other questions that arose. One was, that I should sell my powder to a company to be organized as a selling company. That I objected to. Then he fixed that up by saying, 'Sell it to the Laflin and

Rand Powder Company,' which company had been absorbed by the du Ponts prior to that time. There were quite a number of objections. I do not recollect all of them. There were quite a number of them, but the chief one was where they proposed to take my stock. XQ. That was the chief one? A. That was the chief one. XQ. That was the bad one? A. Yes." You so testified, did you not? A. That is right.

Q. I wish you would look at these proposals that have been introduced in evidence, Mr. Waddell. I show you Plaintiff's Exhibit No. 42. Is it not provided in that proposal that you shall own 51 per cent of the stock of the new company? A. (After examination): Yes. 4334

Q. I show you the next written proposal, which is Plaintiff's Exhibit No. 43. Is it not likewise provided in that that you shall own 51 per cent of the stock of the company? A. (After examination.) That is right.

Q. And in the third one, which is Plaintiff's Exhibit 44, was it not likewise so provided? That is at page 2113. A. (After examination.) That is right. 4335

Q. But you say that some arrangement was made or was suggested whereby two per cent was to be put with the Wilmington Trust Company. Now I show you Plaintiff's Exhibit No. 45 and ask you if that is not the agreement proposed under which that deposit of the two per cent of your stock was to be made? A. (After examination.) I think this is a copy of the paper B that was submitted—

Q. Well, that is the one under which your stock, or two per cent of it, was to be deposited with the trust company, was it not? A. Yes; that was the proposal. It was not executed, it was not signed.

Q. Well, none of them were executed, as I understand it. A. No.

4336 *R. S. Waddell—Cross*

Q. Now then, this Exhibit No. 45, that you objected to, as you recollect, provided that thirty shares of the proposed company, which is two per cent of the capital stock, should be placed in the hands of the Wilmington Trust Company, did it not? That is your recollection, is it not? A. There was a deposit to be placed with them.

Q. And then the provisions in regard to what should happen to that stock were as follows, were they not: "Until default made, as hereinafter pro-
4337 vided, the dividends on the said stock, if any, shall be the property of the said Robert S. Waddell, or his assigns. Should either of the following events happen, this company shall upon the written request of E. I. du Pont deNemours and Company, and after it shall be satisfied that the said E. I. du Pont, de Nemours and Company has given at least five days' written notice to the said Robert S. Waddell, or his assigns of its intention to make the said request, be assigned and transferred absolutely, and free from any trust, unto the said E. I. du Pont, de
4338 Nemours and Company as its sole and exclusive property." You remember that? A. Yes, sir.

Q. That is, you were to get five days' notice in writing of any proposed action toward the forfeiture of your stock? A. They were to give me five days' notice.

Q. How do you recollect that there were three events and three only in which that stock could be so disposed of according to this proposal? A. I don't know as to that.

Q. Well, the contract says that the events of default hereinbefore referred to should be the following: "First: If the said Buckeye Powder Company shall sell to any person or persons, corporation or corporations, any of its output or product except in accordance with the terms of a certain contract,

made and entered into on the day of , A. D. Nineteen hundred and three, by and between the said Buckeye Powder Company and the Laflin and Rand Powder Company, a copy of which contract is hereto annexed, Marked 'A.'" You recollect that was the first proposed default, do you not? A. Yes, I objected to that contract A.

Q. Undoubtedly; but that was a contract under which you agreed to turn over all the product of your mill to the Laflin & Rand Company, did you not? A. Agreed to sell it to them, yes. 4340

Q. And this simply means that if you failed to carry out that contract and sold it to somebody else, they could forfeit the two per cent of your stock, does it not? A. Well, you will have to read paper A to get the right understanding of that.

Q. What was there in the paper A that would govern the two per cent so far as the two per cent went? A. There are a number of modifications.

Q. I understand. But I am not asking you that; I am asking you what there was in paper A that would modify this situation upon which you would forfeit two per cent of your stock? A. I don't recollect now just what my view was at the time. but I know it looked like a summary proceeding to me, that the du Ponts were judges and executioners and everything else. (Motion to strike out the answer sustained.) 4341

Q. Can you state definitely anything in contract A that affected this default? A. I can't remember. There were three contracts altogether. They were joint. One was a part of the other. I know that my interpretation of it at the time was that they had to be read jointly.

Q. Very good. But that default was perfectly definite, a small amount, and you so understood, did you not, Mr. Waddell, that if you carried out

your contract A you would have no trouble with the two per cent of your stock; you understood that, did you not? A. Yes, but it was impossible to carry out the contract.

Q. Then your objection was to contract A rather than to this two per cent? A. It was to the combined three contracts all in one, and one made a part of the other.

Q. But you have stated repeatedly that this putting up of two per cent of your stock was some-
4343 thing that you very strenuously objected to. Now so far as this first default goes it was simply to be put up as collateral security to see that you carried out contract A, was it not? That is all there was to that default, was it not? A. Well, it had to be read in connection with contract A, it had to be read in connection with contract B and it had to be read in connection with contract C.

Q. We are coming to contracts B and C in a few moments; we cannot do it all at once. A. One depended on the other. I objected to putting up my
4344 two per cent and forfeiting the ownership of a business on the connection that was made with the other contractors.

Q. We understand that you objected to forfeiting the control, of course; but so far as this provision goes, there was no danger of your forfeiting the control unless you broke your contract A, was there? A. Certainly the whole thing would have to go; but that was the finality of it, the putting up of the stock was the end of my control of the business.

Q. Can you not answer that question, Mr. Waddell? A. If you want to treat contract B as a separate and distinct contract, having no bearing on the others—

Q. Well, here was a written contract providing

for three separate and distinct defaults, upon any one of which this stock could be forfeited? A. Yes.

Q. Now so far as the first default goes, was there anything in it that would hurt you so long as you carried out your contract A? (Objection overruled.) A. I have not read them in years. I do not know just what the terms are. I know they were objectionable. My letter sums them up.

Q. I understand; but you have testified that this two per cent was not only objectionable, but was the chief thing you split on. You have further testi- 4346
fied that this particular stock was to be put up under this particular contract. A. No; I don't want to say that was the chief thing we split on. That was the chief thing that influenced me in the declination of that contract, entering into that contract. I don't know that Mr. du Pont split on the question at all; I think not.

Q. It is the chief thing that prevented you from making the arrangements, was it not? A. I objected to it, put in that form.

Q. Well now, can you not answer the question 4347
that I have asked repeatedly, whether that first default was any danger in your opinion to your stock so long as you carried out your contract A? A. Taken in connection with contract A it was objectionable.

Q. And by that you mean that there were provisions in contract A that you objected to; it that it? A. Yes, I did.

Q. But if you had settled upon contract A, then you would have had no objection to putting up this security to carry it out, would you? A. I offered to put up security.

Q. You would have had no objection if you had got a satisfactory arrangement about contract A; is that what you mean? A. Along fair lines, I

would not have objected to putting up security; but not in the way they wanted it there. I suggested another method of doing it.

Q. The second default mentioned in this contract is: "If the said Buckeye Powder Company shall refuse, or neglect to manufacture and supply to the Laflin and Rand Powder Company the powder, as agreed upon in the said contract, marked A." You recollect that was the second event in which you could sell this stock or take this stock, do you not?
4349 A. Yes; that was under contract "A."

Q. That was definite, was it not? A. Yes.

Q. And the third and last event in this contract was: "If the said Robert S. Waddell shall engage in, or be directly, or indirectly interested in the manufacture or sale of explosives, except for the said Buckeye Powder Company, the agreement covering which is contained in a certain contract between the said Robert S. Waddell and the said E. I. du Pont, de Nemours and Company bearing date the day of , A. D., nineteen hundred
4350 and three, a copy of which contract is hereto annexed, marked "." That was the third and last event, was it not—if you went into the powder business, outside of this contract? A. Yes; they were putting me right in it in the contract. They were providing that I should sell the output of the Buckeye Mills which had been sold to Laflin and Rand, that I should go in and sell it for Laflin and Rand.

Q. And you thought this was a breach of this provision? A. Sure, it was.

Q. For instance, here is a provision that says you shall not be interested in the sale of explosives except for the Buckeye Powder Company. A. That is right.

Q. And therefore you say that if you did sell for the Buckeye Powder Company you would be break-

ing that provision? A. No; I was to sell the output for the Laflin and Rand Company.

Q. Under a contract mentioned in this same instrument, was it not? A. It was on another one, yes.

Q. Mentioned in this same contract, was it not? A. There were three contracts.

Q. It was mentioned in here, was it not? A. Yes, but not in that clause; but in the forfeiture there.

Q. So that was your interpretation of the contract and you objected to the two per cent being put 4352
up? A. The way they had it written; that is what I objected to.

Q. That is, you thought that because this powder was to be turned over to Laflin and Rand and sold by you it would be a breach of this provision which says that you shall not engage in the powder business except for the Buckeye— A. Yes, I was engaging in the powder business then for the Laflin and Rand Company.

Q. Do you still think that would have been a breach of this contract? A. That was my judgment. 4353
Possibly I may have been mistaken.

Q. Now I call attention to Plaintiff's Exhibit No. 44 concerning which you have testified, that it is a contract on which you made memorandum on the side. I call attention to the part of it on page 2114. The word "waived" is your word, is it not? A. Yes; those are my notations on the side there; but I don't know whether he waived it or what it was that was waived.

Q. The thing that was waived was this, was it not: "It is further agreed that the party of the first part shall assign and have transferred to the Company thirty shares of the capital stock of the said Buckeye Powder Company subject to the terms and conditions set forth in the receipt

4354 to be signed by the said Trust Company in the form hereto annexed, and marked 'A.'" Consequently, after all this discussion that particular thing you objected to was waived, wasn't it? A. Yes; but I don't know whether it was waived by Mr. du Pont or me.

Q. You mean when you put that down there you were waiving it? A. No, I was not waiving it. I wrote a separate contract commenting upon this and presented it to you, presented it to Mr. du Pont,
4355 stating how I would be willing to put that stock up. I was perfectly willing to give the security.

Q. Now you say that T. C. du Pont made these propositions to you, Mr. Waddell, do you? A. Mr. du Pont made the first proposition to me. I commented on it, and we exchanged probably six or eight comments, changes, new suggestions, all based on that general line of contract that he had drawn. I think there were about five or six. I know I wrote a lot of letters on the subject.

Q. Is that your letter (indicating?) A. (After
4356 examination.) That is my signature.

Q. To Mr. Hilles? A. Yes.

Q. You never mentioned but three written propositions in your evidence heretofore, did you? A. No; I was never asked about any more than that. Some of them were letters and a number of them were modifications of—

Q. Do you mean to say that you have not testified on repeated occasions that there were three written propositions in this matter? A. There were three named here—

Q. And you meant by that there were three or more? A. They were all based on the first proposition that was made, starting out with that.

Q. You mean by the expression that there were three to say that there were three or more? A. Di

I mean by the statement that there were three that there were three or more?

Q. Yes; you have stated repeatedly that there were three written propositions. A. Yes.

Q. By that you mean that there were three or more? A. There were quite a number of them; comments on the three or on the first one.

Q. Then there were three propositions with the comments on them? A. Yes; comments on them; changes. The method of making suggestions as to different items in the main proposition. 4358

(The paper referred to was marked, for identification, Defendant's Exhibit A 203.)

Q. Do you recollect, to begin with, that Mr. Hilles was the counsel for the du Pont Company in January, 1903, as you understood? A. Yes.

Q. He was assisting you and Mr. du Pont to get together on this thing? A. I understood he wrote the papers.

Q. He wrote some papers and you addressed your correspondence, or some of it, to him, did you not, on this subject? A. Yes; when he sent those three papers to me. 4359

Q. In writing this letter to Mr. Hilles, January 12, 1903, do you remember stating in it, "in presenting the proposition which you have now put in formal shape, I had no intention of buying the majority interest in a business, and submitting it entirely to the control of the minority, and then give security to the minority that I would comply with its wishes, or forfeit my property on five days' notice." Do you recollect writing that? A. No, I do not recollect writing it. I recollect my signature to that letter.

Q. Do you further recollect writing in the same letter the following: "In making this proposition,

4360 *R. S. Waddell—Cross*

the opportunity for a better business future was waived. An independent connection would be preferable to this one, under the restrictions in these papers." Do you recollect writing that? A. No, I do not recollect the language. If you let me read the letter I can tell you whether I wrote it.

Q. Won't you look this letter over and say whether you wrote those things at that time? A. (After examination.) Yes.

4361

(The letter referred to was marked Defendant's Exhibit A-203.)

Q. That letter was within a couple of months of this letter of November 10, 1902, in which you state that the du Pont ought to take their best men into business with them, was it not, Mr. Waddell? A. I don't recollect the date. I recollect the letter from Mr. Moxham, asking me what coal contractors would go into the powder business.

Q. And you recollect that was about November
4362 10, 1902, do you not? A. I don't remember the date.

Q. Can you state what this document is, Mr. Waddell (indicating?) A. It appears to be a program.

Q. A program of what? A. Of the Grand American Handicap.

Q. You are familiar with it? A. I can't say that I am, but I will look at it and see.

Q. I wish you would. A. (After examination.) Live bird tournament at Kansas City, Mo., March 31 to April 5, 1902.

Q. That is the program of the Grand American Handicap that you attended in that year; is it not? A. Yes; that is the last one that was held in Kansas City.

Q. This is the only one that was ever held in Kansas City up to that date, is it not? A. I don't know as to that. That is the only one I attended.

Q. Please look on this program at the bottom of page 3 and state if that refreshes your recollection as to whether one of those tournaments was ever held in the West before that date? A. If that statement is made there I presume it is true. I don't know.

Q. Then you did see Mr. Rice at this tournament in Kansas City some time between March—

Q. What is the date? A. April 5th.

Q. Sometime between March 31 and April 5, 1902, did you not? A. Mr. Rice was there; yes, sir. 4364

Q. You saw him and talked with him between those dates, did you not? A. I didn't talk to him except to speak to him occasionally.

Q. Then your statement the other day here was not true, was it? Do you recollect testifying as follows: "Q. Do you remember going to this great American Handicap meeting in Kansas City? I. think it was in April, 1902? A. No, sir; there wasn't any such meeting held. Q. When was it held? A. In 1901, the year before. Q. You are sure about that? A. Yes, I am quite sure." That was incorrect, was it? A. Yes; I was wrong in the date. 4365

Q. And this occasion on which you were there and Mr. Rice was also there was within two weeks of the time you wrote Defendant's Exhibit A, No. 200, in which you stated, "I am going to break into the powder business and kindred lines," was it not? A. (After examination.) This was written before that.

Q. I say it was written within two weeks of the time you went there and Mr. Rice went there, was it not? A. Yes; but this refers to the former correspondence we had on the same subject.

Q. It also refers to the fact that you had come to the conclusion that the Lord helps the man who

helps himself, does it not? A. Yes; they had practically cleaned out the Cincinnati office.

(The pamphlet referred to was marked Defendant's Exhibit A 204.)

Q. When you left Wilmington you say you took options on various machinery, options that ran about thirty days. When did you finally close your contract for machinery, Mr. Waddell? A. It was
4367 after I made up the stock and after I got the location of the plants. It must have been, well I don't know how long, but several days, several weeks perhaps.

Q. Was it days or weeks? A. I don't know just how long I was hunting a site. I had to know that before I could tell them where to ship, or what the contract would be, what the delivery would be. It was quite a little time.

Q. Well, you recollect pretty well that you went directly to York, Pennsylvania, and got an option, as you say— A. For sixty days —
4368

Q. For most of your machinery, and then you went to Hamilton, Ohio, and Dayton, Ohio, and got options on electric machinery and other machinery? A. Yes.

Q. That was almost immediately after you left Wilmington, was it not? A. Well, of course it took time to get around—several days.

Q. It was not more than two weeks that it took you to do that, was it? A. I don't think it was more than two weeks.

Q. Now then, having those options, how long did it take you to decide to take them up and have the machinery furnished? A. I had to go to Illinois. I travelled in Illinois some little time before I found a site, before I located, and then we had to make

arrangements to get—there was a good deal more machinery than was included in the direct powder machinery.

Q. Well, did you close those contracts just as soon as you selected your site? A. I don't recollect; nearly as soon or very soon after.

Q. From whom did you buy this site; do you recollect that? I don't necessarily mean who owned the land, but who negotiated to sell it? A. A man by the name of Augerson was the real estate agent.

Q. In Peoria? A. Yes; I hunted the site first 4370
and then I got him to negotiate the options, and it took me some little time—

Q. How long were you hunting sites? A. Well, I should think three weeks.

Q. How long? A. Perhaps three or four weeks. Then I had to take up questions with the C. B. & Q. Railroad in Chicago about freight rates, to know what rates I could get out of there. There were a number of questions before I could determnie. My option was for sixty days on the land.

Q. And it was during that period that you say
you travelled part of the time under an assumed 4371
name? A. Yes. After I left Cincinnati up to the time I got the options I did not use my own name.

Q. And you had considerable difficulty in selecting this site? A. Finding it?

Q. Yes. A. A. Oh, yes.

Q. That is because you considered it essential to have the just right lay of land and the right location, considering dwelling houses, and so forth? A. I did, to comply with the law, yes.

Q. But you did finally get a site that you thought was a very good one, did you not? A. I thought so.

Q. Do you not remember that you bought that machinery, or closed the contract for it, as early as March, 1903? A. I don't remember when the con-

tract was closed. I left Wilmington, Delaware, on the 5th of February.

Q. Do you recollect writing this letter to Mr. Hilles on those subjects (handing witness letter?)

A. (After examination.) There does not appear to be any date on it.

Q. Well, it appears to be an answer to a letter from Mr. Hilles on the 17th, does it not? A. (After examination.) That is my signature.

Q. And in your handwriting, is it not? A. It is
4373 in my handwriting, yes.

Q. And it is an answer or purports to be an answer from a letter you had received from Mr. Hilles on the 17th instant, does it not? A. That is my signature.

Q. And in your handwriting, is it not? A. In my handwriting, yes.

Q. And it is an answer, or purports to be, to a letter you had received from Mr. Hilles on the 17th instant, is it not? A. (After examination.) No; it says, the 18th instant. It speaks of his letter of
4374 the 18th, requesting that I send certificate of incorporation.

Q. I show you what purports to be copy of a letter from you to Mr. Hilles dated February 18, 1903, and ask you if your letter was not in answer to the original of that? A. (After examination.) This bears date February 18th. I don't know whether it was or not.

Q. Do you not recollect receiving such a letter from Mr. Hilles? A. No, I have no recollection of it.

Q. Would you have the original of this? A. There was no copy taken of it, I think.

Q. No, no, I mean the copy of this Hilles letter to you. A. I don't know. My wife may have enclosed it.

Q. You have not any doubt that you received a letter of this sort from Mr. Hilles within two or three weeks after you left Wilmington, have you? A. I recollect that there was a mistake made in the certificate of incorporation.

Q. And you recollect it was called to your attention very shortly after you left Wilmington, do you not? A. I think that that was about the time I left there or before I left that the error occurred, or soon after.

4376

Letters received in evidence as Defendant's Exhibits A-205, A-206.

Q. This letter marked A-206 is dated Wilmington, Delaware, February 18, 1903, and reads as follows:

"(COPY)

Wilmington, Del., Feb. 18, 1903.

Robert S. Waddell, Esq., 4377
% E. I. du Pont de Nemours & Company,
Wilmington, Del.

Dear Sir:—

Will you kindly let me have the certified copy of the Certificate of Incorporation of the Buckeye Powder Company? The Secretary of State or the Recorder has made a mistake in dates which is very material, and which should be corrected at once.

Yours very truly,
Wm. S. Hilles,
Per M."

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The answer, in part, reads:

"Wm. S. Hilles, Esq.,
904 Market Street, Wil., Del.

Dear Sir:—

My wife forwards your letter 18th inst. requesting that I send you the certificate of incorporation of Buckeye P. Co. I regret that I have not the
4379 paper with me but have an exact copy of it in all details. The dates on the paper are all correct and as soon as I return to Chicago I will get and either forward the paper or bring it with me to Wilm., as I am through work and will return home for three or four weeks. I was very fortunate getting the company started. The third man on whom I called at Chicago said he would take the 49% of stock. He had a very large tract of ground and it did not take long to fix things so that I could get a location for my mills without the effort of looking up a site during the winter months. All contracts for
4380 machinery are placed and there is very little I can do now toward putting up buildings. I now give you the dates on the Incorporation Certificate & they are correct as I recollect them distinctly." Then follows two pages of describing dates, on the certificate of incorporation, which I will not read, as they seem to be immaterial. Who was the man in Chicago with whom you fixed up your site? A. I busted on that arrangement. That was Mr. F. S. Peabody, Frank Peabody, who wanted to take 49 per cent. He made a condition later that I could not comply with. He did not take any stock in the company, and that whole thing blew over.

Q. Your complaint states as follows: "And with this end in view they placed detectives on the track

of the said Waddell to shadow him throughout the United States as he should journey from place to place in search of a location, to keep them advised of his movements and to enable them through their emissaries to forestall him in obtaining a location and to create opposition to the location of plaintiff's plant in such place as might be decided upon, by instilling fear into the minds of the people thereabout, and also, if need be, by entering into competition with the plaintiff for the purchase of sites 4382
and bidding up the price of said property, not, however, with any purpose to make use of the same themselves, but to prevent the entrance of an independent competitor for the powder trade in the states, territory and foreign country aforesaid." Did you furnish the information for that statement in your complaint, Mr. Waddell? A. Yes.

Q. Where did they bid up any property that you were trying to buy? A. I don't understand that that is what it says there.

Q. Then you don't know that they did anything of that sort? A. I don't know. I know what the 4383
general plan was.

Q. I am not asking about that. In any instance where you were endeavoring to buy property, did they bid up the property on you? A. I don't know.

Q. Were you present when they were hired? A. No. I didn't know anything of it.

Q. And you didn't see anything of that until after about two or three weeks, did you? A. I should think about that time. I don't know just when.

Q. And the Allentown Foundry & Machine Company. Where was that? A. Allentown, Pennsylvania.

Q. Do you know when it was you applied to them? A. The first time I applied to them was, I should think, about March or April, 1903. It may have been May. And then again, in the fall.

Q. You did not take occasion on your direct examination to mention the fact that you had bought machinery of the Allentown Foundry Company, did you? A. I bought it a year afterwards, after I commenced building the mills.

Q. A year after. About when? A. I think I bought the Press in January, 1904.

Q. That is you paid for it on January, 1904, did you not, a complete horizontal press, paying $3400 for it? A. I presume I paid cash for it.

4385 Q. Well, you had purchased it some time before you paid for it, had you not? A. Yes.

Q. Or arranged for its purchase? A. Yes; I may have arranged in December. I don't recollect dates exactly or I didn't at that time.

Q. Well, you do not recollect saying anything about that on your direct examination, do you? A. Yes, sir; I think I spoke of the Allentown press being the one that I used, the horizontal press. I put it in in place of an upright press, and Mr. Olin testified to it.

4386 Q. I will ask you how much of the stock of the Buckeye Company you took at that time yourself? A. Fifty-one per cent when we organized.

Q. How long did you hold the control in that way? A. Not very long, just until a little after we commenced building the mills, when I let part of it go to personal friends.

Q. How much did you have left after you sold what you cared to sell? A. My recollection is $38,600 out of $100,000 worth. Maybe it was $38,200, but about $38,600, I think; that is, myself and my boys together.

Q. That would be about 36 or 37 per cent. of it? A. 38 per cent and a fraction. I let Mr. Luthy have $5,000; and I let Colonel Ditewig and Mr. McElwee have $4,000 of it.

Q. Do you, or your boys, still own 37 or 38 per cent. of it? A. Yes.

Q. In your own right? A. Yes.

Mr. Abbott: I would state that Mr. Button called for the stock books some time ago. I do not see the materiality of it, but if he wants those stock books he can have them.

Q. Then the entire beneficial ownership of the stock will be shown in the stock books? A. I think so, yes.

Q. That is the shares, so far as you know, are absolutely owned by the people in whose names 4388
the certificates appear on the stock books? A. Yes.

Q. There is no contract about them, or no arrangement outside? A. No, none that I know of.

Q. And you own yourself absoutely, you and your sons, do you, the amount of stock you have mentioned? A. I do, yes.

Q. Now, you have stated, Mr. Waddell, that the plant that you built cost in the aggregate $117,000, but you are unable to separate the different portions of that cost except so far as the land goes, which cost something over $5,000. Where do you 4389
get those figures of $117,000? A. Construction was the first account we had. That was the original building of the mills; and improvement account was for the increase in the capacity of the mills; and the two together make up the total cost, plus—well, we were found to be in error, that we had charged something to repairs that the auditors told us should not be there.

Q. That was a matter of two or three hundred dollars? A. I don't remember what the amount was, but they told us that we should have charged it to plant account instead of to repairs account, at the time the audit was made. The total, as I remember, was a trifle less than the $117,000.

Q. As I understand your testimony, you first

started in and put in part of the machinery and later put in more. How many wheel mills did you put in first? A. The first construction was two wheel mills, and then we put in a third one. We ran quite a time with the third wheel and then later on, under improvement account, we put in the fourth wheel.

Q. Was it a wheel that blew up in January, 1904, or some other machine? A. That was a press, the upright press.

4391 Q. So, eventually, you had four sets of wheels? A. Four pairs of wheels, yes.

Q. And you put in the last two some time in 1904? A. All of them were in, I think, in 1904.

Q. You must have had the first two in 1903? A. In 1903.

Q. And the other two in 1904? A. I think so.

Q. These two accounts, "Construction" and "Improvements," were those the name of the accounts? A. That is my recollection of it—"Construction and improvement accounts."

4392 Q. Will you state whether or not your books as of December 31, 1908, under the two following accounts, show the following facts: Construction account; total, $64,519.37. Improvement account; $44,707.29. Plus the difference pointed out by somebody, $263.52. That makes altogether, $109,-226.66. Now, will you look at the accounts I will show you in a moment and state whether that is correct or not? A. Yes, but you have omitted the boarding house.

Q. Very good, but I will give you that in a moment. Can you state without the book that that is correct? A. No, I cannot.

Q. Then there is another account, the boarding-house account. A. Yes, we built a boarding house.

Q. That is $3,167.07. Do you recollect that?

(Objection overruled.) A. I don't recollect the amount.

Objection to further examination of the witness regarding the books.

Q. Do you recollect whether you charged any salaries in the construction account? (Objection overruled.) A. I don't recollect what was charged in it. I know everything that entered into construction was charged to the account when we were 4394
building mills.

Q. Do you recollect whether any salaries were charged to him? A. I don't know what went in the items.

Q. Will you look at the book marked in evidence P-73, on page 12 of this book, and state whether the balance of your construction account as of May 31, 1906, was $64,519.37?

Mr. Abbott: Now, if your Honor please, I object to that question, because it refers 4395
to the book, or a book, one of the books of the company, and the reason I object to the question is this. If counsel wants to introduce that book or the books for the purposes which he now has in mind, we have no objection; but it is not cross-examination. We did not introduce the books for any such purpose, and we ask that counsel be restricted to the purposes for which we introduced the books, or if he wants to take the books and introduce them for his own purposes, we have no objection to that; but we do object to being made responsible for some account which we did not bring out on direct examination, or for some purpose for

4396 which we did not offer the books on direct examination. We said this—and we stand by it and reiterate it: That these books were here for any purpose that might be legitimate, regarding any issue in this case, but we want counsel to take the responsibility now, and if he proposes to bring out some account here that we have not undertaken to question regarding on direct examination, let him introduce the books himself cover-
4397 ing that matter, as we desire ourselves to have the books go in evidence.

The Court: You have got evidence, have you not, as to the cost of the plant?

Mr. Abbott: Yes, but not from any statement in the books.

The Court: The books are in evidence?

Mr. Abbott: Yes.

The Court: And they are here for any legitimate purpose.

Mr. Abbott: That is all very true.

4398 The Court: Not merely the purpose you introduced them for.

Mr. Abbott: But do not misunderstand me in this. Your Honor required me to state, when I offered the books, what the purpose was.

The Court: To determine whether they were admissable or not.

Mr. Abbott: No, your Honor required me to state that they were for the purpose of showing the status of the accounts with our customers; that is to say, I went on and recited that they would show the date, the name of the customer, the amount of goods sold at different times, and the prices paid, and that was the only purpose we offered

them for—and any purpose that had anything to do with that issue.

The Court: I asked you those questions, Mr. Abbott, to determine whether they were admissable. The evidence being admissable for one purpose, it is admissable for any legitimate purpose in the issue.

Mr. Button: I will say this. If counsel will stipulate that the books are in evidence only for the purpose of showing the relationship between the Buckeye Company and its customers, that will be satisfactory. There was no such limitation at the time they were introduced, but if that is satisfactory, I will so stipulate. 4400

Mr. Abbott: I am willing that they should be introduced for any purpose that is legitimate, but if counsel wants them for that purpose I want him to introduce them.

The Court: When they are once introduced, of course, they are in the case for any legitimate purpose, and you are bound by them. 4401

Mr. Button: Then I understand that that stipulation is not satisfactory?

Mr. Abbott: I do not care to make any further argument if your Honor rules the books are before the Court——

The Court: Let us go on.

Mr. Button: Do I correctly understand your Honor's ruling, that the books are in for all purposes?

The Court: For all purposes that are legitimate to the issue, certainly.

Mr. Button: I could shorten this a great deal if I could know whether that is all that is claimed in reference to the books.

4402

The Court: I hope counsel will try to keep everything out that is not esesential to the case.

Mr. Button: If counsel will state now that he desires the books to be in evidence only for the purpose of showing the relationship between the Buckeye Powder Company and its customers, that will be satisfactory to me.

4403

Mr. Abbott: I have said all that I care to in reference to it.

The Court: Will you answer the question?

Mr. Abbott: I do not care to limit it. The books are here for all legitimate purposes, as I said at the beginning.

The Court: Very well. Go on.

By Mr. Button:

4404

Q. Now will you answer the question, Mr. Waddell, whether the construction account on that date shows a balance—— A. (Interposing) Of $64,519.37.

Q. On the previous page what does the improvement account show? A. $44,707.29. Real estate, $5,400; boarding house, $3,167.07.

Q. There are those four items, are there, those four accounts? A. Yes. I don't know whether office and mill furniture went into it or not.

Q. Well, count that in. That is $542.21? A. Yes.

Q. That would add up $118,385.94? A. Perhaps they do.

Q. I will read them: Construction, $64,519.37; Improvements, $44,707.29; Boarding house, $3,167.07; Plant and real estate, $5,450.00; Furniture

and fixtures, $542.21; total, $118,385.94. I will venture to say that they are approximately $118,385.94. It can be verified. Now that is the source of your information which you gave on direct examination, that the plant cost approximately $117,000? A. Yes, sir.

Q. First, in regard to salaries: Do you know, Mr. Waddell, that your salary was treated in this way during all this period? Take this item on page 61 of the book, which has been marked P-60. 4406
I find here August 3, R. S. Waddell, on account. A. August 3, what year?

Q. It is 1903, I think. A. I think it is years afterwards. It is 1907 there, previous to this (indicating on book).

Q. Do you take it that your salary, the way it was handled, was put through the bills payable account? A. Bills payable? No.

Q. I show you another book, marked P-62, and it seems to be a journal. On page 3, under date of June 30, 1903, you will observe your salary for June charged up to construction. Do you see that? 4407
A. Yes.

Q. And that of your two sons? A. Yes, sir; we were all working at the plant.

Q. That is during June. Now, during the previous month, May, does the same thing occur on page 2 of the same book? A. Charged to construction and credited to each of our accounts.

Q. And through down in July, on page 4, is that correct—the same thing? A. Yes.

Q. And August, on page 5, the same thing? A. Yes.

Q. And in September, on page 6? A. Yes.

Q. And October, on page 8. The services of yourself and your son, R. S. Waddell? A. Yes, sir.

Q. That is in October? A. The doctor was not there then.

4408

Q. That is, N. C. Waddell was not there? A. N. C. Waddell was not there.

Q. Please look at page 11 of that book and state whether or not the salary of yourself and your son R. S. Waddell, Jr., for that month was charged to construction? A. No, charged to salary account.

Q. Journal 11? A. Journal 11, charged to salary account, and charged to us. Construction was over then.

4409

Q. On page 17—— A. Charged to salary and credited to our account.

Q. These last two months you have mentioned, pages 11 and 17 of this Journal, for November and December of 1911, were carried through the salary account, were they? A. Yes, sir.

Q. I show you book marked P-71 and call your attention to a sheet here that is marked sheet No. 1, account No. 8, "Salary." (Objection overruled.)

Q. Looking at that sheet, I called attention to, will you not state whether this was transferred, this salary, to the construction accouunt, the sal-

4410

ary for the last months, December 31, 1903, these two items being November 31 and December 31, officers, $500 each, the first two items on that sheet, aggregating a thousand dollars on December 31, 1903, transferred back to the construction account, were they not? A. I don't know enough about it to tell you that. I could read it to you. Show me the journal and maybe I can tell by that.

Q. The journal is the entry from page 11, that I called attention to in the previous book, which was your salary and R. S. Waddell, Jr.'s, salary, at page 11, which is put in the salary account, $416.66 to you and $84.34 to R. S. Waddell, Jr., making $500 in the aggregate. You will find the first item on this last sheet, account No. 8, sheet 31, taken from Journal, page 11. Do you find that? A. Yes.

Q. The next month's salary was on the 17th page of the journal, the same kind of an entry? A. Yes, sir.

Q. And salaries aggregating $500, you find that under December 31, posted from Journal, page 17, $500, do you not? A. Yes.

Q. And on the other side of the account, December 31, 1903, you find the entire thousand dollars taken back to the construction account. Still on sheet No. 1 of account No. 8. A. Closing for the year. 4412

Q. That indicates that your salary up to December 31 was so charged? A. To January 1st.

Q. January 1st, 1904? A. Yes. I was probably working on construction then, getting that new press.

Q. Do you recollect how long you continued to charge your salaries and your sons' salaries to construction? A. It must have gone to "Improvement" after that, I should think. We were putting a new press in and building some mills.

Q. Will you look at this same journal on page 57 and state whether or not a lot more salary was not treated in the same way? A. (After examination.) That is "Improvement." 4413

Q. No, wait a minute. Let us find the item. Salary to the improvement account, $1,750?? A. (After examination.) Yes. That was putting in the new mills.

Q. That was salary from January 15 to May 1st, 1904, was it not? A. I don't know.

Q. Here is the notation. A. From January 15 to May 1.

Q. To May 1, 1904? A. That is up to the 30th of April. That is when we were putting in the new mills and press.

Q. And on the same page, from February 1 to May 1, 1904, do you find $720 salary of the super-

4414 intendent and engineer charged in the same way—the second item? A. Yes.

Q. That is charged to the same improvement account? A. Yes, putting in the machinery.

Q. That improvement account is one of those that went in to make this $117,000, is it not? A. Yes. Whether you call it labor or salary, we had to put the stuff up.

Q. Consequently, up to May 1st, 1904, during the entire period, you charged all your salaries and
4415 your sons' salaries to the construction of that plant, did you not? A. We did. I was right on that plant all the time.

Q. A part of that time you charged part of the salary of your other son, N. C. Waddell? A. Yes, he was superintending the mill.

Q. And you had an explosion during that time? A. Yes.

Q. A part of those repairs were due to that explosion, were they not? A. No; we had an entirely new press bought. We didn't repair that.

4416 Q. The press that was originally put in and which did explode was charged up to one of those accounts, was it not? A. Originally built? Yes.

Q. How much did that press cost, do you recollect? A. No. I should think about $1,500 or $1,600.

Q. You bought a horizontal press in January, 1904, that cost you $3,400, did you not? A. Yes. That is a bigger press, five times as big.

Q. You do not recollect any place that the cost of that press that blew up was taken out of this construction account, do you? A. I don't know anything about the items on the books. They will have to speak for themselves.

Q. If it was not taken out the result would be that there would be that much more than there

should be in your $117,000 or $118,000? That is, you do not think the value of the exploded press should be charged to the value of your plant, do you, if it is so charged? A. No. I don't know anything about how that was. It may have been charged for.

Q. The next time you had an explosion, what machinery blew up? A. This Allentown press.

Q. That $3,400 press? A. Yes; but it didn't hurt the press any.

Q. That is, no machinery was destroyed? A. 4418
No, just the shell, the little building that covered it. The same press is in use now.

Q. I call your attention to account No. 9, sheet No. 1, in the last book that was referred to, it being a general expense account, so-called—sheet No. 1. Will you note from this account No. 9, sheet 1, that December 31, 1903, the sum of that account was transferred to construction account? A. General expense account closed into construction, December 31.

Q. I call your attention to account No. 9, sheet 4419
No. 1, to an item October 31, transferred from page 19 of the cash book evidently, which I show you, being book P-57. Will you look on that book and state if that item, $81.33, was so transferred? A. I don't know what that entry means.

Q. There is an amount of $81.33 on page 19.

Q. There is an amount of $81.33 on page 19. A. That is the footing of that expense account.

Q. Here you see that it is transferred to 9? A. Posted to 9, yes.

Q. That means this account, No. 9, in your ledger; the same item appearing at page 33, which shows it was posted from page 19, does it not? A. Yes, sir.

Q. That is the same item, is it not? A. There are a number of items there.

Q. I know, but that is the total that was transferred on that day to this general expense account? A. It was posted, yes.

Q. And which, in turn, on December 31, was all transferred to your construction account, was it not? A. Yes.

Q. Therefore all those items went into the cost of your plant? A. General expense items, I should say so.

Q. Among others I would like to call attention
4421 to these items.

Q. Do you recollect that you charged up the cigars and cigarettes that you used on the opening days there, to construction? A. No.

Q. There is an item of that sort there. Did that all go in? A. Expenses are charged to what?

Q. Expenses carried in your construction account.

Mr. Abbott: Where is it carried in construction?

4422

Q. It is just as I show you here on the items on sheet No. 1, December 31, 1903, construction account to close, taking over all of the items that had been charged up to your general expense to date? A. Yes.

Mr. Abbott: How much was charged to cigarettes?

Mr. Button: $15.65.

The Witness: That was the entertainment we had on the opening day.

Q. Yes, and you charged the train you had to go out there? A. No, I don't recollect the items.

Q. Well, is it not a fact that it was your habit to put in this account you called construction account

a great many miscellaneous items of that character? A. We charged up to construction everything we expended during the time we built our mill. I stayed on the ground and superintended the mill, and therefore my salary should go in.

Q. Therefore your $117,000 was practically an account of all your expenditures up to the time your mill was completed? A. Everything that enters into the construction of the mill, superintendence included.

4424

Q. A little more than that, was it not. Everything you spent, you said a few moments ago, did you not? Do you recollect charging up attorney's fees in that account? A. No, no.

Q. Now, referring to this third wheel press, do you recollect buying a third wheel and press, motors, and so forth, and so on, in January, 1904, at an expense of $6,800 and some dollars? A. I remember buying a press. I don't know when I bought the third wheel, but it was practically about that time. I bought of different people. I had to buy motors to drive them——

4425

Q. Was not part of that machinery to replace this that had exploded? A. No, a wheel mill does not replace a press.

Q. Well, a press might have been injured? A. I had bought this horizontal press before the other one blew up.

Q. Do you mean you can have explosions without hurting the machinery at all? A. Yes, it never hurt our press at all.

Q. What was it that was damaged? A. I have had four or five explosions in wheel mills that only detained us fifteen or twenty minutes.

Q. What was the machinery that was damaged by the explosions in January, 1904? A. That was the cylinder of an upright press.

Q. Did it destroy it? A. It cracked it, yes.

Q. Did it destroy the buildings? A. Yes, not the foundations.

Q. And you went and bought a new press and rebuilt the building, did you not? A. No.

Q. Well, you rebuilt the building, did you not? A. No.

Q. Did you abandon the whole thing? A. Abandoned the whole thing.

4427 Q. What did you use in place of that one which was destroyed? A. I had to have a much larger foundation and altogether different for a horizontal press than a little upright press.

Q. Do you know whether you charged off the value of that building and the press that was destroyed from these accounts? A. I don't know; I could not put my finger on the items; I presume we did.

Q. Do you not know that you never made any credits whatsoever to either one of these accounts? A. I don't know anything about it.

4428 Q. From the beginning to the end? A. I don't know anything about the details of it.

Q. All you know, about the fact that your mill cost you in the aggregate approximately $117,000, is that you add up the totals of these three or four accounts that have been mentioned; is that it? A. Yes; we had the judgment of two pretty good audit firms, Everett & Company, of Chicago, and De Loitte, Pledner, Griffith & Company, of New York. I think they knew their business.

Q. Do you recollect in December, 1903, charging up to construction your boiler insurance? A. No, I do not.

Q. That would not be a proper item of construction, would it, insurance on your boilers? A. If the boilers were run during the construction period

I should think it would be. They were certainly not for manufacturing purposes.

Q. Now, you cannot state at the present time how much the different items of machinery cost? A. Not offhand.

Q. You purchased most of your original machinery under contract for a lump sum, did you not? A. Most of it.

Q. The principal part of it? A. Well, we purchased our powder mill machinery from one con- 4430
cern and our electric machinery from the General Electric——

Q. Was not the largest purchase from Baugher, Kurtz & Company originally? A. I don't know whether that was larger than our engines or not.

Q. Whatever it was you purchased that for a lump price, a contract price, did you not? A. Yes, and a whole lot of additions to it.

Q. And the contract price you recollect was carried on in your books without any detail; do you recollect that? A. I don't recollect that. Under 4431
the specifications they made a number of changes, I know, in the specifications.

Q. You did not mean, in testifying in direct examination, that this plant cost $117,000, that you could sit down and give the items that would aggregate that amount, did you? A. No; the items are on the books.

Q. That is what I mean. What you meant was that these various accounts that we are speaking of showed approximately that amount. Is not that what you meant? A. That is what we expended for the plant and stuff.

Q. In November you came to the time that you were going to sell powder that you had made. What trade did you expect to get at that date for that powder? A. What is that?

4432 *R. S. Waddell—Cross*

Q. What customers did you have in mind at that date to whom you expected to sell? A. We expected to sell all the trade that was open to be sold, that was not already tied up in contracts.

Q. And you have already said that you solicited it all, have you not? A. I did. I think I began soliciting about September or possibly a little earlier.

Q. Have you not stated that there was enough new business, due to the development of the coal
4433 mines in Illinois alone each year during the existence of the Buckeye Powder Company, to take the output of your plant? A. In Illinois? No. I think I said in my territory. It was very largely made up of Illinois, but I do not think I made the statement that it was in that State alone. But there was a great increase every year in the production of coal in Illinois.

Q. On page 2007 of this record, I read the following: The question was "Q. Now, what was the excess of tons of coal in the State of Illinois for
4434 which there was no immediate supply of powder at the time when your plant went into operation?" A. There was an increase every year in the amount of powder demanded to mine the increased amount of coal produced that would have required at least 250,000 kegs additional to take care of the new trade." Did you not so testify? A. Yes. I think that is correct, too.

Q. Well, that is not the fact, is it, that each year during the existence of the Buckeye Powder Company there was that increase in the consumption of powder in Illinois? A. I don't think that would be the excess in Illinois alone, but in my territory that was contiguous to my mills there was fully that.

Q. Possibly; but I understand your testimony to

be in regard to Illinois alone, and I understand you take your information from these coal reports, do you not, as to the consumption of powder in those states, or, rather, in Illinois? A. No, I do not take it from those. I knew it aside from the coal reports; but that confirmed me in some respects.

Q. I show you the report for 1910, at page 151, which purports to give the increased consumption of kegs of powder in Illinois from 1902 to 1909.

4436 Q. This is a report that shows the increase from 1902 to 1909, and I would like to read this to you. The kegs of powder used were: In 1902, 637,448; in 1903, 806,311; in 1904, 923,418; in 1905, 928,500; in 1906 1,027,373; in 1907, 1,261,910; in 1908, 1,328.454; and in 1909, 1,280,607. Therefore from 1902 to 1903 there was an increase of a little over 170,000 kegs, according to these figures. A. You are reading from a statement from the State report where only about 70 per cent. of the mines in the State reported the amount of powder they used. That does not cover the field.

4437 Q. That would apply to each year, would it not? A. No; one year 60 per cent. and 80 per cent. in another year; and 70 per cent. is about the average.

Q. Do you mean to say that you have any information on the subject of the total consumption of powder in Illinois that is superior to this information and more accurate? A. I have not any general information that is superior to it, but I have had specific information that is better than that.

Q. To the effect of what is the total consumption of powder in Illinois during those years? A. Not the total, no. I only know by the proportion——

Q. The proportion of what? A. I know that that does not give the exact amount of powder used by each mine.

Q. That may be; but how do you know, then, what the total consumption was in the State during those years? A. I know it by the tonnage of coal produced.

Q. Well, where do you get the tonnage of coal? A. We get it right in that book you have there, on the first few pages.

Q. It is the same table, the next column, is it not? Is that what you refer to (indicating)? It first gives the number of kegs and the next column
4439 gives the number of tons produced. A. With those kegs.

Q. Yes. Is that what you refer to? A. Yes; the mines that report the kegs, report the tons of coal.

Q. Yes. A. But what I refer to as the tonnage of coal are these tables right in the start here (indicating). The total output of all mines in tons of 2,000 pounds, 48,758,853. In 1909 the figures were 49,163,710. That gives the tonnage. I can estimate on the tonnage of coal pretty closely what the tonnage of powder will be.

4440 Q. What page is that? A. Page 6. That gives the total tonnage, and then the output of shipping mines, and different classes of mines.

Q. That is the tonnage output of all mines in tons of 2,000 pounds? A. That is right.

Q. And for 1909 it was 49,163,710? A. Yes. That letter you read yesterday stated that when I left Wilmington it was 27,000,000 tons, about. It is up to 49,000,000 there in 1909.

Q. That is during a period of about seven or eight years? A. Yes; it doubled in six years, about.

Q. Then you would not tie up to this statement of the actual increase in kegs of powder? A. No, I would not swear to it.

Q. And it is true of the other reports in that record that have been put in, I take it? A. They are only a guide.

(The papers referred to were marked for identification A-209 and A-210.)

Q. If there was an increase, Mr. Waddell, it would be largely an increase in the production of mines that had theretofore opened, would it not? A. No.

Q. Would it be confined to new mines? A. Not entirely, but the old mines, or some of them, were working out ever year.

Q. And extending, some of them? A. Well, old 4442
ones were abandoned, a good many of them, and new mines were coming on, and they were new companies.

Q. Do you mean that it was your intention at that time to confine your efforts to getting business, to getting that new business entirely? A. No. After I read that letter in Cincinnati I was going to get any business that was open to me, at an equal price.

Q. At an equal price, you say? A. I would not dare cut the price, if I knew it.

4443

Q. What is that? A. I would not dare cut the price if I knew it.

Q. Then you didn't do it? A. Not if I knew it.

Q. Did you know their prices? A. Know the du Pont prices?

Q. Yes. A. No.

Q. In this Government case, page 188, did you testify as follows: "If they had the total control of the field and the furnishing of this vast amount of powder, which you have pictured to us, what field was it you were going to enter and not infringe upon theirs." To which you replied: "I expected to get the new business of Illinois alone, which would more than take the product of my mills"? A. Yes.

Q. Was that your intention? A. Yes, that is what I thought before I left Wilmington; I left there with that expectation.

Q. Confining yourself to Illinois and to the new business? A. Oh, no; there was not any confining myself to Illinois.

Q. You said "I expected to get the new business of Illinois alone which would more than take the product of my mills," was that your intention in Illinois? A. No, no, sir.

4445 Q. You so testified, didn't you? A. I don't know whether that "alone" was in there or not; my intention was to get the trade of that district.

Q. According to this record, that is what you said on page 188. A. There is a whole lot of remarks I find in this record that are not right.

Q. On page 188 we find that.? A. I may have used the word, "alone," I dont' know; my purpose was to get the trade of my territory out there that was contiguous to the mills where I manufactured the powder.

4446 Q. And the first trade you got was the trade of Mr. Brechnitz, wasn't it? A. Brechnitz—I don't know; I think he was one of the early ones.

Q. I show you this invoice which I have understood you to say shows the sale you made of powder—this is P-67, and invoice No. 1, an invoice to Mr. Brechnitz at $1.15, isn't it? (Handing paper to witness.) A. $1.15; that is right.

Q. How many kegs? A. 400.

Q. What was the du Pont price to Mr. Brechnitz at that date, November 4, 1903? A. I don't know.

Q. What was the Austin price to Mr. Brechnitz at that date? A. Austin?

Q. Yes. A. I don't think he ever bought any, I never knew it; I probably took Brechnitz's statement for what the price was.

Q. I show you an invoice which purports to be dated December 2, 1903, to Mr. Brechnitz for the sale of powder from the Explosives Supply Company. Are you familiar with invoices of that nature enough to state what that shows and to recognize the invoice? (Handing paper to witness.) A. No; I never saw one of their invoices; I don't know whether——

Q. Now, after that first sale to Mr. Brechnitz, you partly made a contract with him, did you not, to sell him quite a large amount of powder? A. 4448
I don't know how soon after that it was, but I did make a contract with Brechnitz.

Q. It was some time the next Spring, wasn't it? A. The contract is there in evidence; I don't know just when it was.

Q. Now, I show you invoice No. 5—No. 18 to Powers & Williams on these books—and ask you what price you were charging that concern in your first sales to them, they are contained in there, dated November 13, 1903, evidently covering 260 kegs. What was your price to Powers & Williams? 4449
A. Well, I would have to figure that out. The price on this bill is $1.20 net.

Q. Well, this is your bill, isn't it? A. That is our bill.

Q. That is what you were charging Powers & Williams at that date, isn't it? A. Yes.

Q. Now, will you look at invoice No. 18 and then look in the same book and state what price that was sold at? A. $1.20 net.

Q. Is not that $1.15? A. After further examination $960 and 800 kegs; no, I don't believe it is —eight times twelve is ninety-six.

Q. Is not there something on one of those vouchers to indicate the price was $1.15? A. No.

Q. May I see it? (Handing Counsel.) Do you

know what the du Pont price was to Powers & Williams at that date? A. I didn't sell them.

Q. Are you sure of that? A. Powers & Williams were buying from Indiana.

Q. Indiana? A. From the Indiana Powder Company.

Q. Do you know what the Indiana price was? A. I think I had to rebate down to meet the Indiana price. If you will look at Powers & Williams' letters to me you will see.

4451 Q. My question is do you know what the Indiana price was at this date? A. A little higher than the Indiana price——

Q. Do you know what the Indiana price was? A. Whatever the books show. I had to rebate down to this Indiana price.

Q. Here is your voucher (handing witness). What do you mean by that statement? There is No. 5, showing a rebate of 15 cents a keg from $1.35, making $1.20 on your first sale on November 13, 1903, to Messrs. Powers & Williams. Now,

4452 there is your book (indicating). Now, state from that what the price of the Indiana Powder to Powers & Williams was on that date if you can. Can you state from the books, Mr. Waddell? A. No; I didn't keep the Indiana accounts in my books. Indiana price was $1.10.

Q. How do you know? I say, how do you know? A. I knew what the special price was.

Q. Got it from Mr. Moxham's list of contracts? A. No.

Q. What did you get it from? A. I got it from that list of the special prices that Rob put in here. Q. You had that before you at this date? A. Yes.

Q. Won't you take that same book of vouchers and see what you then sold the Maplewood Coal Company, what price? I think you will find it in

voucher No. 6 or invoice No. 6. A. (After examination) $1.10 net.

Q. Now, I show you a contract that has been introduced in evidence, 1246 for identification, sub-No. 255, and seems to be between the du Pont Company and the Maplewood Coal Company under date of May 1, 1903, and ask you to state what the price in that contract is. A. It is November, 1903.

Q. Your sale was at $1.10 here on November 17, 1903, was it not? A. Yes.

4454

Q. Now, what is the price in that three-year contract dated May 1, 1903? A. The price named here is $1.35 a keg.

Q. With how much rebate? A. 17 1-2 cents.

Q. That would make it $1.17 1-2, wouldn't it? A. As of the date this was made, May 17, 1903, but you may have increased the rebate between that and the time of this.

Q. Possibly. Do you know anything about it? A. I know you were increasing the rebates.

Q. Do. you know anything about the increase of rebates on this Maplewood Coal Contract which I have referred to? A. Yes, I know——

4455

Q. At that date? A. I know you did increase the rebate to them.

Q. When? A. During 1903 while I was building the mill.

Q. When? A. I don't recall just the date in 1903; you increased the rebate to nearly all the trade around Peoria.

Q. To what point was the rebate to this concern, the Maplewood Coal Company, increased during 1903? A. I don't recollect the figures exactly.

Q. Then this Maplewood Coal Company was a concern in which you had a stockholder, was it not? A. Yes, they bought stock.

Q. Who was the stockholder? A. McElwee and Ditewig.

Q. Did they both have stock or take it as a concern? A. Both had stock, equal amounts, individually.

Q. When did they acquire that stock? A. I think it was along in the winter of 1903 they came and solicited it, they came in my office and I sold it to them, part of my own stock.

4457 Q. Then at that time they were under contract with the du Pont Company, were they not? A. I don't know.

Q. For three years? A. I don't know whether they were—that contract there would indicate it.

Q. I thought you just testified that the rebate on this particular contract was reduced during the year 1903, did not you? A. Yes.

Q. Then you did know that they had a contract during 1903, didn't you, with the du Pont Company? A. Yes, but I didn't know that they had it at the time that they bought this 100 kegs of me;

4458 I don't know what time that was.

Q. Now, you say, if this contract is correct which you have introduced, that is correct, isn't it, it is dated May 1, 1903? A. Yes, sir, that is the date of the contract.

Q. And if that is correct, it stands proven that you sold them some powder at the time that they had a contract? A. I sold the powder, I think, in November.

Q. Yes, but you sold it on that date and then you sold them some right along later, didn't you? Didn't you sell them some in December, 1904, and right on in May, 1905, more or less, don't you remember? A. I don't recollect what the items were; I sold them very little powder, I know.

Q. That is a concern about which you gave cer-

tain testimony to the effect that you went down there and had an interview with the Pit Committee, wasn't it? A. I don't recollect testifying in regard to the Pit Committee.

Q. Didn't you testify that you went down to the mines? A. I went to the mines.

Q. Of the Maplewood Coal Company, and that they were a stockholder, and that they ordered some powder, and then the Pit Committee notified these people in your presence that they didn't want Buckeye powder; didn't you so testify? A. Some 4460
gentlemen notified them and they would not take any more of the powder.

Q. You testified that it was the Pit Committee that came in while you were there and said they would not have Buckeye powder? A. I don't know what I testified to; that is the fact.

Q. You recollect about it. A. That is the fact; they did come in while I was there and say they didn't want it.

Q. And that is during the time that these people, the Maplewood Coal Company, was under contract with the du Pont Company to take all of 4461
their powder, wasn't it? A. I don't know about that; I don't know when it was.

Q. And after you had sold them at $1.10 in November? A. I can't tell you when I visited the Maplewood. You say I sold them from 1903 to 1905, it may have been anywhere between there; I remember being at the mines.

Q. Don't you remember selling them during that winter and the next year, a stockholder of yours? A. I sold them, I think, a hundred kegs. They used about 24,000 kegs a year, between 22,000 and 24,000 kegs; and I think I sold them a little less than 1,000 kegs all the time.

Q. Where was the Petersburg Coal Mining Com-

pany? A. Petersburg Coal Mining Company? I should think it was at Petersburg, Illinois.

Q. Do you know what price the du Pont Company was selling the Petersburg concern powder for? A. No.

Q. Well, will you look at voucher No.—or invoice No. 63 there in your book, and see what you sold them for—invoice No. 8? A. No. 8?

Q. Yes. A. I sold at $1.17½.

Q. And you say you don't know what the du Pont
4463 price was at that date? A. No; I don't.

Q. And where were they located? A. Petersburg, Illinois.

Q. Now, the Northwestern Coal and Mining Company is a concern that you sold a large amount of powder to, isn't it? A. Bevier, Missouri.

Q. You again have sold to them according to the invoice No. 9 there at $1.05 delivered? A. No.

Q. How much? A. Instead of $1.05 it should be $1.20. $480 for 400 kegs.

Q. Rebate of 25 cents, that means $1.10? A.
4464 No, the price was $1.45 in Missouri.

Q. This was west of the river, is that the idea? A. Yes, Missouri, $1.45 in Missouri and 25 cents rebate makes $1.20.

Q. What was your price to them? Who had been selling that concern before, do you know? A. I think it was Equitable.

Q. The Equitable? A. I believe so; I am not quite sure as to that.

Q. How long had this Northwestern Company been—do you know how long this Northwestern Company had been organized? A. No, I don't; I don't know their history.

Q. The Canton Union Coal Company. Will you look at invoice 13 and state what you began to sell them for? A. $1.20.

Q. That was in December, 1903? A. December, 1903.

Q. Do you know what the du Pont price was to the Canton Union Coal Company at that date? A. My impression is that this was the first they bought. That was a company composed simply of four or five miners. They bought it in ten-keg lots, I think. They had a little leased mine.

Q. You did not know that the du Pont Company had a contract with them for three years at $1.17? A. No; the Canton Company—— 4466

Q. (Continuing) ——which has been offered in evidence here? A. I never heard of it.

Q. I want you to look at this. It is No. 1720. It is dated August 1, 1903. A. (After examination) This is another proposition entirely. This is Simmons.

Q. What is the difference? This is the Canton Union Coal Company, is it not? A. Yes, and the other Canton Union Company was five miners that went together in a union mine and this is Simmons, the Simmons concern, up north.

Q. Two different concerns? A. Yes. 4467

Q. The other concern was the Canton Coal Company, was it not? A. What is that?

Q. There were two; one was called the Canton Union and the other the Canton Coal Company? A. No; there is still another one. That is the Canton Coal Company, and then there is a different company up north about three miles, and then this one right in the city of Canton.

Q. You say there is a third one? A. There seems to be a second Canton Union Company.

Q. Do you think there were two Canton Unions? A. I think there were at that time. I did not sell Simmons at that time.

Q. You did not sell Simmons at that time, but

4468 *R. S. Waddell—Cross*

besides the concern you were serving—— A. There were four or five miners.

Q. Can you not remember the names of any of them? A. No, I cannot; they were just coal miners.

Q. Now, about Applegate and Lewis, you have testified you sold them. Now, will you look at your voucher or invoice No. 14 and state what you began to sell them powder for on December 1, 1903—No. 14? A. This seems to have been originally invoiced at $1.35 less 15 cents, and then changed to
4469 less 20 cents rebate, that would be——

Q. $1.15? A. $1.15 net.

Q. Look at No. 24, December 19, 1903, and state what the price shown by that invoice is? A. Well, this is corrected in the same way; that is, $1.35 less a rebate of 20 cents.

Q. Well, take the next month, January, 14, 1904, No. 34, and state what the price is. A. That is 20 cents rebate.

Q. Now, I show you—— A. $1.15 a keg.

Q. I show you Plaintiff's Exhibit 676 and ask
4470 you if you knew they were under contract with the du Pont Company, dated August 1, 1903, for three years and at what price (handing paper to witness)? A. No; I never knew anything about the contract.

Q. Did you know anything about the price in there, which shows $1.20, does it not? A. $1.25 a keg.

Q. Less 15 cents? A. Oh, yes, 15—that is, $1.20, provided you haven't increased your rebate; I don't know whether you have done that or not.

Q. Well, now, Applegate & Lewis were located in Peoria, weren't they? A. No.

Q. Where were they located? A. Cuba, Illinois.

Q. How far away from Peoria? A. About 50 miles.

Q. They lived, Applegate & Lewis themselves lived in the city, in Peoria, didn't they? A. No.

Q. Where? A. They lived out at McKoopen, or some town of that kind, west of them.

Q. You knew them very well, did you not? A. I do not think I ever met Applegate & Lewis at that time personally; I may have met Mr. Applegate.

Q. You got quite well acquainted with them later? A. Yes, after they moved to Peoria. 4472

Q. And when was that? A. I should think in about 1906.

Q. Consequently at that time—— A. Possibly 1905.

Q. Consequently, in 1903 and 1904, the fact that they were under contract with the du Pont Company did not prevent you selling them powder, did it? A. Yes, I think it did.

Q. You did sell them, didn't you? A. Something prevented me selling them that powder, it was all shipped back, nearly.

Q. You sold it to them, didn't you, at that time, 4473 those three vouchers or invoices? A. Yes; 25 kegs, but I think most of it came back.

Q. Now, where were the A. Rentz & Brother located? A. Rentz & Brother were adjoining my mills, directly adjoining west.

Q. What price did you begin to charge them for powder in December, 1903? Look at invoice No. 15 and state. A. $1.17½ net.

Q. Did you know at that date they were under a three-year contract with the du Pont Company at $1.25? A. No.

Q. Well, I show you contract—— A. This is f. o. b. mills, this price.

Q. Where were they located? A. About a mile above my plant; they came down with their own wagon and got it.

4474 *R. S. Waddell—Cross*

Q. Is there anything on this invoice to indicate that? A. No.

Q. No. 15? A. No.

Q. They would drive down after it, you say? A. Yes.

Q. I show you this contract, which is Plaintiff's Exhibit 1503, I should think. That shows that the du Pont Company was under a contract dated August 1, 1903, for three years at a price of $1.25, wasn't it? Is that right (handing witness)? A.
4475 This "cancelled" on the contract, does that mean anything?

Q. That means it came to an end three years later. According to this, that was the situation, wasn't it? A. I don't know what their price was.

Q. You didn't know the price? A. They may have increased their rebate.

Q. Now, won't you follow that? I wish you would confine yourself to the knowledge you have. Of course, a great many things may have happened, Mr. Waddell. Do you know anything about it?
4476 A. I know you did increase rebates to nearly everybody around Peoria during that year while I was building my plant.

Q. How much did we increase it to Rentz? A. I don't know.

Q. You don't know? A. I could not tell you the exact amount.

Q. Now, then, will you look at vouchers 22, 23 and 24 and see if you kept the same mines in December? A. Yes.

Q. 25, at the same price, weren't they? A. Yes, $1.17½.

Q. Is that right? A. 25, yes.

Q. 35 in January, 1904. A. I took my pay in coal—$1.17½ right.

Q. No. 51 and 52 in March, 1904, same price. A. Same price.

Q. The next, 59 and 63, in April, 1904. A. Same price.

Q. And No. 74 in May, 1904. A. Same price.

Q. How much would it cost to deliver powder down to their mines by wagon? A. I didn't deliver it.

Q. Well, I know they came after it. How much was that worth? A. Oh, it would take about an hour to come down, I guess, say eight—about 40 cents a hundred kegs. 4478

Q. Three or four cents a keg? A. Half a cent a keg—one-third of a cent a keg.

Q. The Central Coal Mining Company was located where, No. 17 invoice? A. 17?

Q. Where were they located? A. It is No. 16.

Q. 16, is it? A. That was shipped——

Q. December 1, 1903. A. Yes, this was shipped to Bryant, Illinois.

Q. What is the price? A. $1.10 net on the contract.

Q. You had a contract with them? A. I had a contract with them. 4479

Q. Who was running that concern? A. Mr. Pierce.

Q. This is the same concern that we had a letter about a while ago, wasn't it, that you wrote to Mr. Pierce? A. Yes, I—you showed me a form of contract that I left in his office providing for $1.17½; and when he signed the contract he didn't sign that paper, he just wrote me a letter contract.

Q. That is as you recollect it? A. And he made the price $1.10.

Q. That letter was August 10th or 16th, I have forgotten which, 1903, wasn't it, Mr. Waddell? A. No; just before we started the mill.

Q. Are you aware that Mr. Pierce was under contract with the du Pont Company under date of July 15, 1903? A. No.

4480 Q. To buy in carload lots all the black powder that he required? A. For what point?

Q. Bryant, Illinois; Kewanee, Ilinois; St. Dabid, Illinois; Edwards Station, Illinois. A. No, sir, I didn't know anything about it.

Q. You didn't know that along in July 15, 1903? Well, I show you Plaintiff's Exhibit 729, being what purports to be a contract of that sort, or contracts at $1.17½, and ask you if it so states? A. That is the price on that, yes.

4481 Q. Now, where is the contract which you made with him which don't seem to be among the contracts that you produced? A. I found it among the letters in the letter files.

Q. Have you got it here? A. Mr. Abbott has it, I guess.

Q. Where was East Bryant, Fulton County, Illinois? A. That was down below Dunfermline.

Q. That was to the extent of one-half of their actual requirements at East Bryant, Fulton County, Illinois, wasn't it? A. Yes, I think that was.

4482 Q. And the price was to be $1.10 f. o. b. C. B. & Q. tracks at your mills? A. At my mills; and the freight on it would bring it up to $1.17½.

Q. You are sure that was the freight? A. Yes, later I got a 16-cent freight rate down there.

Q. That would be 4 cents? A. A little more than that, 4¾; and later I got a 15-cent rate in there. At that time it was too close on to $1.17½.

Q. Well, is there any difference between East Bryant and Bryant? A. Yes.

Q. Illinois? A. Yes.

Q. This was a different mine you were furnishing, was it? A. Yes; one was a good ways below the other, but the East Bryant quit very soon, they did not operate very long.

Q. Your voucher to that concern, or your invoice

No. 16 or 17 there, whatever it is, that shows about —how much you got? A. 16 was $1.10 and that was under that contract.

Q. Very well. But you had reduced it then at this time, December 1, 1903, to $1.10 delivered, hadn't you? A. No; not delivered.

Q. This states shipped to Bryant, Illinois, rebate 25 cents per keg. A. It don't say delivered though.

Q. Well, don't you think those words "shipped to Bryant, Illinois," meant that you were paying the freight? A. That is where we sent it. 4484

Q. Your books will show, won't they, whether you paid the freight or whether he did? A. I don't know what the books will show, that is what the contract calls for f.o.b. mills.

Q. Where was the Clark Coal & Coke Company located? A. Peoria, Illinois.

Q. Did you sell them some powder? A. A few kegs.

Q. Do you recollect the price you charged in December, 1903? A. No, I do not.

Q. Do you know what price the du Pont Company was charging that concern prior to that time? 4485
A. No.

Q. Will you kindly look at invoice No. 19 and state what price you charged in December (handing book to witness)? A. $1.10 net.

Q. And No. 54, see if you sold them in March, 1904, at the same price. A. 100 kegs, same price.

Q. I show you invoice No. 354 and I ask you in November, 1904, if you sold at the same price (handing another book to witness)? A. I don't know what this is I can't read these figures, it might be deciphered by the use of another book, but I cannot read those

Q. I took it to be—isn't it $1.10? A. That is the total amount of the bill; I don't know how many kegs there are.

4486 *R. S. Waddell—Cross*

Q. Sixty and forty? No matter, we can supply it on some other book. A. The ledger will determine where it was posted.

Q. Will you look at that contract (handing paper to witness)? Were you aware that the du Pont Company had a contract with that concern dated August 1, 1903, for three years for all their requirements? A. Dated August 1, 1903?

Q. Isn't it? A. The only contracts I knew about were the contracts named in the Moxham list, and
4487 that was made up in the fall of 1902; I never knew anything about any other contract except as I was told by the customers and given the price by the customer.

Q. This is plaintiff's exhibit 731 and indicates, does it not, that the du Pont Company had a three-year contract for all their requirements at $1.20? A. Appears to be a copy of a contract. There are no signatures to it. Fifteen cents rebate from $1.35 is named in the contract—August 1, 1903. I would not know anything about those contracts, that was a year after I left there.

4488 Q. August, 1903—that is about six months after you left, was it not? Now do you recollect selling powder to the Missouri & Illinois Coal Company? A. I think we sold them powder, but I don't know whether we sold them that direct, probably through the Willis Coal Mining Company.

Q. Where were they located? A. Their office was in St. Louis, their mine——

Q. Do you know the price the du Pont Company was charging that concern prior to your sales? A. No, I do not know.

Q. Will you look at that invoice No. 30 and state whether you sold that concern in January, 1904, at $1.15 delivered? A. 50 kegs at $1.15.

Q. Will you also look at invoice No. ——? A.

I don't know that that was delivered, nothing on the invoice to indicate that it was delivered.

Q. Well, look at invoice No. 46 and see if you sold them 400 kegs in March, 1904, at that price? A. At $1.15, carload, yes.

Q. Does that indicate whether it was delivered or not? A. No, it does not say on the bill.

Q. I show you the account in the ledger of the Missouri & Illinois Coal Company, being on sheet No. 1, account No. 101, first item on the credit side under date of January 30, 1904, freight on 50 kegs 4490
$9.36. A. 400— and 800 credited with the freight.

Q. Therefore it was delivered, the first shipment, was it not? A. Yes, that is right.

Q. Now if you will look at another invoice there, No. 53, and state whether you sold them an 800 keg lot in March, 1904, at that price? A. $1.15.

Q. I show you exhibit 869 and ask you if you knew anything about a contract for three years that the du Pont Company had at $1.17½ with that concern (handing paper to witness)? A. Well, this was made August 25, 1903, and appears to be a copy at 17½ cents rebate from $1.35—$1.17½. 4491

Q. You knew nothing about that price then? A. No, I didn't know anything about the contract, it was a year after I left there.

Q. In reference to Chas. Devlin, where was he located? A. Chas. Devlin?

Q. Chas. J. Devlin? A. He was president of some coal company in Kansas.

Q. Offices at Topeka, Kansas? A. Mr. Miller sold him, I don't know where his offices were.

Q. Will you look at that invoice No. 109 and state what you charged Mr. Devlin in July, 1904? A. July, 1904—$1.05.

Q. 1,000 kegs? A. 1,000 kegs.

Q. And invoice No. 148, 800 kegs, July 29, 1904? A. That was 800 kegs at $1.10.

Q. Now, voucher No. 174, will you find that? A. 1,000 kegs at $1.05.

Q. And voucher 325 in November, 1904, the invoice No. 325, it is in this book (handing another book to witness). What was that price? A. It is $1,15, November 2, 1904, and delivered at Pekin, Illinois, that is right by Peoria; I should judge that those other carloads that you mentioned of Devlin's were all delivered at the mill, f.o.b. mills.

4493 Q. Why should you judge that? A. The fact that this is prepaid to Pekin, which is only about ten miles from Peoria.

Q. No. 340, do you find a voucher there or invoice? A. It is $1.15 delivered at Pekin.

Q. Don't you remember the fact that that was further rebated down to $1.05 through your journal and ledger? A. I don't recollect it now, it may have been.

Q. That is dated November 9, 1904. A. November 9, 1904.

4494 Q. On December, 1904, on this tissue invoice book (handing another book to witness), did you sell him, the middle one there (indicating) December 6, 1904, 1,000 kegs? A. Yes, that is f.o.b. Pekin.

Q. What is the price? A. $1.05 mill delivered.

Q. Now on page 11 of the same tissue copy book did you sell him 1,000 kegs delivered at Pekin at $1.05? A. $1.05 that is right.

Q. Now on page 18 of the same book in January, 1905, did you sell him 2,000 kegs at the same price? A. Same price, 2,000 kegs, that is mill delivery also.

Q. Do you know what the du Pont price was to Mr. Devlin? A. No, I did not come in contact with him.

Q. Do you know whether he had a contract with

the du Ponts or not? A. If it was on the Moxham list I knew it, if it was not, I didn't.

Q. At the present time you don't know? A. No.

Q. Now the Phillips Fuel Company, Ottumwa, Iowa, you sold them? A. Yes, we sold them powder.

Q. Do you recollect what price you charged them? A. No.

Q. I will leave that for a moment and go on to W. S. Norton, Weir City, Kansas; will you look at your invoice No. 62 and state what particular price you sold him at? A. I sold him 800 kegs at $1.30. 4496

Q. Now will you look in your tissue copy book there on page 24 and see if you sold them a thousand kegs on January 13, 1905, at $1.20? A. A thousand kegs at $1.20, January 13, 1905.

Q. Did you know the du Pont price in that instance A. No.

Q. Well, I show you plaintiff's exhibit 987, contract dated December, 1903, between the Laflin & Rand Company and Mr. Norton, did you know the Laflin & Rand price? A. No, I did not know any of them. 4497

Q. This is No. 987; will you state whether or not that contract indicates that the Laflin & Rand were furnishing powder at $1.35 delivered to that concern under a three-year contract? A. This contract is signed W. S. Norton; my sale was to the Norton Coal Company; I don't know whether they are the same or not.

Q. What is the location of the operations from the contract? A. I sold to Weir City, Kansas, and the locations were—his contract called for Weir and Scammon, Kansas.

Q. Did you know Mr. Morton? A. Never met him, no; I don't know him; I think this was sold by a letter.

4498 *R. S. Waddell—Cross*

Q. By Mr. Miller? A. No, I believe I sold that myself by a letter; I will look it up and see.

Q. Do you know two W. S. Nortons down there? A. I don't know either of them or any one by that name personally?

Q. Don't you recollect in regard to the Phillips Fuel Company that that was one of the instances that some witness was examined about in which there was an invoice in your book at $1.35 and certain rebates carried to the journal and ledger, bring-
4499 ing it down to $1.15? A. No, I don't remember that.

Q. Well, do you know what the price of the du Pont Company was to the Phillips Fuel Company in 1903 and 1904? A. No.

Q. You don't. Now the Collier Co-operative Coal Company, where were they located? A. I do know what Mr. Phillips told us the du Pont price was.

Q. You know what? A. I know what Mr. Phillips told us the du Pont price was and we had to rebate down to it.

Q. That business was done through Mr. Miller,
4500 wasn't it? A. Yes.

Q. Right there won't you tell us what your arrangement with Mr. Miller was, Mr. Waddell, how did you pay him? A. We gave him a net price f.o.b. the mills.

Q. What was that price? A. Well, that varied, it started in on small lots, I think $1.25 on small lots, and I think we started in on carloads at $1.15 and he made all he could make above that.

Q. Was he responsible for collections? A. No, we took the accounts.

Q. Did you pay the freight and all other charges? A. Well, that depended upon whether it was f.o.b. mills or whether it was delivered; if it was carloads delivered we paid freight.

Q. You made him a net price at the mills; what was the lowest net price at the mills that you made to Mr. Miller at any time? A. I think after we got down to $1.00 that he never charged us anything after that.

Q. Well, my question is what was the lowest net price at the mills, Mr. Waddell, that you made to Mr. Miller? This calls for dollars and cents, Mr. Waddell. A. I don't recollect dollars and cents.

4502

Q. Very good; didn't you get down to selling Mr. Miller at ninety-one cents at the mill? A. Whatever he had to sell at when it got below a certain price Mr. Miller sold at cost.

Q. Well, you recollect you got down to selling him at that price and less, didn't you? A. I don't know; I can't recollect the figure in thousands of accounts.

Q. Now will you look at the invoice on page 82 of the tissue copy book there and state what you sold the Collier Co-operative Coal Company for? A. Co-operative, Collier Coal Company, Peoria, Illinois, 10 kegs at $1.10 delivered. 4503

Q. And further in December, 1906, on this other book? A. That was in April, 1905, that sale to Collier Co-operative, April 10, 1905.

Q. I show you this sales book under date of December 13, 1906, the book being marked P69 (handing book to witness), and ask you if you can state the price to the Collier Co-operative at that date? A. (After examination) It is December, 1906, 100 kegs, 95c.

Q. Now do you know the price that the du Pont Company was charging the Collier Co-operative Company in 1903 and 1904? A. No, only by the—

Q. And did you know that they had a contract? A. No, I didn't know anything about it, unless it was on the Moxham list.

4504 *R. S. Waddell—Cross*

Q. Well, now I show you plaintiff's exhibit 1246, sub. No. 8, dated May 1, 1903, for three years, and ask you if that was not a contract at $1.35 a keg delivered, or rather $1.20 I think it is, rebate of fifteen cents? A. $1.20, yes, $1.35, and a rebate of fifteen cents.

Q. $1.20 net? A. $1.20 net, May 1, 1903, is the date of the contract.

Q. For three years, isn't it? A. For three years.

4505 Q. Now do you recollect the Greenville Coal & Mining Company—or Greenview? A. I remember Greenview.

Q. Where was that concern located? A. Greenview, Illinois.

Q. Now will you look on that sales book you have in your hands on page 11, under date of September 28, 1906, and state what price you were charging that concern, invoice No. 294, possibly you can find it easier from the copy of your invoice of September 28, 1906. A. 300 kegs at 98c.

Q. That is delivered? A. F.o.b. Greenview.

4506 Q. Now will you look at Invoice No. 323 in that same volume and see if you sold them further on October, 1906, at the same price? A. 100 kegs, 98 cents, f.o.b. Greenview.

Q. Will you look at No. 356—— A. That is October 10, 1909.

Q. Will you look at No. 356 and state if you were selling them more that same month at the same price? A. That was 200 kegs October 23, 1906, at 98 cents, and 150 kegs to Manchester at the same time.

Q. Now invoice No. 381 to the same customer in November, was that at the same price, 400 kegs? A. 400 kegs, November 16, 1906, at 98 cents f.o.b. Greenview.

Q. Now do you know the price that the du Pont

Company was charging to the Greenview Coal and Mining Company in 1903? A. No.

Q. Or in 1906? A. I should think 95 cents, that would be the price that they were making in Illinois at that time.

Q. Now the Manufacturers' Coal & Coke Company, Chicago, Ill. Will you look in that first book of invoices under date of November 17, 1904, I have not the number, it is November, 1903. A. I don't think I sold them in 1903 (examining book).

Q. It may be in 1904. Never mind, I will have 4508
that checked up. Will you look on that tissue copy book, page 158, and state what you were selling that concern, the Manufacturers' Coal & Coke Company at, in August, 1905? A. Carloads, 750 kegs at $1.10 delivered.

Q. And on page 171, same month. A. That is August 29, 1905, the date of that other.

Q. Yes. A. That was August 29, 1905——

A. At what price? A. 750 kegs at $1.10 delivered.

Q. Now on page 193 of the same book, in the next month. A. That was a temporary supply on 4509
a carload order of 1,000 kegs; 100 kegs at $1.10, September 30, 1905.

Q. Now, do you know what price the du Pont Company was charging the Manufacturers' Coal & Coke Company at that date? A. No.

Q. Do you know whether they had a contract? A. No.

Q. I show you Plaintiff's Exhibit 1246, sub-number 61, and ask you if that is a contract for three years with this concern, dated the 16th day of January, 1902, and at what price (handing paper to witness)? A. That was in January, 1902, I had a list of it on Moxham's list.

Q. What is the price on that contract? A. (After

4510 *R. S. Waddell—Cross*

examination): $1.35 is written in at Novinger, Missouri, and a rebate of 10 cents.

Q. That would be $1.25 net according to that? A. Net, yes, that price was changed.

Q. When was that price changed? A. December 19, 1902.

Q. Well, this contract is dated January, 1902. Now to what price was it changed on December 19, 1902? A. Well, all prices were advanced 10 cents a keg by the December 19th meeting, and
4511 those contracts that were called advanceable went up except those that could not be advanced. Those stayed at the old price, but this I can——

Q. Was this one advanced? A. I don't know.

Q. I thought you stated it was. A. I stated the price was advanced, and I think probably that is an advanceable contract, the way I read it, and if so he changed it.

Q. As a matter of fact, you don't know anything about whether the price to this particular customer was advanced in 1902 or not, do you? A. No, I
4512 would judge that you had another contract which is not here.

Q. What is that? A. I would judge you had another contract with that party that is not here, that you haven't shown me.

Q. Yes, there are several more right here in evidence. A. With the same party?

Q. With the same concern, they are all in evidence. Now to go back to Mr. Devlin. Do you know that they had a contract with him which is Plaintiff's Exhibit 984, dated October 7, 1903, for two years (handing paper to witness)? A. No, I don't know anything about that contract.

Q. And what price is that contract? A. $1.15 delivered at Frontenac, in Chicopee, Kansas, October 7, 1903, and October 6, 1903, I don't know.

Q. And according to your voucher No. 109 which you referred to, you were selling him carloads in July, 1904, delivered at Frontenac, Kansas, at $1.05, weren't you, despite this contract? A. No, we were not delivering it at Frontenac, Kansas.

Q. Look at your voucher No. 109. A. We were delivering at the mills as I recollect these invoices.

Q. Look at 109. A. That would be higher than this price.

Q. F.o.b. Pekin, where is Pekin? A. That is right close to our mills, that is ten miles, that is 4514
the junction of the Santa Fe and that was delivered right at our mills.

Q. $1.05 is not that it? A. Yes, and the freight on it out there would be 80 cents, about 20 cents a keg, that would cost $1.25 out there as against your $1.15 price.

Q. Do you know from what mill of the du Pont Company deliveries were made to this customer in Kansas? A. No, I don't.

Q. Probably from one of the two Kansas mills it would be naturally? A. I should think so, it would 4515
be the proper way to make it.

Q. Now, do you recollect the Prussia Hardware Company, Fort Dodge? A. I don't remember them.

Q. Well, are those two letters, Defendants' Exhibits A and B, signed by Mr. Miller (handing papers to witness)? A. It is Mr. Miller's signature, yes.

Mr. Button: I offer those two letters.

(Same received in evidence and marked Defendants' Exhibits A-355 and A-356.)

Q. Do you know what price the du Pont Company was charging the Prussia Hardware Company at that date? A. No.

4516 Q. August, 1904? A. No.

Mr. Button: This is a letter to the Prussia Hardware Company:

"Chicago, Ill., August 25, 1904.

Prussia Hardware Company,
Fort Dodge, Iowa.

4517 Gentlemen: Your favor of August 23d received. I am pleased to quote you following prices f.o.b. cars Fort Dodge, Iowa, as follows:

400 kegs Buckeye Blasting Powder, $1.30 per keg.

800 kegs Buckeye Blasting Powder, $1.25 per keg.

Terms, 60 days net or 2% discount for cash in 10 days from date of invoice.

Kindly favor me with your order. Also, when you are in need of further supply of
4518 Dynamite, Blasting Supplies or Tee Rail Spikes, will you kindly give me an opportunity to figure with you on your orders and place me under many obligations to you.

Awaiting your reply, I am,

Yours very truly,

(Signed) J. G. Miller."

Mr. Abbott: What exhibit is that, Mr. Button?

Mr. Button: That was Exhibit No. A-356. A-355 is:

"Chicago, Ill., Sept. 9, 1904.

Prussia Hardware Co.,
Fort Dodge, Iowa.

Gentlemen: Your favor of September 7th received. I am very anxious to secure your orders for Powder and you need have no hesitancy in putting in stock of Buckeye Powder, for the reason that it is equal to any on the market, if not better. If the 4520
Powder does not give satisfaction to your customers, I am perfectly to move it elsewhere as there is a demand for this powder and it has not been thrown out any place we have shipped it. I will make you price on Black Blasting Powder, f.o.b. Fort Dodge, Ia., as follows:

Carloads, 400 kegs, $1.25 per keg.

Carloads, 800 kegs, $1.20 per keg.

Terms, 60 days net or 2% discount for cash in 10 days from date of invoice. 4521

I will wire you price on mixed carload 8-lb. and 12-lb. rails tomorrow.

The Buckeye Powder Mills are equipped with the latest machinery only; the best ingredients are used only, and the mills are equipped with experienced powder makers; consequently, the output is strictly first-class in every particular.

Awaiting receipt of your order, I am,

Yours very truly,

(Signed) J. G. Miller."

Q. Now, do you know whether the du Pont Company had a contract with that concern on that date? A. No, I do not know.

4522 Q. Now, the Big Creek Coal Company, Kewanee, Illinois. I show you an invoice dated April 18, 1905, and ask you if you sold them that powder (handing paper to witness)? A. April 18, 1905, 800 kegs at $1 a keg. I presume that $33 is the freight to St. Davids, Ill.

Mr. Button: I offer that invoice in evidence.

4523 Q. That is your company's invoice, isn't it, Mr. Waddell (handing witness)? A. It appears to be, yes, I should judge so.

(Same received in evidence and marked Defendants' Exhibit A-357.)

Q. I show you another invoice of the Buckeye Powder Company to the same concern dated June 3, 1905, and ask if that is the invoice of your company? A. 800 kegs at $1.00 delivered.

4524 Q. Is that your invoice? A. June 3, 1905, our invoice.

Q. Is there a receipt for the payment on the first document signed by your son? A. Yes.

(Above invoices received in evidence and marked Defendant's Exhibits A-358 and A-359.)

Q. I show you another invoice dated July 18, 1906; is that an invoice of the Buckeye Powder Company to the same concern? A. July 18, 1906, 1,000 kegs, Big Creek Coal Company, St. David, at ninety cents.

Q. And is the first document the receipt for the bill? A. This is f.o.b. mills 90c, at the mills.

Q. Is the first yellow document a receipt of the

Buckeye Powder Company for payment? A. That is right. "F. S.," I guess that is a stenographer.

(Papers received in evidence and marked Defendant's Exhibits A-360 and A-361.)

Q. Now the Economic Coal Company, Danville, Illinois, is that your invoice of August 12th, 1904, and receipt for payment (handing witness)? A. Yes, but I don't understand that bill; my impression was that we had to ship that powder back because we had overcharged them; the books will show. 4526

Q. What does the invoice show? A. The invoice shows 800 kegs at $1.05 delivered.

Q. And the receipt shows payment of that price, does it? A. Payment at that price, but I think we took a good part of the powder back; the Austin Powder Company had a lower price than we did there.

Mr. Button: I offer those in evidence.

(Papers marked Exhibits A-362 and A-363.) 4527

Q. What was the price of the Austin Powder Company that was lower? A. I don't recollect it now.

Q. Do you know that on May 2, 1904, the Austin Powder Company sold them 500 kegs of powder at $1.17½? A. What date was that?

Q. May 2, 1904, your sale is August 2, 1904; do you know that fact? A. No, I don't.

Q. Do you know that the Austin Powder Company sold them on July 12, 1904, 800 kegs at $1.10? A. No, I don't.

Q. Less than a month before your $1.05 price? A. No.

Mr. Button: I offer that letter.

(Letter received in evidence as Exhibit A-366.)

Q. Do you know the du Pont price f.o.b. St. Paul at that date, February, 1907, to this concern? A. Well, they always quoted the price that they were named by the other people, we met it.

Q. Do you know the du Pont price at that time? A. No.

4535 Q. Do you know that they were charging the same concern $1.15 f.o.b. St. Paul at that date? A. I don't think the du Ponts were selling them; my recollection is that our competitor there was the American Powder Mills.

Q. Do you know the price of the American? A. The American was below us generally; we had to rebate once or twice to meet it.

Q. This was handled by Mr. Miller, wasn't it? A. Yes.

Q. How much did you have to rebate to meet the American? A. I don't recollect; my impression
4536 is—the books will indicate what it was.

Q. Then the American was competing with you for that trade at that date, was it? A. Yes—I don't know who our competitors were all together.

Q. Well, the American was competing at that date with you, wasn't it? A. I thought it was, yes.

Mr. Button (reading A-366):

"February 7, 1907.

W. A. Talmage, Esq.,
President W. A. Talmage Company,
Red Lodge, Montana.

Dear Sir:

Referring again to your letter of Feb. 1st to our Peoria Office:

I am pleased to quote you price of $1.00 per keg f.o.b. St. Paul, on 1,000 kegs Black Blasting Powder, or I will accept your order for five or six carloads at 99c. per keg f.o.b. St. Paul, Minn.

Terms, 60 days net or 2% discount for cash in 10 days from date of invoice.

I note from your letter that you can control trade of one or two carloads per month, and hope that you will kindly favor us with your order. The above quotation certainly 1538
places you in position to do business as against any and all competition at Red Lodge.

Awaiting your reply which I trust will be favorable, I am

Yours truly,
John G. Miller."

Q. You would rather judge from that that your price was lower than any one else's, wouldn't you, Mr. Waddell? A. No, no, the du Ponts were sell- 1539
ing the Northern Pacific Railroad there at Red Lodge and Talmadge, a merchant, competed against them, and I presume Mr. Miller was giving him a price that would enable him to compete.

Q. You don't know anything about it, do you? A. Well, I called on Talmadge after I sold out—I went out there representing Western after I had lost the trade and I heard a good deal about it.

Q. Do you know any price that the du Pont Company was making that concern at that date? A. No, du Pont prices were all secret; they didn't publish any price list.

Q. February 16, 1905, did you sell the Capital

4540 *R. S. Waddell—Cross*

Coal Company of Springfield, Illinois, at $1.05 (handing letter)? A. Ten kegs at $1.05, yes.

Q. And do you know the du Pont price to that concern at that date? A. That all came back to us; they didn't use any.

Q. Do you know the du Pont price at that date to that concern? A. 1905, I should judge 95c.

Q. Do you know the du Pont price to the Capital Coal Company at that date? A. I don't know the price.

4541 Mr. Button: I offer the voucher in evidence.

(Received in evidence and marked Exhibit A-367.)

Q. Now I show you three invoices dated August 1, 1905, August 29th and September 30th of 1905, to the Manufacturers' Coal & Coke Company which we have been over, but I would like to have you state if those are three of your original vouchers? A. August 1st, August 29th and September 30th, 1905.

4542 Q. Are those your invoices? A. Those are our invoices.

Mr. Button: I offer those three.

(Invoices received in evidence and marked Exhibits A-368, A-369 and A-370.)

Q. Going back to this Devlin account which you talked about, the expense of delivery in Kansas, I call your attention to an entry in your journal of March, 1905, in that account, the book being marked P62, page 135, and state whether you didn't reduce the price from $1.05 to $1.00 to Mr. Devlin (handing book)? A. Yes, we probably had to do so.

Q. What? A. Yes, we probably had to do so.

Q. Well, now I move to strike out the answer.

Did you do it or didn't you? A. Well, I don't know; that is the way it looks.

Q. Your books show that you did, doesn't it? A. Yes.

Q. Now you have stated, Mr. Waddell, that these prices of the du Pont Company were secret. Did you testify as follows in the Government case, page 244: "My mills began building in March, 1903, and I left their employ February second, 1903. Immediately after the location of my mills near Peoria, Illinois, all of the powder companies in the 4544
Association reduced their own prices of blasting powder, which they had fixed at one dollar and thirty-five cents in the State of Illinois, with rebates of ten and fifteen and as high as twenty cents per keg from the list of contracts, naming the lowest net price, one dollar and fifteen cents per keg. All brands of the associates were reduced to a flat price of one dollar and ten cents, irrespective of the quantity. Q. When you say all brands, what kind of powder do you mean? A. Du Pont, Hazard, Laflin & Rand, American, Miami, Equitable, Oriental and King. Q. Blasting or rifle powder? A. 4545
Blasting powders; blasting powders only. The price of rifle powder was never reduced in the State of Illinois during my continuance in business there. There was unusual activity by all of the companies immediately on the location of my plant, and during the eight or nine months it was building in making contracts at these reduced prices with all the trade in Illinois, Iowa, Michigan and Indiana that could be reached from my mills. This low, flat price, which was a cut of their own figures and prices, was confined to that district that would be reached by the Buckeye mills." Did you so testify? A. I did, and that is correct, that is the word that I got from the whole trade of Illinois.

4546 *R. S. Waddell—Cross*

Q. And yet you knew nothing about the prices of the du Pont Company and these other concerns were charging? A. No.

Q. As you have just testified? A. I knew what the trade told me the price was.

Q. You testified within ten minutes, that these prices were secret, didn't you, Mr. Waddell? A. Certainly they were.

Q. Did you or didn't you? A. You didn't publish a price list.

4547 Q. Do you mean to say now that these companies that were mentioned there made a $1.10 price, flat price in the summer of 1903 whenever and wherever mills were located? A. Yes.

Q. They did? A. I mean there, I can point you out several of them that did it.

Q. Did they make a low flat price to every customer regardless of quantity at that time? A. I did not swear to every customer.

Q. You didn't? A. If I did, I didn't so intend it. No, they had a variety of prices.

4548 Q. Your testimony was: "All brands of the associates were reduced to flat price of $1.10 irrespective of quantity." A. That is all brands——

Q. You testified further: "There was unusual activity by all of the companies immediately on the location of my plant and during the eight or nine months it was building and in making contracts at these reduced prices with all the trade in Illinois, Iowa, Michigan and Indiana that could be reached from my mills"; that was what you said? A. Yes; but I don't say every customer, I said on all brands.

Q. You did not say every customer, you said all of the trade. A. The du Ponts were not selling all of the trade.

Q. No, you did not confine it to the du Ponts.

This was powder of du Pont, Hazard, Laflin & Rand, American, Miami, Equitable, Oriental and King is what you said. A. Yes.

Q. Did you so testify at that time? A. Yes, I did, and that is exactly what I am stating now, they came down at that time to the low price of $1.10 per keg on all brands.

Q. How about those contracts I have shown you here, many of them running up to $1.20 and $1.25 during that very period? During the summer of 1903? 4550

Q. During 1903. A. I don't know anything about the contracts.

Q. You don't know anything about these? At this date? But you didn't have very accurate knowledge on the subject, did you, Mr. Waddell? A. No, I had very full information from the trade everywhere.

Q. You either did or didn't, what is your present statement, that you did know these prices or you didn't know them? A. I knew the prices, yes, as I got them from the trade. I didn't get any price 4551 lists from du Pont people or any instructions from them.

Q. I refer you to a statement you made in your direct examination on page 2090: "Concerning the matter of prices, Mr. Waddell, I want to ask you a question. What method did you follow during the years 1903 to 1908, in order to ascertain what were the ruling prices for black blasting powder with which you had to compete? A. The only prices that I know anything about were the prices that I had when I left Wilmington, Del., and were established by the Powder Association on the 19th day of December, 1902, $1.25 east of the Mississippi River, and $1.45 west of the Mississippi River." Did you so testify on your direct examination? A. That is the schedule price, yes.

ship this to us, that I might exchange it for fresh and satisfactory stock. He will do this as early as possible. In the meantime, I will ship you other Powder to replace it. Will also ask our Mr. Thos. Reynolds, ex-President of the Miners' Union of this State, to visit your mines and aid your men in the proper use of the Powder. If any should experience difficulty Mr. Reynolds can be of service to them.

4559 If you expect to visit your mines Tuesday or Wednesday of next week, and will wire me, I would like to call on you at St. David.

Wishing you success in the coal business, I remain,

Very truly yours,

BUCKEYE POWDER CO.,
R. S. Waddell, President."

Q. This letter is dated August 12, 1904, about ten months after you had begun to manufacture
4560 powder, Mr. Waddell, and you stated here: "I spent that entire time trying to get that powder into proper shape." A. Ten months—oh, no.

Q. Didn't you so state in this letter to Mr. Pierce? A. Well, the shipment to Mr. Pierce was 100 kegs and the order was taken before my mills started.

Q. And it was the same 100 kegs—— A. And that is to the Central Coal & Mining Company.

Q. And it was the same 100 kegs that you shipped him about Dec. 1, 1902, on the invoice which you produced here? A. Yes.

Q. The concern which you testified—— A. I was writing him as to his letter in regard to that.

Q. Wait a moment—— A. I didn't have any more from him under the contract.

4561

Q. Wait a minute, won't you, Mr. Waddell, and let me finish my question. Which you testified about a week ago that you lost that business because the du Pont Company made a lower price to Mr. Pierce, didn't you so testify? A. That is what they did.

Q. You so testified, that was the reason you did not fulfil the contract and was notified of a lower price and cancelled the contract, didn't you so testify? A. They didn't take any more powder on the contract.

4562

Q. Didn't you so testify, that that was the reason of it? A. I don't recall my testimony, if I said that it is correct.

Q. I refer you to Volume 29, page 4695 of the record referring to the letter which you wrote to Mr. Pierce on August 26, 1903, which is in evidence. You said that that letter is written by Rob, your name, dictated, was R. S. W., signed Rob, "dictated by you? A. Yes, sir." And you stated on page 4098: "Yes, I got that contract, and it was cancelled because I would not meet the price, the price of the du Ponts. Q. And you found this customer to be one of those that were in Mr. Moxham's list which you had in your pocket which showed it was being furnished, not at $1.17½ at that time, didn't you, but at $1.20. You recall that? A. I don't know anything about that, this man, I forget the date, had just opened up at Bryant, Illinois." You so testified, didn't you? A. Yes, that is right.

4563

Q. Do you remember how much powder in your mill you dumped and reworked in the year 1906 because it was not fit? A. We filled our magazines full of powder and could not sell it and in time it would get so old that we would rework a part of it, I don't remember how many kegs.

Q. Do you remember you reworked 13,127 kegs

in 1906 as shown by your books? A. I don't, I don't remember how much. The chances are, we had accumulated a large grain, say 2-C or 3-C grain as all other powder mills in the world do, and when they get an unusual quantity of large grain, they run it in and break it down and rework it.

Q. There is not any question pending, Mr. Waddell? A. Yes, there is.

Q. What is it? A. You asked me if I worked this powder over.

4565 Q. I asked you if you remembered what your books showed on the subject. A. You inferred that it was an inferior powder.

Q. You need not answer my inferences, Mr. Waddell, your counsel will take care of you.

Q. On Book P-58, page 61, does your account show how much you reworked in 1906? A. Yes, but it don't show that we reworked it because it was bad quality or the fact that the powder was not a standard quality.

Q. It shows it was reworked, doesn't it? A. It

4566 was breaking down the big grain, the big grains was broken down into the smaller grains, yes.

Q. And in 1907, how much? A. 5,365 kegs; probably for the same reason, we had accumulated a large grain and had to break it up into small.

Q. Do you recall that fact or not? A. I know we were constantly reworking over powder, every powder mill in the world does.

Q. That is on page 75 and says powder was "remade, no new materials used," doesn't it, is not that entry on your books? A. Yes, certainly, there would not be any new materials used if we reworked the powder.

Q. It states there powder was remade, you mean by that simply changed over the size of the grain? A. No, done over and put under the wheel, broken down, the grain was broken down and made a fined

powder as powder is made and then pressed, grained and glazed.

Q. And practically made over? A. Well, that is done in every powder mill in the world, it is done every day, constantly reworking it; and those charges are thrown in——

Q. There is no question pending, Mr. Waddell. Now, you have spoken of some agents you had selling powder. Who was Mr. Corbin? A. Corbin —Steven Corbin, he was a miner in Michigan, Northern Michigan, Saginaw. 4568

Q. Can you state what relation he did have or had previously sustained to the miners' organization in that district? A. No, I don't know; I know he was a friend of Tom Reynolds, who was then with me, and he recommended him as a salesman.

Q. Well, in New York you stated, did you not, "I think he had been some of the officers in the state organization of miners"? A. Yes, but I didn't know which, I think he was.

Q. Further. "Hadn't he been president of it? A. He may have been, he was some officer, I don't know." A. I didn't know. 4569

Q. You knew he had sustained some official relation to the miners' organization in Michigan, didn't you? A. I think he did have, yes.

Q. Now, Mr. King, what relation had he sustained to the miners' organization? A. Just a common miner.

Q. Hadn't he had some relations with the miners' organization? A. No.

Q. Mr. Deacon? A. Mr. who?

Q. Mr. Deacon? A. I don't know him.

Q. Didn't you have a man by the name of Deacon at one time selling powder for you? A. No, not me.

Q. Now, Mr. Reynolds, what was his relation?

A. Thomas J. Reynolds was—had been president of the Miners' Union of the State of Illinois. He was recommended by the coal operators of the state to me.

Q. Now, your powder always carried the union label on the keg, didn't it, Mr. Waddell? A. No, not always.

Q. Practically always? A. No, we had our union busted up two or three times, we could not use the label only when we were union.

4571 Q. For a long period? A. I don't remember the period; the treasurer ran off and stole the funds once, and they disrupted.

Q. Didn't you testify as follows in New York, page 118: "Mr. Waddell, was that factory run under the union principle at first? Was it unionized? A. From the start to the finish.? Q. All the time? A. All the time. Q. And during what period did the kegs have the union label on them? All of the time? A. All of the time excepting for two occasions, for a brief period." Did you so

4572 testify? A. That is right, that is what I am saying now, I don't know the length of the period.

Q. Who handled this business of Mr. McCall's for you down at Novinger? A. Mr. Burroughs.

Q. He went over there to Novinger and interviewed the miners, did he not? A. I don't know what he did. He made a contract with Mr. McCall. That's all I know.

Q. You had a contract with Mr. McCall? A. Yes, sir.

Q. And you recollect the instance in which Mr. McCall gave a deposition and some miners. That has been read here. A. Yes; a contract for $1.15.

Q. To the effect that some trouble was gotten up because they wanted du Pont powder, because it had union labels on it? A. Yes.

Q. You recollect that testimony? A. Yes, sir.

Q. Do you not recollect that Burroughs went down to see those miners? A. No, sir.

Q. Did he not make report to you as to his operations? A. He always wrote me what he had done.

Q. Did he not tell you where he had been? A. Usually, when he would write me, yes; he would tell me.

Q. And you have no recollection of his going to Novinger on that business? A. No; not on that 4574
business. He may have gone.

Q. Do you know who was furnishing the powder to McCaull's mines before you made your contract? A. No; except by what he testified.

Q. Do you know Mr. McCaull's signature? A. I do not know it. I never saw it, I think.

Q. Can you recognize and state whether that is his signature to that letter (indicating)? A. I could not; I never saw the man or his signature and I don't know anything about it. I don't think I ever had any correspondence with him.

4575

(Paper referred to was marked for identification Defendant's Exhibit 372.)

Q. Do you not know as a fact, Mr. Waddell, that the occasion on which there was trouble at McCaull's mine in regard to union powder was the occasion on which your powder was introduced to displace du Pont powder? A. No. I know that our powder had been introduced some time before. I know we sent them powder, a hundred kegs or two hundred kegs. They tried it out before they made a contract. The miners accepted it and we made a contract at $1.15. Then McCaull asked us to cut the price to $1.05 to meet the du Pont offer and I refused to do it, and he cancelled the contract and quit.

Q. Now, you do know something about the incident then? A. Yes.

Q. But you don't know that your man went down there? A. No. I got that from the testimony here.

Q. You know nothing about it except the depositions you have heard read. Is that your statement? A. What these men have sworn to. I do know we shipped them the two lots of it.

4577 Q. In regard to this matter of influencing miners, concerning which you have given some testimony, you paid out considerable sums of money for that purpose yourself, did you not, Mr. Waddell? A. No.

Q. I show you your cash book marked P-57 on page 107 and ask you to look at the second item there and state whether on that date you spent some money entertaining miners. Won't you just read that? A. (Reading): "Entertainment miners, hotel bill $41." Yes; I was attending the miners' convention, the State convention in Springfield, Illi-

4578 nois, and my hotel bill and entertainment of miners who were there cost $41.

Q. Will you not look at the same page down there and see if you can find an item of $31.59 under date of June 15, 1905? A. Paid miners for testing powder. Yes; that is for the labor of testing our powder.

Q. $31.59? A. $31.59.

Q. Where was that test made? A. That was for labor.

Q. I know; but where was the test made? A. My recollection is at Donk's mine; but I am not right sure about that.

Q. So when you are in the habit of putting your powder in for a test you are in the habit of paying some miners to test it? A. Well, where men would

give up their work and go to shoot our powder on a test we would pay them.

Q. That is your custom? A. It is not our custom, but we did it in one or two cases. I think there was another case where I paid six or seven dollars for labor.

Q. During the test I suppose they are taking out coal, are they not? A. Well, this was——

Q. (Interrupting): Just answer the question. During the test they are getting out coal? A. Yes; but they—— 4580

Q. Now, just answer to the question. They get paid for what coal they get out, don't they? A. No; not testing in this manner.

Q. Why not? A. Because a man, say, may have No. 50, may be in a room, and if he tested in that room he would put his own ticket on the cars and get credit for it, if the coal were mined by the ton. I would not employ him under those circumstances. But if he went into an entry to shoot and went away from his place of business where he worked regularly I would pay him for his day's labor. 4581

Q. And you mean to say if he got a large amount of coal, that the Buckeye powder always gets out, and sent it out, he would not get paid for that amount? A. I don't know anything about their arrangements. Possibly he might. I think not, however.

Q. Will you look on the same book, page 69, under the date of October 1, 1904, and see if you find a $25 item there? A. I guess I know what that is without looking for it.

Q. What is it? A. We had a miner working at our plant——

Q. Now wait a minute. Do you find the entry, $25, there? A. Yes.

Q. How does it read? A. "Donations to Secretary Miners' Union." The poor devil died while he was working for me and I contributed $15 to his burial and $10 to his little daughter.

Q. This reads, "To the Secretary of the Miners' Union," does it not? A. Yes. The Miners' Union buried him and I contributed.

Q. I suppose if you found that the du Pont Company had ever contributed to things of that sort you would complain of it. A. I contributed hun-
4583 dreds and hundreds of dollars for the du Ponts that way.

Q. Would you complain of that sort of a contribution if it turned up? You would complain of such a thing if such a payment was made by the du Pont Company for the same purpose? A. No; that is charity; I have paid in a whole lot of money for that.

Q. Look on page 70 and see what the note on that item of $45.50 is.? A. Page 70?

Q. Page 70, October 18, 1904, an item of $45.50.
4584 A. I do not find any such item.

Q. Voucher 105? A. That is on the credit side of cash. May be there was something coming in from the miners.

Q. Well, how does the entry read? A. Well, I have not found any such entry.

Q. What is that, how does that read (indicating)? A. That is traveling expense for a miners' committee that came from the mines to my mills to see powder made and to see it tested as against the du Pont powder at the mills.

Q. Oh, you had some du Pont powder at the mills testing it? A. Yes; we had some du Pont powder there.

Q. Who was running the du Pont end of that? A. I was. We shot it in a gun, one against the other.

Q. From what mine was that committee? A. I don't remember from what mine. Three or four of these committees came from different mines to see powder made and we paid their traveling expenses.

Q. And when you got them there from these various mines you yourself took both kinds of powder and undertook to demonstrate what was the best? A. We tested, we showed them how powder was made; we took them around the mines and showed them the whole business; we showed them 4586
how it was packed and separated, and then we conducted a series of tests.

Q. As between those two powders, in your mill, or near your mill? A. I usually bought four kegs of du Pont powder at a time and conducted the tests.

Q. And conducted those tests there and before various committees? A. Whoever would visit us——

Q. And of course in every instance that must have been shown to men who were from a mine that was using du Pont powder? A. No. 4587

Q. Then what were you testing it against du Pont powder for? A. That was a convenient powder. There wasn't anything else on sale in Peoria that I know of except du Pont. I bought it through merchants.

Q. Did you ever test any Laflin & Rand powder that way? A. No. Laflin & Rand went out of existence before I went into business.

Q. Or any powder made at the Laflin & Rand mills then? A. There was only one agency at Peoria that I know of, and that was du Pont's.

Q. When did they go out of existence? A. I think the du Ponts purchased them about September, 1902.

4588 *R. S. Waddell—Cross*

Q. Did you write this letter in 1906 (indicating)? A. (After examination) That is my signature.

(Document received in evidence as Defendants' Exhibit A-373 and read to the jury as follows):

Peoria, Ill., May 26, 1906.

Mr. Thos. Mackie, Gen. Purchasing Agt.,
Central Coal & Coke Co.,
4589 Keith & Perry Bldg.,
Kansas City, Mo.

Dear Sir:—

Replying to your favor 24th inst. We thank you for the opportunity to quote you on powder, but fear the freight rates from our mills are so heavy they will shut us out.

We quote you $1.00 per keg for Buckeye powder delivered at all your mines in Kansas.

Terms: 60 days, 2% off for cash in 10 days.

4590 This is equivalent to about 86 cts. for Laflin & Rand powder, if it were of the same grade as Buckeye. Recent tests of their powder that we have made indicates that it is so low in quality that it is no longer a competitor of Buckeye. We estimate the difference in the quality of our goods at about 10 cts. per keg, which would be equivalent to 76 cts. for Laflin & Rand-du Pont brand delivered at your mines. I believe they recognize the inferior quality of their goods for they have just closed a contract with C. G. Brechnitz, one of our stockholders at Belleville, Ill. He uses approximately 2,500 kegs per year, at 87 cts. per keg delivered at his mines, less 2% for cash. They have a haul by wagon of about 12 miles from their Phenix mills. On the quantity you use compared with this con-

tract, you should have a price of about 80 cts., but I presume they will want 85 cts. per keg delivered at your mines, as they have a monopoly of your business. From this they would make the ordinary keg deduction of 5 cts. for the empty kegs returned.

We are just figuring on a contract with a coal operator in this state where the du Pont-Laflin & Rand & Equitable Co. have a rate of 5½ cts. per keg and they have quoted a little less than 90 cts. for the powder delivered, which indicates that they are quite willing to sell at a little less than 85 cts. 4592 near the mills.

If you do not succeed in getting this price please let me know and I can furnish you the information necessary.

Truly yours,

Buckeye Powder Company,
R. S. Waddell, President.

By Mr. Button:

Q. So on May 26, 1906, there was still some Laf- 4593 lin & Rand powder, was there not? A. Yes, at the du Pont mills. They——

Q. Well, did you test any of that powder in your mills in this way that you have indicated? A. No. That was a thousand miles away from my mills.

Q. You did not do that? A. I tested the du Pont powder all the time.

Q. This price quoted in Kansas was to customers in the class that you say you did not care to sell to, was it not? A. That I didn't care to sell to?

Q. Yes. A. I don't know any class of customers that I did not care to sell to.

Q. I thought you stated in regard to Mr. Simpson's trade that you didn't want trade down there. You quoted him but you did not want trade down

there, that it was too far away? A. I could n' take care of the trade is what I said, at 97½ cents in kegs, when my freight rate was 65 or 70 cents a hundred, about 18 cents a keg. I didn't want it.

Q. Just what did you mean by the last sentence in this letter: "If you do not succeed in getting this price please let me know and I can furnish you the information necessary." You meant to have them use that letter like the Brechnitz letter, for the purpose of getting a low price from the
4595 Laflin & Rand, did you not? A. Oh, no.

Q. That is not the interpretation of that? A. No—you can interpret it as you please, but the letter speaks for itself. I didn't want his business below a dollar.

Q. Also your statements about the Brechnitz contract, at a price of 87 cents per keg delivered at his mines, were not true, were they? A. Yes.

Q. When did they do that? A. That is what Mr. Brechnitz told me, but he corrected that by saying it was an allowance from 92 cents. Brechnitz gave me his price at 92 cents less an allowance of three
4596 cents a keg, for the use of his magazine, which made it 89 cents, less two per cent discount for cash, which made it 87 and a fraction. That was Mr. Brechnitz's statement to me.

Q. Were you present when Mr. Brechnitz gave his testimony in this case? A. Yes.

Q. In which he said he never got it less than 95 cents with an allowance of three cents for hauling it? A. And two off for cash.

Q. They always get the two off for cash, don't they? A. Yes. That brought about 92.

Q. Well, did you—— A. (Interrupting): And two off for cash brought it to 89 instead of 87. Mr. Brechnitz was mistaken in his former statement to me.

Q. Did you furnish your attorneys with the information that is in your complaint, to the effect that the du Pont Company went around circulating malicuous stories about the quality and character of your powder? A. Yes, but that is the truth.

Q. It is what? A. Yes, that is the truth.

Q. Laflin & Rand had a very poor powder, did they? A. The miners of Kansas through it out and called for powder at 98½ cents as against 87½.

Q. Was that an instance in which you brought 4598
the committee up to your mills and paid their expenses? A. No, I never heard of the committee. They made their own investigation and——

Q. (Interposing): Will you look on that same book, No. 117, for voucher No. 1797, for $23.61? A. Expenses railroad fare, miners, from Westfield, Illinois, committee. There were three who came over from Westfield, Illinois.

Q. What mine was that that they were connected with? A. That is the Dering Coal Company, that is using our powder.

Q. And did you conduct one of these competitive 4599
tests in your mill between the du Pont powder and yours in their presence? A. The miners were very anxious to see——

Q. Interposing): Did you or did you not conduct one of these tests? A. I know we fired our own powder; I don't know whether we tested other powder at that time; I think not.

Q. You paid their expenses at that time? A. Their railroad fare, yes.

Q. How much more do you think Buckeye powder was worth than Laflin & Rand's, Mr. Waddell? A. Well, that depends on how it was made

Q. This Laflin & Rand powder that you are talking about in this letter; let us confine it to that. How much more per keg was Buckeye powder

4600 *R. S. Waddell—Cross*

worth than this Laflin and Rand powder that you were talking about? A. I know what the difference was in the price that the Consolidated and Merchants Coal Mining Company paid——

Q. I am not talking about prices; I am talking about the value of the powder. A. I don't know. I didn't see this powder.

Q. You didn't see this powder that you are talking about? A. No.

4601 Q. Your judgment in that was that the Buckeye powder was worth 24 or 26 cents more a keg than the Laflin powder, is that about right? A. I didn't say that.

Q. You said that the price of the Laflin and Rand on this basis ought to be 76 cents and that yours is a dollar. Is that your judgment of a fair difference between the two powders? A. That is nearly all freight.

Q. Your statement is: "We estimate the difference of the quality of our goods at about ten cents a keg," which would be equivalent to about 76 for

4602 Laflin-du Pont brand delivered at your mines—— A. Ten cents.

Q. So you have the price of Laflin & Rand delivered at 76 cents and your price at $1.00. That is a difference of 24 cents, is it not? A. That is freight, yes.

Q. But the difference in quality you think is about ten cents; is that right? A. That is what I stated.

Q. Yes, is that your judgment? A. 97½ from 108½.

Q. Is that your judgment? A. They paid me that difference.

Q. I say is that your judgment of the respective values of the two powders? A. Made at the Kansas mills, as I had heard of them——

Q. Where did you see any powder made at the Kansas mills? A. Well, I had pretty good information as to the quality of powder they made out there.

Q. That is, somebody had told you something; is that it? A. Mr. Miller, ran the Kansas mills or sold their product for a number of years, and so I had a pretty good idea——

Q. (Interposing): So you were talking about the period prior to 1903, were you? A. I knew the general character of the mills and knew it was a powder——

4604

Q. (Interposing): That is, you knew it was a powder mill and that is all you knew of it? A. John Miller was the general sales agent of the Laflin and Rand——

Q. So it was what he told you? A. From many sources of information I knew they were not making a good, high grade powder.

Q. Not so good as the Buckeye? A. No.

Q. You were in the habit during the existence of the Buckeye Powder Company of sending out various circulars to the trade, were you not, in regard to your powder? A. We advertised, yes.

4605

Q. Did you send out that circular in August, 1904 (handing paper)? A. I think so.

Q. Will you please mark it?

(Paper received in evidence as A-374.)

Q. Did you send out one of which this is a copy in April, 1908? A. There is nothing on that to indicate, maybe if I read it over maybe I can tell you—nothing here to indicate that that came from my office.

Q. Don't you recollect testifying in New York that you did send out that circular? A. No, I don't recollect—copy of that?

Q. Yes. A. If I did, it was something else that reminded me of it; there is nothing but a blank

4606 *R. S. Waddell—Cross*

paper there; there is nothing to indicate; I must have had something else to remind me of it.

Mr. Button: (Reading Exhibit 374.)

Peoria, Ill. Aug. 22, 1901.

Dear Sir.

As their contracts expire, or conditions change, the coal operators of Illinois, Indiana, Iowa and Missouri, find it greatly to their advantage to fig-
4607 ure with us on future supplies.

The quality of Buckeye Powder is unexcelled, and with a mill capacity of over 1200 kegs (fifteen tons) per day, our ability to serve the trade is gratifying both to the company and its patrons.

The welfare of the Operator depends greatly on his patronage of independent powder mills.

Pennsylvania buyers have for years been saving a quarter of a million dollars a year over Operators in the middle west, on an equal volume of powder, by sustaining the independent mills.

4608 We hope you are among the fortunate ones who have short-lived contracts, and can join the procession that is daily coming our way. We can take a few more good accounts.

Independent mills in operation and about completed, can make a million kegs a year. No dearth of supplies.

Try a car of Buckeye and get familiar with a high grade powder at a fair price.

Please indicate your wishes and we will call on you.

Most of our patrons order by wire and mail, noting the equivalent of expense of time and travel in the reduced price.

Respectfully yours,

Buckeye Powder Company,

by R. S. Waddell, President.

Q. What independent mills did you refer to in that? A. The independent mills in 1904 were the Buckeye, all the mills of Pennsylvania, the Rand mills, mills in the Shamokin and anthracite regions, quite a number of them.

Q. The Fairchance and the Senior and the Excelsior and the Egyptian were coming along about then and the United States also, about that time? A. No, I don't think any of them were built at that time.

Q. They were contemplated, were they not, and 4610
they were being built, were they not? A. No, not all of them. I think they came in—started in the fall or winter of 1904 and were built during 1905, and some of them later on; but at that time I could not tell.

Q. In regard to this other paper, dated April 11, 1908, do you not remember you sent out a circular with the following statement in it: "The mill capacity for the production of powder in this country is about four times the quantity consumed"? Do you remember sending out a statement in April, 4611
1908, with that statement in it? A. I have made statements similar to that. I do not know whether that is one of the statements or not.

Q. Do you not recollect being examined at some length on it at New York? I will read from your testimony given there. This will be found at page 17: "Q. Do you recollect that a circular was sent to the trade, dated April 11, 1908, of which this is a copy (handing witness paper)? A. Yes, I remember that circular. I don't know whether I wrote it or whether my son wrote it, but I remember the circular. Q. You knew it was being sent out, didn't you? A. Yes, to a certain class of trade." Do you recollect that I handed you a paper there? That identical copy? A. I don't know.

Q. You do not recollect it? A. I think all that you handed me there were on the heading of the Buckeye Powder Company.

Q. Well, you said this: "A. Yes, I remember that circular. I don't know whether I wrote it or whether my son wrote it, but I remember the circular." My question there was whether you remembered this circular of April 8, 1908, of which this is a copy. Then I asked this question: "In this circular you state as follows"—— and I was in-
4613 terrupted there with an objection, but finally I stated the question as follows: "Q. You said in this circular the mill capacity for the production of powder in this country is about four times the quantity consumed. Is that statement correct?" And you answered: "A. Yes, I think that is correct, or was at the time it was made." So, it seems that in some statement you made that statement? A. Yes, in the one you handed me I made that statement. I was speaking of capacity and not production.

4614 Q. There was one item about the machinery that I omitted. You have said you could not get the kind of a corning mill that you desired. Do you mean that as an ordinary thing machinery manufacturers keep corning mills in stock? A. Yes, I think so. I know Olin Scott usually had a mill under construction; the Allentown Foundry and Machinery Company had an order for six presses from Laflin & Rand, and I got one of them.

Q. That is just it, they don't make corning mills except upon orders and specifications, do they? A. I think Olin could furnish you one any day and I know du Ponts could.

Q. They are not kept in stock? A. No.

Q. You got a small corning mill from this concern in York and your reason was that you wanted

to get started quickly; was not that it? A. No, they did not have the drawings or patterns for the large mills such as I wanted and they had to design it, and I helped them.

Q. You wanted to get some man who had the du Pont patterns, did you not? A. No.

Q. So you would not have to go to the expense of having any made? A. I wanted an Olin-Scott mill. That is what I wanted, and I couldn't get it.

Q. I understand. Then, was it not your idea in 4616
taking that small mill that you could use it temporarily and get your mill started early? A. Well, I was compelled to do it. I couldn't do anything else.

Q. Was not that your reason? A. My reason was for taking what I could get, that is all I could get. There had to be a mill developed.

Q. You have forgotten that you testified on your direct examination that that was the reason you took the small mill. A. I don't remember what the question was, or what the exact question was, but I know the facts. 4617

Q. You don't remember it. Well, how much did you pay for a small mill from Baugher, Kurtz & Company? A. The books will show that. I should say——

Q. Your books do not show. A. I should say $1,500.

Q. Do you remember sending it back? A. (Continuing) Probably $1,500 f. o. b. New York.

Q. Do you remember sending the mill back, the small one? A. Yes.

Redirect examination by Mr. Abbott:

Q. Mr. Waddell, on your cross examination, very early in your cross examination, you were asked the question by Mr. Button as to whether or not

4618 *R. S. Waddell—Redirec*

you had some other suit pending against the du Pont Company and you stated that you had one against the Hazard Company and one against the Laflin & Rand Powder Company. Now will you state how those suits came to be brought? A. All of the parties, the du Pont people, Laflin & Rand and Hazard and other parties, were joined in the original suit——

Q. You mean in this suit? A. This suit.

4619 Q. In this present suit? A. Originally they were parties to this suit. We failed to get service on them, as I understood, and they did not enter their appearance, and it was necessary in order that this suit might be brought against all the parties—and that we could not try it all in one issue here—it was necessary to bring the suit against the Hazard Company in Connecticut and against the Laflin & Rand Powder Company in New York.

Thereupon the following portion of the declaration was offered in evidence for the purpose of

4620 showing the original parties defendant in this action. The offer was objected to and objection overruled:

> "The Buckeye Powder Company, a corporation, plaintiff, against E. I. du Pont de Nemours & Company (a corporation of Delaware), E. I. du Pont de Nemours Powder Company (a corporation of New Jersey), E. I. du Pont de Nemours & Company (a corporation of Pennsylvania), du Pont International Powder Company (a corporation), Delaware Securities Company (a corporation), California Investment Company (a corporation), Delaware Investment Company (a corporation), The Hazard Powder Company (a corporation), Laflin & Rand Powder Company (a corporation), Eastern

Dynamite Company (a corporation), Fairmont Powder Company (a corporation), International Smokeless Powder and Chemical Company (a corporation), Judson Dynamite & Powder Company of California (a corporation), Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Pierre S. du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Thomas Coleman du Pont, Victor du Pont, Jr., Jonathan A. Haskell, Arthur J. Moxham, Hamilton M. 4622
Barksdale, Edmond G. Buckner and Frank L. Connable, defendants."

Q. Have you ever been a party to any suit of any character before against the du Pont Company except the present one? (Objection overruled.) A. No, I have never brought any other suit against the company.

Q. Have you ever been interested in any suit that was brought against the du Pont Company? A. I have never been in any way whatever.

Q. Have you ever been interested in any plant 4623
which has ever been sold to or purchased by the du Pont Powder Company at any time during the history of the du Pont Company down to the present time? (Objection overruled.) A. No, I have never had a dollar invested in any company execept the Buckeye Company.

Q. You were not interested in the Indiana Powder Company? A. No.

Q. You were not interested in the Chattanooga Company? A. No.

Q. Nor the Birmingham Company? A. No.

The Court: His first answer covers everything.

4624 *R. S. Waddell—Redirect*

Q. I call attention to the following allegations in the 11th paragraph of the declaration and ask you to state what it was you told your attorneys about that matter: "Plaintiff shows that the said E. I. du Pont de Nemours Powder Company as a part of its plan"——

The Court: What is your present purpose? Let me understand.

Mr. Abbott: My present purpose is this:
4625 The attention of this witness was called, on cross examination, to paragraph 11 of the declaration. It was read over at length and Mr. Waddell was asked whether or not he had given his attorneys the information upon which those allegations were made. He said he did and he would be very glad to give it here.

The Court: He answered it.

Mr. Abbott: He answered and said he would be glad to give it here. Now I think we are entitled to have the information given
4626 here.

The Court: Not at all. It needs no explanation. If you take up that kind of a re-direct examination it might continue for weeks.

Mr. Abbott: But he has been interrogated——

The Court: Certainly, and they had a right to interrogate him. What new matters were brought out?

Mr. Abbott: This was a new matter.

The Court: Certainly, but it was completely answered, was it not?

Mr. Abbott: I do not think so.

The Court: If we go into that we will never get through with this case.

To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

Q. In the matter of the Government case: You stated in your cross examination that you had no idea whatever of bringing an action against the 4628
du Pont Company or that it would be necessary for you to take any steps of that kind until after your interview with Mr. Piatt. Is that correct? (Objection overruled) A. Mr. Piatt, yes.

Q. You did not, however, take any definite action to cause any suit to be instituted until 1906, as I understand? A. May, 1906.

Q. Will you tell why it was you did not take action earlier than that, with the Government, in reference to the prosecution of the du Ponts?

(Objection overruled).

4629

A. I knew, of course, that when I took any open, public action against the du Pont Company in defense of the Buckeye Company that it meant a fight to a finish and bankruptcy for the Buckeye, and I hesitated as long as I dared and until we had reached the final stages of dissolution of our company before I made a fight in self defense.

Q. Prior to the time you instituted, or caused to be instituted, these proceedings on the part of the Government, was there any conference or any action taken by any of those interested in the Buckeye Powder Company concerning the action which you would take?

Mr. Button: Objected to.

The Court: I think he can answer yes or no.

4630 A. Yes.

Q. Did you act alone in the action you took in that matter? (Objection overruled). A. Oh, no.

Q. Who was associated with you in the effort to cause this action to be instituted at that time?

Mr. Button: Objected to.

The Court: If you simply want to show he was acting on behalf of the company I will allow that.

4631 Q. You may answer it within the ruling of the Court? A. My stockholders, my family, were interested; the members who were stockholders in the company.

Q. Upon your cross examination you were asked if you told your attorneys the facts recited in the complaint with reference to the purpose which the du Ponts had in view in putting detectives on your track. Now I would like to have you state how you arrived at your conclusion, that that was the purpose of defendants in putting detectives on your track.

4632 Mr. Button: Objected to on the ground I never asked him any such qestion. I asked him if he furnished his attorneys with information that the du Ponts had done any such thing as to bid up a plant or real estate upon him. Then he explained that he made no such statement, or rather his counsel explained that he made no such statement, simply that that was their purpose, and I asked him then if he was present when these detectives were hired and he said "no." That is all there was to it. I never asked him if he gave them any information which would make them think that that was the purpose of the du Pont Company.

Mr. Abbott: I read from page 4547 of our

transcript of this record: "Q. Your complaint states as follows: 'And with this end in view they placed detectives on the track of the said Waddell to shadow him throughout the United States as he should journey from place to place in search of a location, to keep them advised of his movements and to enable them through their emissaries to forestall him in obtaining a location and to create opposition to the location of plaintiff's plant in such place as might be 4634
decided upon, by instilling fear into the minds of the people thereabout, and also, if need be, by entering into competition with the plaintiff for the purchase of sites and bidding up the price of said property, not, however, with any purpose to make use of the same themselves, but to prevent the entrance of an independent competitor for the powder trade in the states, territory and foreign country aforesaid.' Q. Did you furnish the information for that statement in your complaint, Mr. Waddell? A. Yes. Q. 4635
Where did they bid up any property that you were trying to buy? A. I don't understand that that is what he says there. Q. Then you don't know that they did anything of that sort? A. I don't know, I know what the general plant was."

Mr. Abbott: "Plan" I suppose it was.

Now then, if your Honor please, we are entitled to show how this witness gave this information to his attorneys. We would like to have it shown how he came to believe that was the purpose of these defendants in placing these detectives upon his track.

The Court: No. Keep within the realm of fact.

4636

Mr. Abbott: This is a relevant fact if he can show him a reason for it.

The Court: No. Objection sustained.

To which ruling the plaintiff's counsel then and there excepted and said exception was allowed.

4637

Mr. Abbott: I will ask the defendant's counsel if they have letters of February 14, 1902, and February 27, 1902, heretofore called for.

Mr. Button: I have one of those letters. I do not know about the other (handing paper to Mr. Abbott).

Mr. Abbott: You have produced the letter of February 14, 1902, from Mr. Waddell to the Hazard Powder Company.

4638

Q. I show you this letter and I will ask you to state whether you know anything about that. (Witness shown letter dated February 14, 1902.) A. I wrote that letter. That is my signature.

Q. I show you defendant's exhibit A-200 and ask you to look at it and state whether or not that has any relation to the document which I have just shown you, Plaintiff's Exhibit No. 1403, and tell what this is? A. They are part of the same subject matter; the same topic was being discussed in both letters, and it was discussed orally at New York, and I went to Wilmington, Delaware, for the purpose of discussing it with Mr. Eugene du Pont before his death. He was ill at the time and I did not take up the subject with him. I passed it up.

Later Mr. T. C. du Pont took up the subject and wrote me referring to that second letter, which was a controversy that had arisen before the death of Mr. Eugene du Pont, a question I had raised. It did not have any reference to Mr. T. C. du Pont.

Mr. Abbott: I think that is sufficient.

The Court: The other side may probe it, of course.

By Mr. Button: 4640

Q. As I understand it, then, the first letter was written while Mr. Eugene duPont was running the company? A. Yes, sir.

Q. And the second one after T. C. duPont had come in? A. He came in and wrote me referring to this——

Q. I say the second letter was written by you after Mr. T. C. duPont had come in? A. Yes, it was in explanation of the first letter——

Q. My question is whether it was written after he came in? A. Yes, when he came in he found my first letter and then he wrote me and I answered him. 4641

(The letter referred to, marked Plaintiff's Exhibit 1403, and was read to the jury as follows:

Cincinnati, Feb. 14, 1902.

The Hazard Powder Co.,
New York.

Dear Sirs:

While last at your office, I expressed dissatisfaction with the changed methods of conducting the du Pont and Hazard business, so far as it relates

4642

to me and promised to take up the question at Wilmington. Mr. du Pont was ill and I did not distress him by mentioning it.

A synopsis of the points on which I wish to offer objections, is as follows:

1st. My engagement is for service to du Pont and Hazard Powder Companies and not to a delegated authority.

4643 2d. I am apparently controlled, without my consent, by a secret organization that is oftner antagonistic than friendly to my principals—to which I must, through you appeal, as a primary condition to doing the work ofr which I am employed; and which authority nullifies my service by arbitrary acts of which I have no notice or knowledge and which acts are not subject to the control of my principals.

4644 3d. All information as to special contracts and cut prices thus arbitrarily granted to rivals and denied to us, and by which I am prevented from rendering the service contracted, is withheld by principals and all others and is only discovered after we have been made ridiculous in the presence of the trade to whom we are supposed to represent principals.

I might specify the other points of building up one faction by tearing down another, etc.

The Hazard and du Pont Companies are greater than any individual and no matter if their action be unfair and unjust, it must stand—will be, no doubt, your decision.

I file this formal protest and will be pleased to

have your views on the subject and what, if anything, you have to suggest as a remedy.

Yours very truly,

R. S. Waddell, Agt.

By Mr. Abbott:

Q. I show you another document marked for identification No. 38, and ask you to state if you know anything about that? A. That is a letter I 4646
received from Mr. T. C. duPont.

Letter referred to offered and received in evidence and read to the jury as follows:

Wilmington, Del., March 6, 1902.

Mr. R. S. Waddell,
Cincinnati, Ohio.

Dear Sir:

4647
I have your letter to the Hazard Powder Company under date of February 14th. As explained to you in person yesterday, your letter will have due consideration and you will have to bear with me a little while until I can get the run of things a little better.

Yours truly,

T. C. du Pont,
President.

Pencil Notations: 2 to 4 weeks another interview.

Q. Was that letter the letter you received in answer to the one just read? A. Yes.

Q. I show you plaintiff's identifications 39 and 40, and ask you to state whether or not you know

4648 *R. S. Waddell—Redirect*

about those. A. They are both letters from Mr. T. C. duPont addressed to me.

Letters offered in evidence and objected to. The letter, dated Wilmington, April 29, 1902, to Mr. Waddell, and signed by Mr. T. C. duPont, was admitted and read aloud to the jury as follows:

4649 E. I. du Pont de Nemours & Co.

President's Office.

Wilmington, Del., April 29, 1902.

Mr. R. S. Waddell,
Cincinnati, Ohio.

Dear Sir:

Please pardon my not answering your letter of April 17th sooner. The general plan which I dis-
4650 cussed with you is thoroughly covered in that letter. It may be advisable after discussion to make some territorial changes, as the consumption of powder in various districts changes, but this is a matter of detail, which can be talked over later. I am now trying to get data which will enable me to tender to you an opportunity of investing in one or more companies.

I go with you fully in the last paragraph of your letter that there are splendid opportunities for saving a large amount of money. Feeling that you only want what is fair and just, I think you can rely on getting a satisfactory compensation. As I get a little deeper in the business, I find complications which are aggravating in the amount of time they take. I find too, many opportunities for

big savings. Kindly keep this matter quiet for the present.

Yours truly,

T. C. du Pont,

Q. Now, Mr. Waddell, you have testified on your cross-examination regarding certain differences that arose between you and your superiors shortly after you entered the employ of the duPont Company at Wilmington. I would like to have you 4652
state the origin of those difficulties. (Objection overruled.) A. There was no difficulty that arose shortly after I went to Wilmington. I went there in the spring of 1902.

Q. By shortly, you mean—— A. No difficulties arose until towards the fall, along about September, I think.

Q. What were those difficulties? A. I had been given other duties. Mr. duPont had asked me to do the buying and purchasing for all of the loaded shells, and a number of other suppplies that the general purchasing agent, Mr. Wheatley, did not 4653
know anything about, and I understood the class of trade. He called Mr. Wheatley, purchasing agent, Mr. Dunham, the auditor, and myself, into his room and made a personal request stating that Mr. Wheatley had purchased more than 150,000 loaded shells and sent them over the country, and that they were wrong, and the orders not properly placed, and he asked me to do the work. I agreed to do it. In addition to the selling I did the purchasing. I asked Mr. Dunham at the time if I should make the orders and send them out to the purchasing department and he said no.

Q. Who was Mr. Dunham? A. The auditor. Mr. Wheatley objected to them coming to him, because

he did not know whether they were right or wrong and did not want to bother with them. Mr. du Pont told me to do the puprchasing direct and the bills would be sent to me for O. K., for me to audit them, and Mr. Dunham would pay them. I did so for probably two months, certainly for six weeks, running up to forty, fifty or eighty bills a day, purchases for shipping shells alll over the United States. I o. k.-ed the bills Mr. Dunham sent me
4655 until one day I received a stock of them back. He had paid hundreds of them. He sent a stack back to me with a very insulting letter of three or four pages——

Mr. Button: I object.

The Court: Yes, do not characterize it.

A. (Continuing.) Very well. I took the matter up with Mr. T. C. duPont, said I was doing the work for the accommodation of other departments, and I did not enjoy the criticism for doing it, and
4656 there was a collusion between the purchasing and auditing departments; and the friction arose over those matters, and over one other, which resulted finally in my resignation. It was not ill feeling against the duPont people, against the principals, I never had a controversy with them; it was due to friction with the departmental officials.

Q. Was that controversy you just referred to taken up by Mr. T. C. duPont in an official way? A. Yes.

Q. With what result? A. He told the three of us to go settle our own difficulties, that he didn't want to mix in it.

Q. I show you a letter and ask you to state whether you know anything about that. A .That is a letter of Mr. T. C. duPont addressed to the heads of

the three departments, my department and Mr. Wheatley's and the auditor's.

(The letter referred to was offered and received in evidence as Exhibit No. 1404 and was read to the jury as follows):

E. I. du Pont de Nemours & Co.
Wilmington, Delaware.
PRESIDENT'S OFFICE.

4658

November 21, 1902.

Mr. R. S. Waddell, Gen'l. Sales Agent,
Mr. R. H. Dunham, Auditor,
Mr. Wm. Wheatley, Purchasing Agent.
Office.

Gentlemen:—

Thinking that by this time the little differences that our system seems to have developed among you has been deeply buried by the common-sense and 4659
loyalty to the company that I know animates all, I can refer to the correspondence that passed some three or four weeks ago between you.

It seems to me that Mr. Wheatley was not unreasonable in asking Mr. Waddell for a requsition as against a bill incurred by Mr. Waddell. Under our system, all purchasing, of any shape or form whatever, should pass through the purchasing department, even when articles are purchased, as of necessity they sometimes will be (and it is best that they should), by outside departments (as in this case, advertising was purchased entirely properly by Mr. Waddell for the department), such cases should still go through the purchasing office as a matter of record.

It is the place of the purchasing agent to secure records of outside purchases, and it should be his effort to make the task of approval or endorsement so simple that it will not entail troublesome red tape upon the other departments.

Each man has his own individual conception of the details of his own department and so long as these conceptions do not interfere with the system as a whole, they should be encouraged, not only by the company but by one department as with
4661 another. They stamp individualism on the department and in that way upon the company.

I would urge that from this on, in matters of this kind the thing to do is for the heads of the several departments to discuss together any difference, and, keeping in mind that there must be give and take on both sides, to agree among themselves as to what best in the matter of co-operation. A few friendly words at the start will often avoid a volume of trouble afterwards. If the managers of the departments will always figure out that which is best for
4662 the interest of E. I. du Pont de Nemours & Company, there will be very few cases where a solution cannot be reached in an amicable way. I would again urge, that you follow this policy from this on, and let all sides forget that this controversy has ever had existence.

Yours truly,

T. C. du Pont,
President.

Q. This letter was dated November 21, 1902. A short time after that letter was written you sent in your resignation, did you not? A. In two or three days, in reply to that letter; but there were a number of other items not covered there—in the correspondence.

Q. In that connection I will ask you to state what other differences, if any, were there, or other difficulties that arose between you and any other employe of the duPont interests at that time, or just previous to that time? (Objection overruled.)

A. There were several controversies that arose between the heads of the departments, sales, auditing and purchasing, with myself on one side and Mr. Dunham and Mr. Wheatley on the other. I had been to New York to attend a smokeless powder 4664
meeting at which the prices were advanced and arriving at Wilmington at 7 o'clock in the evening I had to send out telegrams throughout the United States and unable to get stenographers after night I had the letters of advice and telegrams printed, I think some 500 or 600 of them, and I mailed them that night and sent the telegrams, creating a bill of about $7.50 for printing. I was unfortunate enough to employe a printer that Mr. Wheatley was unfriendly toward, and the bill was sent to the auditor and he sent it to the purchasing department and I was called before the officers of the 4665
company for incurring an expense item for the sales department of $7.50. There had been a voluminous correspondence on the subject before I learned anything about it. There had been a number of incidents of that kind that accumulated, that brought about my resignation. It was not a controversy with the heads of the du Pont Company but departmental friction.

Q. Did you at the time have any difficulties with Mr. Rice of Chicago, about that time, while you were general sales agent? A. Yes, I was announced as general sales agent of the United States, and Mr. Rice in charge of the largest branch office, refused to recognize the general sales department, never had any correspondence with us, and when I had to

4666

check his account of sales or have any connection with the work of the Chicago office and its immense field into the northwest, I had to get Mr. T. C. or Mr. Moxham to write the letters.

By Mr. Button:

Q. Is this one of the reasons for your resignation, in the same category, or this trouble with Mr. Rice? A. That was part of it. I was not
4667 general sales agent. I was only so in name. I bore along hiping in time that the company would be able to bring about a soluction of that; but they did not.

By Mr. Abbott:

Q. Before you left the employ of the du Pont Company and started out to build the Buckeye Powder Company plant did you know of any change of policy, had there been any change of policy an-
4668 nounced to you by any one in connection with the du Pont Company's affairs with reference to the future purchases of competitive plants? A. Yes, sir.

Q. What was that policy? A. On several occasions Mr. T. C. du Pont and Mr. Moxham stated to me that the old policy of the old companies purchasing competitors was entirely abandoned, and hereafter no mill would ever be purchased by the du Pont Company, no competitor would ever be purchased. I understood that thoroughly.

Q. When did they first make that announcement to you? A. During the summer of 1902. I would not be able to fix the exact date, but after my resignation was handed in four or five times it was mentioned.

Q. So that when you left the employ of the com-

pany you fully understood that to be the policy of the company, did you?

Q. I show you Plaintiff's Identification No. 41. In the first place, let me ask you whether you have a copy of the letter of November 25, 1902? A. No.

Q. What did you do with the copy you had or the letter you wrote at that time? A. I kept it and gave it to the Government.

Q. Is the document I now had you a correct copy of the letter you gave at that time (referring to Plaintiff's Identification 41). A. It is a correct 4670
copy, yes, sir.

Q. This letter begins by referring to your favor of the 21st instant. I will ask you whether or not that letter of the 21st instant is Plaintiff's Exhibit No. 1404? A. Yes, Mr. du Pont's letter to me.

Q. That was the letter in regard to the difficulties which you had with the auditing department? A. And the purchasing department.

Q. Which was read to the jury yesterday? A. Yes.

(Letter received in evidence as Plaintiff's Exhibit 41, and read to the jury as follows): 4671

Wilmington, Del., Nov. 25, '02.

Mr. T. C. du Pont, Prest.
Office,

Dear Sir:—

Replying to your favor 21st. inst.

Your mention that a record of all purchases by other Departments must be made in the Purchasing Department is another new feature—one of the numerous changes, made without notice, in the so-called "System" of this business during the past four months.

To this undefined and vacillating policy, plus

petty jealousies, ignoble ambitions, and a tyrannizing spirit, the present unsatisfactory condition of the Departmental relations may be attributed.

A definite policy for the conduct of the business along fair and just lines might have been evolved. Instead of this, your letter indicates that it is the purpose to thrust the heads of the departments, like roosters, into a pit, to fight for supremacy. The stakes are too small.

4673 I have never been involved in such a disgusting condition of business.

You state that if we will "figure out that which is best for the interest of E. I. du Pont de Nemours & Co. there will be few cases where a solution cannot be reached in an amicable way."

Permit me to reply that for twenty years I have sacrificed my personal interests for the good of the du Pont Company.

Possibly my training under different methods of business; an independent spirit that is not tolerant of such small actions as we have lately experienced;
4674 or that I am disqualified for service as an automaton in a business machine, one or all, may influence my judgment.

Whatever the causes, I can see no reason why I should continue this unhappy relation.

I, therefore, tender my resignation as General Sales Agent of the du Pont and Hazard Companies for immediate acceptance, to take effect December 1st, 1902. If you should desire that I remain until Jan. 1st. to install my successor, I will be pleased to do so.

Truly yours,

R. S. Waddell.

Q. When you sent in that resignation you then had your negotiations with Mr. T. C. du Pont, did

you, with reference to entering into the powder business, the manufacture of powder and the building of a plant? A. Not immediately. He sent for me——

Q. That led to the negotiations, did it? A. The negotiations followed.

Q. I show you Plaintiff's Exhibit No. 37 for identification and ask you to state what that is? A. That is a letter from Mr. du Pont addresed to Mr. Hilles, and a copy sent to me.

(The letter referred to was offered and received in evidence as Plaintiff's Exhibit 37, and read to the jury, as follows): 4676

January 21, 1903.

Mr. Wm. S. Hilles,
City.

Dear Sir:

I had a talk with Mr. R. S. Waddell yesterday and the only thing in the agreement that was not satisfactory at the time Mr. Waddell was called West was the location of the mills. We have agreed 4677
on this point as follows: The contract to run for ten years; and that at the end of nine years if a new contract is not entered into and if Mr. R. S. Waddell so elects, he may sell and we must buy his interest in the plant at its cost to replace value by his interest there in at whatever it may be valued; commencing thirty days after the expiration of nine years, if Mr. Waddell so elects, to pay for same in the following manner: 1/12 at the end of thirty days; 1/12 at the end of sixty days; 1/12 at the end of ninety days and so on so that at the expiration of the ten years or during the last one year of the contract, Mr. Waddell would have been paid in twelve equal instalments for his entire interest in the plant. Value of said plant in

case the parties thereto do not agree, to be fixed by arbitration. Each party to select an arbitrator and these two to select a third. The decision of the arbitration committee to be final.

I go to New York to-day for a few days. Won't you please take up with Mr. Waddell these questions of detail and push through the organization as far as possible? I can be reached by telephone at the Laflin & Rand Office in New York, or Mr. Moxham can act for us equally as well as myself.

4679 Yours truly,

T. C. du Pont.

Pencil Notations: Mr. R. S. Waddell. Copy from Mr. du Pont. We have not agreed. Mr. D. suggested this method.

Q. Did you make these notations in pencil on the side? A. I did.

Q. Were these notations made at the time this letter was given to you? A. Yes, sir.

4680 Q. This is the pencil notation on the side of this letter: "We have not agreed. Mr. D. suggested this matter." Is that a correct statement of the facts? A. Yes, sir; we did not agree. That was a mere suggestion of Mr. du Pont. I did not agree to it at all.

Q. In regard to your negotiations with Mr. Simpson, who represented the Consolidated Coal Company and the Western Coal Company, you were asked on cross examination concerning whether you made any complaint against losing Mr. Simpson's business, and you indicated you did not make any complaint as to some of that business. I would like to have you make it clear just what part of Mr. Simpson's business you did not make complaint of and just what part you did make complaint of losing. A. I was testifying to the business of the

Western Coal Mining Company, at the mines of that company particularly which were in southeast Kansas and Oklahoma and Arkansas. I did not make any reference to the mines that were in Illinois or the mines of the Consolidated Coal Company, which was a separate corporation.

Q. Where were the mines of the Consolidated Coal Company located? A. They were all in Illinois.

Q. So, as to the mines located in Illinois, you did then make complaint against losing their business? 4682
A. Yes.

Q. Mr. Button asked you with regard to the Brechnitz matter, whether or not you had taken away customers that had belonged to the du Pont Company, when you undertook to do business with Mr. Brechnitz. I would like to have you state whether or not the coal operators with whom Mr. Brechnitz had contracts at the time you began to do business with him were furnished with du Pont powder? (Objection overruled.) A. I know Mr. Brechnitz had been the agent of the Oriental Powder Mills, that he had supplied his trade with 4683
Oriental powder, and the trade came to me from Brechnitz unsolicited by me. I did not solicit the trade from Brechnitz. I did not know the customers of Brechnitz.

Q. Did the Oriental Powder Company have a plant of its own in that neighborhood? A. No, its nearest plant was at Fairchance, Pennsylvania. It had an agency in St. Louis.

Q. Mr. Waddell, in regard to the contracts which you stated that you originally made in the Pocohontas District, some inquiry was made by Mr. Button of you in regard to whether Mr. Rood assisted you in making those contracts. What is the fact in regard to that matter? Did Mr. Rood have anything to do in assisting you in making those

4684 contracts? A. Mr. Rood left our employ April 30, 1897, and those contracts in Pocohontas coal fields, the Bramwell District, were not authorized by the Powder Association until June. I went personally to the Bramwell District, in the Pocohontas field to negotiate with those people. Mr. Rood knew nothing about it.

Examination Concluded.

4685 Mr. Abbott: At this time now if Your Honor please, I desire to call your attention to the fact that here are the exhibits which were offered in evidence by the defendants, letters which were produced and read by Mr. Button on his cross examination, which we have examined and answers to which and other matters referred to therein were asked for and produced under a subpoena *duces tecum*. Now here are the answers (Laying bundle on table).

4686 Which have been produced as far as we are able to find them from the letters known as the Hazard letters in this file. And here are the answers relating to the du Pont papers which are in this file (indicating) and here are several du Pont replies too that have been produced (indicating): There are some other letters which have been produced. We will desire to read a number only, a small number of these letters, and we would desire to at this time to offer in evidence all letters and papers which have been produced by the defendants under the subpoena *duces tecum* in answer to the various documents which were read in open Court and I had to have them marked. It will take a little time to do this.

The Court: Do it later. Are you offering them in evidence?

4687

R. S. Waddell—Redirect

Mr. Abbott: Yes, I offer everything.

The Court: Any objection to that?

Mr. Button: We have no objection.

The Court: Very well, let them be marked subsequently so that we won't lose any time about it.

Mr. Graham: They will all have to be read then.

Mr. Abbott: I am not going to read all of them. 4688

Mr. Katzenbach: They certainly must be read if Mr. Abbott offers them in evidence and puts them in evidence.

Mr. Abbott: I don't think so.

The Court: I should hope not.

Mr. Abbott: I am only going to read a very few of them if your Honor please.

The Court: What is the use of offering in evidence what you don't propose to use?

Mr. Graham: Why cumber up the record then if they are not going to be used?

The Court: There is not any good purpose served in putting these in evidence if they are not going to be used. There is no use of putting anything in evidence except what is going to be used before this Jury. 4689

Mr. Abbott: I will say this if your Honor please, that one reason why we desire to offer them in evidence is this, that the defendants read a very large number of letters,—I think 104 or perhaps more than that, covering a period from—a long period while Mr. Waddell was in the employ of the defendants and we asked to have these other letters produced because we thought they would support the statement made by Mr. Waddell as to the relations——

4690

The Court: You are entitled to the whole correspondence, but what I say now is if you don't want them and are not going to use them, why put them in evidence?

Mr. Abbott: We want them and I at some time was going to make this suggestions, and I will make it now so as to cover the whole thing and save time:

4691

There are a number of things contained in the Lent exhibit and other documents which have gone before the Court and have been admitted, that we would like to refer to from time to time, and it would be simply folly to undertake to read everything here before the jury because it would not even end, so far as this case is concerned; but we think it would be of very great help in argument, in addressing the Court and in addressing the jury, to call attention to what there is in these documents. Now if we can have the privilege of reading these documents at any time during the case,—both sides to have the privilege of reading any of the documents which are in evidence,— we think that will very materially lessen the time and difficulty in trying this case; and I think it would be foolish to insist that they should be read at this time, and I now make that request of the Court.

4692

The Court: They must be used before the jury, they must be used for some purpose or else there is no use putting them in evidence. Merely dumping them here and saying they are in evidence means nothing to the Court and jury.

Mr. Abbott: I understand that.

The Court: If you want to save time, in

other words, if you don't want to duplicate the reading of them, if I catch what you want, and want to reserve them until such time as you may want to use them in argument to the jury instead of in the case, very well.

Mr. Abbott: Not only use them in argument, not necessarily before the Court, but as well before the jury.

The Court: Or at the conclusion of the case. 4694

Mr. Abbott: At any time

The Court: So long as you use them.

Mr. Abbott: At any time.

The Court: Any objection to reserving the reading of them until such time?

Mr. Abbott: I don't expect to use all of them, if your Honor please, I would say that very frankly.

The Court: No use putting them in evidence, then. No use putting anything in evidence that you are not going to use simply because the other side don't object. 4695

Mr. Button: We have a suggestion that we would like to make about these letters, that Mr. Abbott is going to use a few of them, why not let him put those in evidence and then we will go through the list and see the ones that we want to use and we will put those in evidence, and leave the rest of them out.

Mr. Abbott: I will say this, if your Honor please, so I won't be misunderstood, that my only purpose in offering these, all of these, is to show our good faith. We don't care for a great deal of the matter that is in them, but we don't want the question raised

4696 that we had these documents and did not offer them.

The Court: Neither side is entitled to the whole correspondence upon a given subject which is entered upon at all, and if there is no objection, there is no use of putting anything in that is not to be used by counsel.

Mr. Button: We are perfectly agreeable to the suggestion that they may go in and be referred to without reading them at all.

4697 The Court: But afterwards,—let it be understood that that which is not referred to or read cannot go in. The rest of them will be eliminated. No use loading up the record.

Mr. Abbott: All right.

Mr. Abbott: Now in this connection, if your Honor please, I have certain letters here that have been produced by the defendants marked 436 and 437, 463, 432, 433 and 434 for identification, which I offer in evi-

4698 dence, but I don't care at this time to take up the time to read them, but maw do so later under the suggestion which was made yesterday.

Mr. Button: I understood that you offered yesterday all that has been produced. Was that a mistake on my part? Are these in addition to what you offered?

Mr. Abbott: These are some that I had in a separate package here, except a few that I have reserved here for later consideration.

Mr. Button: Well, in order to keep track of these, does this complete everything that has been introduced?

Mr. Abbott: That is why I gave those numbers so as to segregate them from the others.

Deposition of Charles A. Parry, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Parry, where do you live? A. Hanna City, Illinois.

Q. How long have you lived there? A. I have lived there since '98.

Q. 1898? A. Yes, sir. 4700

Q. What is your business, what was your business during that time? A. Coal mining.

Q. Where were you employed, that is, for whom were you employed? A. Do you mean Applegate and Lewis?

Q. Yes. A. Before Applegate and Lewis, I worked for Richard Newsome, of Peoria; he owned the mine before Mr. Lewis.

Q. In your business as a miner, have you had occasion to use black blasting powder? A. Yes, sir.

Q. What grades or kinds of powder have you 4701
used during that time? A. I have used single "C" du Pont and single "C" Buckeye.

Q. Have you used any other makes or grades of powder? A. Not in Peoria County.

Q. You have elsewhere? A. Yes, sir.

Q. Now, when did you use any Buckeye powder first, when did you first use any Buckeye powder? A. Between six and seven years.

Q. Between six and seven years? A. Yes, sir.

Q. And where was it that you used Buckeye powder during that time? A. Hanna City.

Q. State such facts as you have within your knowledge as to the results which you obtained from the use of Buckeye powder with reference to

4702 *Charles A. Parry—Direct*

the amount of coal which was produced per keg. A. Well, in regard to the powder, of course, the first keg of Buckeye powder, they came in and asked me if I would try it, and I said I certainly would; I opened the keg of powder, and noted that it had a brighter look than——

Q. What was that bright look? A. The glaze on the powder, and of course, we had been using du Pont here, so we were accustomed to the amount of powder that was shot, and would naturally give
4703 the same amount, or pretty near, as the other shot; the consequence was, we had to dig our coal from further back.

Q. What do you mean? A. It was blown further away from the working place.

Q. What was the reason of that? A. Too much powder.

Q. Too much? A. Too much powder.

Q. Then what did you do? A. I cut my powder down.

Q. How much did you cut it down? A. Some-
4704 times four, sometimes five, and six inches.

Q. Five or six inches less than what? A. You give a shot sometimes, according to the width of the shot and the depth, you would give a shot three and a half feet wide by six feet; you would give that about two and a half feet of the du Pont.

Q. How much did you give to the Buckeye powder in the same conditions? A. Two feet two.

Q. Did you keep track of the results that you obtained from the use of Buckeye powder at that time? A. Well, I did, yes. I got them at home, but not here, unless they are misplaced. I keep every day's work, and have ever since I worked in the mines, so that if there was any mistake——

Mr. Katzenbach: You say you have a record of that at your home?

The Witness: Yes, sir.

Q. About how many tons of coal did you obtain per keg of Buckeye powder, as a result of the experience you had that you have just now testified to? A. Well, at times you will get 20 tons, and other times about 18.

Q. With Buckeye powder? A. Yes, sir; take it on an average, about 18 tons.

Q. Was that your uniform experience in the use of Buckeye powder? A. Yes.

Q. What was your experience as to the number of tons of coal you obtained by the use of du Pont 4706
powder per keg? A. I had as low as seven tons to a keg of du Pont; of course, conditions was a little different.

Q. What was the average amount you had from du Pont? A. I think the average amount was about 17 tons.

Q. Under the same general conditions that you used Buckeye powder and du Pont powder, what were the general results? A. The general results were very easy to find out.

Q. What were they? A. For a better grade of 4707
coal with the Buckeye powder?

Q. And as to the amount, what were the results? A. You would get about 18 to 20 tons of coal to a keg, straight through.

Q. With what powder? A. Buckeye.

Q. And how many kegs with du Pont powder? A. About 17.

Q. Did you state the facts which you have just now stated with regard to the results of your experience and use of du Pont powder and Buckeye powder, from your own knowledge and experience? A. Yes, sir.

Cross-examination by Mr. Katzenbach:

Q. How many miners were employed in the mine

of Applegate and Lewis at Hanna City while the Buckeye powder was being used in that mine? A. Now, that would be a question beyond my knowledge, to a certain extent. I may tell you a certain amount, and I may be away wrong.

Q. You don't know, then, how many miners were employed in the mine at the time Buckeye powder was being used? A. Not to be positive, no sir.

Q. While Buckeye powder was being used in the mine, was there any other kind of powder being
4709 used there? A. Yes.

Q. What powder? A. Du Pont.

Q. The men could get either Buckeye or du Pont, just whichever they preferred, from the operators, Applegate and Lewis, could they not? A. Well, to a certain extent, yes.

Q. The price of Buckeye and du Pont to the miner was the same? A. Just the same, $1.75; we paid the same price.

Q. While you were using Buckeye powder, did you see other miners using du Pont powder? A.
4710 Yes.

Q. Did a greater number of miners use du Pont than Buckeye? A. That I am not prepared to answer.

Q. You saw a great many miners using du Pont during that time? A. No, there wasn't a great many miners there.

Q. You said a little while ago, you didn't know how many there were there? A. I did.

Q. Can't you approximate? A. Yes, I can; I may not come——

Q. Approximate how many miners were there. A. I say no.

Q. Approximate how many miners there were there. A. I refuse to answer.

Q. You can approximate how many miners were there, can't you? A. I said I refuse to answer.

Q. You refuse to answer? A. I refuse to answer.

Q. Do you mean you can, but you won't? A. I refuse to answer the question.

Q. You can, but you won't? A. You have my answer.

Q. You say you can, but you won't? A. I object to the question.

Q. Then you have no idea how many miners were working in the mine when Buckeye powder was being used? A. No, sir. 4712

Q. Were the miners in the mine of Applegate and Lewis paid for the number of tons mined? A. Yes.

Re-direct examination by Mr. Abbott:

Q. Did your duties as a coal miner impose upon you any responsibility for the number of miners employed in the Applegate and Lewis mines? A. I don't think so.

Q. Did you ever keep track of the number of miners employed in the mines? A. Not at that time, no. 4713

Q. Whose duty was it to keep track of the miners employed in the mine, if you know? A. The only way would be through the Union; every man that belonged in the mine had to be a Union man, and, of course, the Secretary of the Union knew and could tell you every man's name down there.

Q. You were not the Secretary of the Union? A. No, not at that time.

Q. Mr. Parry, do you know anything about the test that was had between Buckeye powder and du Pont powder at the Applegate and Lewis coal mines? ? A. Yes.

Q. An official test? A. Yes.

Q. State when that was. A. I couldn't tell the date.

4714 *Charles A. Parry—Re-Di*

Q. No, about the time, as near as you can recall it? A. Shortly after the Buckeye powder was introduced in Hanna City.

Q. Shortly after that? A. Right after.

Q. Who had charge of that test at that time, if you know? A. I had charge of the Buckeye powder.

Q. Do you know who had charge of the du Pont powder? A. Yes.

4715 Q. Who did? A. A man by the name of Albert Isbell.

Q. State in your own way all the facts in connection with that test; how it was conducted, and what the results were.

Q. Mr. Parry, state just why under-cutting of coal was unfair in a test of that kind? A. Because the under-cutting of the coal was unfair insofar as that when you under-cut a vein of coal, it isn't shooting the coal from the solid, and it gives the powder a better chance to work in shooting, because all it has to do is to roll it over.

4716 Q. What is the relative difference in the amount of coal given by any shot when it is under-cut, as against a shot which is fired from the solid? A. It is quite a loss of the material in it.

Q. Can you state how many tons of coal there would be difference? A. Now, for instance, we would work on that same proposition; you were under-cutting the coal; now, I am working in a 12-foot entry and it's mined under 6 feet; I shoot that entry down in two shots, and I give one shot 20 inches of powder, and the other shot 22, and from them 46 inches of powder I get 11 tons of coal. When I have the entry on the solid, I get my coal in the center, and I would have to shoot two shots for one. I said when we were on the solid, I was in an 8-foot place, and, of course, that

would make a difference in the tonnage on a day's run; it would take 4 feet of coal from it, and it took more powder by far to shoot from the solid than to under-cut, which anybody will know.

Q. Can you state, of your own knowledge, about how many tons of coal, if you know from your own experience, would be produced from a keg of powder as fired from an under-cut, as against a keg of powder when used from the solid or fired from the solid? A. The amount of coal you can get from the coal what is under-cut, you can place it at 60 4718
tons to the keg, and heretofore, on the solid, it would not average at the mines 17 tons, so you see there is a big relative difference in under-cutting a shot and firing from the solid.

Q. And that is what you mean when you characterize this as— A. It is unfair advantage.

Q. Now, the conditions, according to the best of your knowledge, were the same general conditions in both of the rooms which were chosen for this test? A. Yes, they were side by side.

Q. And that same remark applies to the last comparisons you made as to the amount of coal you 4719
made from solid and from under-cutting? A. Yes, sir.

Recross examination by Mr. Katzenbach:

Q. The superintendent, Mr. Morton, was a strong advocate of Buckeye powder, wasn't he? A. That I don't know.

Q. Didn't he ever ask you to use it? A. Yes, sir.

Q. He did ask you? A. Yes.

Q. He asked you to use it when you were using du Pont, didn't he? A. Yes, sir.

Q. You say he called off the test? A. The superintendent.

Q. Mr. Morton? A. Yes.

4720 *Charles A. Parry—Re-redi*

Q. Then there never was a test that was completed in the Hanna City mines between Buckeye powder and du Pont powder, was there? A. The test was all right as far as it went.

Q. What do you mean by saying it was called off? A. As far as it went, it was a test; the keg of powder was pretty near gone, both kegs.

Q. Which keg of powder had mine the most coal? A. The Buckeye, as far as it went.

4721 Q. How can you determine that, how do you know that? A. I was right there when they measured the powder.

Re-redirect examination by Mr. Abbott:

Q. Did you mean powder? A. The powder that was left to each keg.

Q. How many tons of coal were produced from the Buckeye powder in that test? A. I couldn't tell the exact number.

4722 Q. Were there more tons produced by Buckeye powder than by du Pont? A. One ton and some hundred pounds.

Q. What do you mean by the test being called off for under-cutting? They had the shot prepared, understand, and after they got the shot prepared, they went to work and under-cut it with the picks, and so it would have taken one-tenth the powder than if it was on the solid, and, therefore, they would have got more coal for a smaller amount of powder.

Q. Then the test had proceeded with the idea of using a keg of powder of each? A. Yes, sir.

Q. And the superintendent called the test off before the keg of du Pont powder had been exhausted? A. Yes, sir.

Deposition of DAVID HARRIS, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Harris, where do you live? A. Hanna City.

Q. Illinois? A. Illinois.

Q. How long have you resided there? A. About eight years. 4724

Q. What is your business? A. Coal miner.

Q. How long have you been a coal miner? A. Well, all my life.

Q. How old are you? A. I am 62 years old the 20th of this month, 62 the 20th of this month, so I am past 62.

Q. How long have you been actually engaged in mining coal? A. I started when I was very young, when I was seven years old; that's when I first started to work, in England.

Q. Have you had any experience in mining coal with blasting powder? A. For 51 years I have used blasting powder. 4725

Q. State what kinds of blasting powder you have used during that time. A. I don't know that I can give you all the names.

Q. Just tell us a few you can recall. A. Du Pont powder and Buckeye powder.

Q. Any others? A. Yes, a powder they call—it used to come in wooden kegs—that wasn't du Pont powder, that was a different powder, but I don't remember the name, because I have used all grades of blasting powder.

Q. Where did you use Buckeye powder? A. At Hanna City.

Q. Where did you use du Pont powder? A. We

4726 *David Harris—Direct*

had been using du Pont powder for pretty much all the time; the company got Buckeye powder there, and we went to using it to give to a test.

Q. You used du Pont powder at the Hanna City mine? A. Yes, sir.

Q. Now, then, describe, in your own way, the use you made of Buckeye powder at the Hanna mine; such experience you have had personally in the use of Buckeye powder. A. In the first place, when we got the powder, I didn't know whether I
4727 was going to get good results out of it or bad results, but we got it and used it, and, of course, we had—I had a difference in the first shot or two in using that powder.

Q. About what was that difference? A. The difference was, I put the same amount of powder in in inches to the shot, to my judgment, as I would of the other powder.

Q. You put the same amount of powder; what powder do you mean? A. Of the Buckeye powder; I put the same amount as the other powder.

4728 Q. What is the other powder? A. The du Pont, and I found, when my shots was fired, I had to change powders for the coal it had to work.

Q. Of what kind of powder? A. Of the Buckeye.

Q. How could you tell that? A. My judgment called for that amount of powder, and secondly, I knew that there was a difference in the strength of the powder.

Q. You knew there was a difference, on account of the results? A. After those first two shots, I reduced the quantity of powder.

Q. Of what kind of powder? A. The Buckeye, from my judgment, as I had of the du Pont powder; a shot that would take—my shots was pretty much of the same kind, from two feet six inches to two

foot eight inches of powder, I would get them down to four inches on the du Pont powder.

Q. What powder are you now testifying you cut down? A. I cut down the Buckeye powder, the amount, so as not to have too much powder for the amount of coal.

Q. What was the result of your changed methods? A. Because I knew that the powder was stronger.

Q. I am asking you now, after you cut down the charge of Buckeye powder, what was the result of 4730
those shots? A. They worked a good deal better, and kept the coal more in its place where it should be kept to load.

Q. As to the amount of coal, what was the result? A. The amount, it would vary with me, say from four tons to six tons to the shot.

Q. How do you mean? A. To that amount of powder, from that amount of powder.

Q. What was the total amount of tons you got from a keg of Buckeye powder, if you can recall? A. I just couldn't come down to the facts of the
matter; I expect we could get the books if we went 4731
down on the second floor.

Q. Where abouts on the second floor? A. To Applegate and Lewis's office.

Q. Have you made any inquiries there for any records? A. No, sir, not yet; I keep a record of all my work I do at home.

Q. Give the testimony to the best of your recollection, as to how many tons of coal you obtained from a keg of Buckeye powder. A. From about 18 to 22 or 23 tons to the keg.

Q. In your use of du Pont powder, about how many tons of coal did you obtain per keg? A. Well, I always reckoned if I got 16 tons to the keg I was doing well, 15 or 16 tons.

4732 *Davil Harris—Cross*

Q. And you obtained the results you have testified from Buckeye powder, by the use of a considerably less amount of Buckeye powder than of du Pont powder? A. Yes, sir.

Cross examination by Mr. Katzenbach:

Q. Mr. Harris, the miners bought their powder of the operators, did they not? A. Yes, sir.

4733 Q. At a certain price, fixed price per keg? A. Yes, sir.

Q. Between the years 1903 and 1909, what price per keg was charged by Applegate and Lewis for powder? A. $1.75 was what has been customary for us to pay for powder.

Q. When was the Buckeye powder first used in the mines of Applegate and Lewis? A. I can't really——

Q. At Hanna City? A. ——tell you, but to the best of my belief, it has been between six and seven years.

4734 Q. That was then about the year 1907, or before that? A. Somewhere about that time.

Q. It might have been 1906? A. It might have, it might have.

Q. During the time that the Buckeye powder was used in this mine, was there any other powder that was used, or did the miners use Buckeye exclusively? A. No, sir, they had two kinds of powder there.

Q. What kinds were they? A. The Buckeye powder and the du Pont powder.

Q. What kind of powder do they use in the mines now? A. They are using the du Pont now.

Q. A miner, then, could get from Applegate and Lewis, either Buckeye powder or du Pont powder for use in the mines? A. Yes, sir, at the time when they had two kinds there.

Q. How were the miners paid during the years 1906 and 1907 by Applegate and Lewis? A. They were paid by the ton.

Q. That is to say, their wages were based on the number of tons of coal mined? A. Yes, sir.

Q. By each miner? A. Yes; whatever tons they dug they got paid for.

Q. How many miners did you have at the Hanna City mines of Applegate and Lewis in the years 1906 and 1907? A. At that time it would vary, sometimes we wouldn't have many men in the mines 4736
to work, and other times it would increase.

Q. What was the lowest number and the highest number that you can recall? A. It has been down as low as between 20 and 30, anyway.

Q. And how high? A. About 46 is about the highest it would reach.

Q. From 20 or 30 to 46? A. Yes.

Q. While you were using Buckeye powder, did you see miners that were using du Pont powder in the mines? A. Sure.

Q. Were there more using du Pont powder than 4737
Buckeye powder? A. I can't tell you that; I know what I was using.

Q. You can't tell that? A. No.

Q. You do know that du Pont powder was being used in the mines right along by the miners? A. Yes, sir.

Q. Who was the mine manager of Applegate and Lewis in the Hanna City mines in the years 1906 and 1907? A. I believe William—no, Bob Morton, at that time.

Q. By "Bob" you mean Robert? A. Yes, sir—we call him "Bob" for short; we don't go to any nice names.

Q. Do you know whether Robert Morton is a brother of Andrew Morton? A. Yes, sir, he is.

4738 *David Harris—Re-dir*

Redirect examination by Mr. Abbott:

Q. Mr. Harris, you stated that $1.75 was the customary price which the miners were paid for powder which was furnished by them? A. Yes, sir.

Q. By "customary price" what do you mean; is that a rule? A. A rule?

Q. Is it a rule? A. That's a rule; the operators adopt among themselves I suppose, that the price of the powder bought through the mines at dif-

4739 ferent places is the same.

Q. Whatever powder you bought you had to pay a fixed price based on this rule? A. Yes.

Q. No matter what it costs the operator? A. No, sir.

Q. You spoke about Applegate and Lewis having used du Pont powder after having ceased to use Buckeye powder; what did you mean by du Pont powder, in that connection? A. Why——

Q. You stated they were now using du Pont powder? A. Du Pont powder.

4740 Q. Have they used any other powder since 1908, except du Pont powder? A. Yes, sir.

Q. What other powder is that? A. They have used Buckeye.

Q. Since 1908? A. Since 1908, to the best of my ability.

Q. Where is that Buckeye powder made that you have testified they have used since 1908, if you know? A. From what we understand, it is made over here to Edwards' Station.

Q. Does it go under the name of Buckeye powder at this time? A. I don't know whether it goes under the name of that.

Q. In other words, the powder you have in mind as having been used by Applegate and Lewis Coal Company since 1908, is the powder made at Edwards, Illinois? A. Edwards, Illinois.

Q. Do you know of a powder known as Western powder? A. Yes, sir.

Q. Where is that made? A. I suppose over at the Buckeye mills.

Q. Is that the powder you speak of as Buckeye? A. Yes, sir, the same powder under two names.

Q. Did you use that powder? A. Yes, sir.

Q. Has it been satisfactory or otherwise? A. Yes, sir.

4742

Q. You said "Yes, sir;" I said, has it been satisfactory or otherwise? A. Satisfactory to me; I don't know——

Q. That's all.

Deposition of DAVID S. THRUSH, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

4743

Q. Mr. Thrush, where do you live? A. Hanna City, Illinois.

Q. How long have you resided there? A. About 25 years.

Q. What is your business? A. Miner.

Q. How long have you been in the mining business? A. About 25 years.

Q. How old are you? A. 40 years old.

Q. And where have you been mining during that time? A. I have been mining in Danville, Hanna City, Farmington, and I have been in Springfield.

Q. How long have you been in the mining business at Hanna City? A. I presume about 12 years.

Q. In your work as a miner, have you had any experience in the handling of blasting powder? A. Yes, sir.

Q. I understand you have been mining coal all this time? A. Not all this time; there was part of the time that I wasn't.

Q. In the use of blasting powder, what kinds of powder have you made use of? A. What kind?

Q. What kind? A. I used the du Pont and the Western powder.

Q. Du Pont and Western? A. Du Pont and Western, and Miami powder; I have used, I expect, most every kind.

4745 Q. Is there any other kind of powder that you can mention at this time? A. I used Laflin & Rand.

Q. When you stated you had used Western powder, what did you have reference to? A. We call Buckeye powder Western powder.

Q. You meant Western as Buckeye? A. Yes, sir.

Q. When did you first begin using Buckeye powder? A. The first I ever used that was six years ago, I think, or seven.

4746 Q. And where was that used? A. Hanna City.

Q. What mine? A. The Hanna City Coal Mine.

Q. Owned by what company? A. Applegate & Lewis.

Q. I will ask you to state what your experience has been in the use of the various powders which you have testified you have used, as to the results obtained from the use of Buckeye powder. A. I got good results from Buckeye powder.

Q. I will ask you to recall, if you can, Mr. Thrush, any particular time when you used Buckeye powder; the first time, we will say? A. In 1906.

Q. 1906? A. Yes, sir.

Q. Now, will you state under what circumstances you used it at that time? A. We used it to blast coal with.

Q. State any other time when you used Buckeye powder. A. I used it since that time.

Q. How long after that? A. Probably for a year or two afterwards; I used it right along.

Q. You began using it in 1906? A. Yes.

Q. And then you used it right along? A. Yes, sir.

Q. Did you ever, at any time, attempt to keep track of the results obtained from the use of Buckeye powder? A. Yes, sir.

Q. When was it? A. When I first began to use 4748
it.

Q. Now, then, state what the results were which you obtained from the use of Buckeye powder, with respect to the amount of coal produced by a given keg? A. I got better results out of it, and a good bit better grade of coal, and from three to five tons to the keg more with it.

Q. Than what? A. Than I had been with the du Pont.

Q. Was that your uniform experience? A. Yes, sir.

Q. It was? A. Yes, sir. 4749

Q. Did you, at any time, ever make a comparative trial of Buckeye powder with any other powder? A. Only with my experience and the partner that worked alongside of me; he used one kind and I used the other.

Q. What kind did he use? A. Du Pont.

Q. What kind did you use? A. Buckeye powder.

Q. What was your experience, working side by side? A. I thought I made a little gain on him; I thought I made from three to five tons more than he did.

Mr. Katzenbach: That is objected to as an opinion and not a fact.

A. That is a fact. You can go down and get the books on the second floor.

By Mr. Katzenbach:

Q. Then, these records are embodied in bulletins or books? A. Certainly, they are; and they are embodied in bulletins.

Q. You may state what results you obtained in this trial you have testified to, with reference to the amount of coal you produced, and the amount of coal your partner produced. A. It made better
4751 coal, more lump coal.

Q. With reference to the amount of coal produced, what was the result? Which one of you got the most coal, if there was any difference? A. We thought I did.

Q. How did you arrive at that conclusion? A. We kind of kept track of it.

Q. Did you measure it? A. It's weighed, the coal is weighed.

Q. How is it weighed? A. Why, it's weighed.

Q. How? A. It's weighed with scales.

4752 Q. Who loaded it? A. The man that digs it.

Q. You kept track of the amount of coal received from a given shot? A. Yes, sir.

Q. Your partner, did he do the same? A. I want to answer that question this way; I don't come here to make a play one way or the other; I wanted the thing as clear as I could; if we were working partners, you would know whether you thought I was doing more than you was, wouldn't you?

Q. Yes. A. That's a fact, and that's the way we started it up.

Q. How long were you working side by side with your partner, while he was using du Pont and you Buckeye powder? A. Probably for a couple of months.

Q. What were the results obtained during this

entire period; were they different from what you have stated? A. It seemed to be about the same; he went to using the powder too, part of the time.

Q. Do you know anything about a certain test, a certain official test that was made by the Applegate & Lewis Coal Company with reference to Buckeye powder and du Pont powder? A. Only just from hearsay.

Cross-examination by Mr. Katzenbach:

4754

Q. Mr. Thrush, then during the time that you say you and your partner were at work side by side, he used Buckeye powder part of the time during this test, didn't he? A. Yes, sir.

Q. Who furnished the powder for the miners in this mine of Applegate & Lewis? A. Applegate & Lewis furnished it. We got to buy it, you understand.

Q. The miners bought the powder? A. Yes, sir.

Q. In this mine, how were the miners paid; what was the basis of the pay? A. So much a ton. 4755

Q. Both du Pont and Buckeye powders were used in this mine? A. Yes.

Q. How many men were using Buckeye powder? A. I couldn't tell.

Q. Can you estimate it? A. No.

Q. Well, approximately? A. Well, you wouldn't take a guess awhile ago, and what is the use of my trying to give one now.

Q. There were more miners that used du Pont powder than Buckeye powder? A. I couldn't say.

Q. You were there in the mine? A. Yes, sir.

Q. You observed what powder was being used? A. I observed what powder I was using myself.

Q. You don't know what other powder was used, and by whom? A. No, I couldn't say.

Q. Did you observe du Pont powder being used by the miners? A. Yes; I couldn't help it; it's an evident fact.

Q. That is a fact? A. Yes, sir.

Q. Who was your partner that you have spoken of? A. Herman Swardinski.

Q. Where is he living? A. Out on the Plank Road.

Q. When did you last see him? A. This morning.

4757 Q. Is he here in Peoria? A. I think so.

Deposition of SETH WHITES, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Where do you live? A. Hanna City.

Q. Illinois? A. Yes, sir.

4758 Q. What is your business? A. My business is a coal miner.

Q. How long have you lived at Hanna City? A. Eight years.

Q. How long have you been a coal miner? A. I have been working in that mine for about eight years.

Q. Were you or not, a coal miner before that, or what was your business before that? A. I was a farmer before that.

Q. In your experience as a coal miner, have you ever handled powder? A. Yes, sir.

Q. What kind of powder have you handled? A. Black blasting powder.

Q. Of what make? A. Du Pont and Buckeye powder, and Western powder, here of late.

Q. When did you first begin having Western powder, if you know? A. That has been long ago; I don't know the exact date, within the last six months, or something like that.

Q. State whether or not you have handled any other powder except the two you have just mentioned. A. No, sir, I haven't handled any other, that I know of.

Q. Where did you handle the Buckeye powder that you have testified you have used? A. The Hanna City mines. 4760

Q. When was it? A. 1907, about, the first of 1907.

Q. How long did you continue to use Buckeye powder? A. I used it as long as I could get it, till the Western powder came in, then I handled that the rest of the time.

Q. Did you, during that period, handle any other kind of powder except Buckeye powder? A. Yes, sir.

Q. While using Buckeye powder? A. Once in a while I got a keg of du Pont. 4761

Q. So you handled both powders at the same time? A. Yes, sir.

Q. State, in your own way, just what were the results you obtained from the use of Buckeye powder, with reference to the amount of coal which was produced per keg. A. What do you mean—the amount of tons each keg produced?

Q. That's right. A. Out there I got from 18 to 24 tons out of a Buckeye keg.

Q. State about how many tons of coal per keg you obtained from the use of du Pont powder. A. Well, about 15 or 17 was the best; 17 was as good as I could get.

Q. Did you use both powders under the same general conditions? A. Yes, sir.

Q. The same conditions? A. Yes.

4762 *Seth Whites—Cross*

Q. Now, the facts you have just testified to with reference to the results of the use of Buckeye powder and du Pont powder, were they your general experience, or do you refer to any special occasion? A. For general reasons, it was a paying proposition, that was all.

Q. You found the results to be about uniform at all times when you used either grade of powder; is that correct? A. Yes, sir.

4763 Q. State what was the result of your general experience in the use of Buckeye powder and du Pont powder, with reference to the amount of coal per keg which was produced by each of those powders. A. My general experience would be, it takes less of that powder for the shot. You get more coal out of a keg of Buckeye than out of a keg of du Pont, was the reason I used it.

Q. And the figures you have already stated, is the difference which you have in mind? A. Yes, sir.

4764 *Cross-examination by Mr. Katzenbach:*

Q. When did you first use Buckeye powder, what time? A. About the first or last of January, 1907.

Q. How long did you continue to use Buckeye powder in the mine at Hanna City where you worked? A. The rest of that spring; as long as they kept it there I used it.

Q. Did they stop keeping it? A. No, they didn't stop keeping it—I don't think they did.

Q. While Buckeye powder was being used, what other powder was being used? A. Du Pont.

Q. How many miners were there in the mine working, in the spring of 1907? A. Somewhere in the neighborhood of 60 or 70, somewhere around there; I don't know the exact number.

Q. A miner could ask the operator for just whichever powder he wanted, could he not? A. Sure.

Q. And both powders were the same price to the employee or miner? A. Yes, sir.

Q. During the spring of 1907, did you see any of the miners using du Pont powder? A. Yes.

Q. How many miners used du Pont powder in the mines? A. I don't know; I never kept track of it.

Q. Well, approximately 50 per cent., or more than that? A. I don't know just exactly. 4766

Q. Well, how many do you think, to the best of your recollection? A. Probably half of them.

Q. About half used du Pont? A. Yes, I think so.

Q. During the spring of 1907, how were the miners paid by Applegate and Lewis, on what basis? A. How they were paid?

Q. Yes. A. They were paid every two weeks.

Q. What was the basis of their wages? A. Tonnage.

Q. It was tonnage? A. Yes, sir, by tonnage. 4767

Q. In other words, the men that mined the most tons of coal got the highest wages? A. Yes, sir.

Q. What was the price per ton during 1907, that you were paid? A. 63 cents, I believe.

Redirect examination by Mr. Abbott:

Q. Is the price of coal regulated between the miners and operators, by agreement? A. Yes, sir.

Q. Is that agreement in writing, that you know of? A. Sure, it's in writing.

Q. Was it in writing at the time you had in mind in answer to questions of Mr. Katzenbach? A. You mean the agreement for the price?

Q. Yes. A. Yes.

4768 *William D. Evans—Dirc*

Q. There is always an agreement between the operators and the miners regarding the price of coal? A. Yes, sir.

Deposition of WILLIAM D. EVANS, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

4769

Q. Mr. Evans, where do you live? A. 1908 South 7th Street, Springfield, Illinois.

Q. Springfield? A. Yes.

Q. How long have you lived in Springfield, Illinois? A. About, I don't know, just about forty years.

Q. What is your business? A. Coal miner.

Q. How long have you been a coal miner? A. Thirty-three years.

Q. Where have you been employed during that time? A. I worked twenty-seven years at the

4770 Woodside mines, between twenty-seven and twenty-eight years, and I worked a little in the Peoria district last summer.

Q. In your experience as a coal miner have you used black blasting powder? A. Yes, sir, altogether.

Q. What kinds? A. We had Buckeye and Miami, and Laflin & Rand. I don't know, I guess every kind that was ever made for blasting coal.

Q. Did you ever use any du Pont powder? A. Principally du Pont.

Q. In your use of Buckeye powder I wish that you would state what results you obtained from it as compared with the other kinds of powder which you say you have used. A. Well, I found that it cut the coal better. I used about one hole

less in every four of the Buckeye powder. It made better coal and it worked the dirt better, and it didn't affect the roof any. I used between eight and ten kegs of it.

Q. You stated that you saved one hole in every four? A. Yes, sir.

Q. Describe just what you mean by that? A. Well, three holes done the work of the Buckeye powder that I was using four holes to accomplish the same kind of work. It cut the coal up and down where the other powder didn't and you had 4772
to use that extra hole to keep the bottom squared up.

Q. Extra hole with what powder? A. With du Pont powder. You had to use the fourth hole all the time to keep the bottom squared up.

Cross-examination by Mr. Katzenbach:

Q. Mr. Evans, how many kegs of du Pont powder have you used during your life? A. I don't know how many thousand.

Q. How many kegs of Buckeye powder have you 4773
used? A. I used, well, between eight and ten. It would be safe to say I got nine.

Q. In what mine did you use this powder? A. The Woodside.

Q. How many miners were employed in that mine? A. Well, at that time I would judge about two hundred, or a hundred and fifty at that time.

Q. A hundred and fifty? A. Yes, sir.

Q. This powder was supplied to you by the operators? A. Yes.

Q. And all the miners could use Buckeye powder if they wanted to? A. No, sir. All? No.

Q. Who gave you this powder to use? A. Why, there was a hundred kegs of it brought there?

Q. Who got it? A. The company, and when you ordered your powder you could call for this Buckeye powder and they would give you a keg of Buckeye powder. There was no test made, or anything of that sort, at the time.

Q. You could get it if you wanted it? A. Yes, sir.

Redirect examination by Mr. Abbott:

4775 Q. You were asked if all the miners could use Buckeye powder and you said they could not. A. No, there wouldn't have been enough to give them a keg apiece.

Q. They didn't continue to buy Buckeye powder and keep it on hand for the mines? A. No, they refused to.

WILLIAM COYNE, recalled as a witness for the plaintiff and testified as follows:

4776

Direct examination by Mr. Abbott:

Q. I show you Plaintiff's Identification 1248 and ask you to look at it and state whether or not that is a document presented by you the last time you were upon the stand? A. (After examination): It is.

(The paper referred to received without objection and marked Plaintiff's Exhibit No. 1248).

Q. Now will you state how that document was prepared? A. The records of the sales department were searched to find the dates and the names of

the customers to whom 95c prices were authorized between May 5th, 1905, and October 14th, 1907.

Q. Did you make that search yourself? A. No, sir.

Q. By whom was it made? A. I think there were three or four people working on it.

Q. Well, it was made under your direction? A. Yes, in my department.

Q. And by persons who are acquainted with your books and know how to get the facts that you desired to have; is that correct? A. Yes. 4778

Q. I notice, Mr. Coyne, that there are notations under the head of remarks in a column called "Remarks," reading as follows, as a sample: "S. B. Min." giving the date, and so forth. What does "S. B. Min." mean? A. Sales board minutes.

Q. Yes; where are those minutes kept? A. In Wilmington.

Q. Under whose charge and control? A. Mine.

Q. How long has the Sales Board kept minutes? A. Of my own knowledge I could say from 1905 on and I think——

Q. Well, have you any knowledge upon it except your own, your investigations of the affairs of your office lead you to know whether there are other minutes previous to that date? A. I think that the minutes were always kept by the sales board ever since its existence. 4779

Q. Now, under whose charge, in whose care are those minutes kept? A. In our sales department file room.

Q. Can you give me the name of the officer who has charge of those minutes? A. Yes, I think Mr. Kerr has.

Q. He would have charge of all the minutes since the organization of the sales board, would he, down

to the present time? A. As long as—I think he would have them since they started keeping them.

Q. Well, do you have control over those minutes yourself? A. Yes.

Q. Could you produce them of your own authority or would you have to get somebody else's authority to produce them? A. I could produce them of my own authority if it was proper to do it.

Q. Well, now will you state how those minutes
4781 are prepared, that is to say, does the sales board have regular meetings from time to time of which minutes are kept? A. Yes.

Q. They have a secretary? A. Yes.

Q. Who was the secretary during the period that you have indicated here? A. I cannot recall.

Q. I will ask where there are blanks that occur under this heading does that indicate that there were no minutes of those orders? A. Those notations under the head of "Remarks," as I read them, have no relevancy to the 95 cent price. For example, the first one, page 1, in the sales board min-
4782 utes of September 18, 1905, says, "Lists Contract dated August 29, 1905, for one year." A. I don't know why they happened to put that information on there but it has no reference to a 95 cent price.

Q. Then were any of these charges authorized by the sales board or action authorized by the sales board or taken to the sales board? A. I think all of them were.

Q. These minutes as indicated on here, as you have stated, relate to the time when the contract was issued that was entered into with these people? A. No. As I read it, each carries its own story. One has reference to a contract and another a dollar price there; where we authorized a 95 cents we got a dollar (indicating). There was something exceptional about that particular customer that caused that notation to be made.

Q. Now, as I examine these hastily it appears to me that they all relate to the date of the contract except one. Will you point out others if there are any others in relation to any other subject? A. This one simply says—to authorize a one dollar price.

Q. That particular one. But do you find anything else that bears on any other matter except the matter of the contract? A. Except that one, it appears they all have reference to a contract that was apparently entered into by us with the customer. 4784

Q. Is it necessary to secure authority from the sales board for the issuing of contracts or making of contracts in all cases? A. Any special price——

Q. When I say "is it," I mean "was it," necessary during this period that is indicated here—The period from 1904 when you entered the employ of the company down to 1908? A. Practically every price had to be approved or authorized.

Q. And every contract? A. Every contract, yes.

Q. Do you know a man by the name of David S. Brewster? A. Yes, sir. 4785

Q. Was he ever in the employ of the du Pont Company? A. I think Mr. Brewster was in the employ of the company in 1904 when I came with them.

Q. How long did he remain with the company? A. Two or three years afterwards, I think; I am not certain about that.

Q. What position did he occupy in the office of the company at Wilmington? A. I don't know what his position was in Wilmington excepting he was connected with the sales department.

Q. Do you know whether he was at the head of what was called the competitive division? A. I do not.

4786 *William Coyne—Recalled—Direct*

Q. You have such a division, have you? A. We have the statistical division, as we call it.

Q. But was it not known as the competitive division in 1905? A. Yes, sir.

Q. Since then it has been merged into the statistical division, which is now in charge of Mr. Simpson? A. Yes, sir.

Q. Did Mr. Simpson succeed Mr. Brewster? A. I could not say definitely, Mr. Abbott, about that.

4787 Q. Have the duties or the responsibilities, you might say, of that statistical division changed in any manner since the time it became known as the statistical division? A. I have intimate knowledge of it only from July, 1907.

Q. Previous to 1907 it was, you say, known as the competitive division, and since that time as the statistical division. Was there any change in the responsibilities of the officer in charge of that division after that period when the name was changed? A. No.

4788 Q. In other words, it is now, and has been ever since 1907, really the competitive division. All competitive subjects are referred to that division, are they not? A. Yes.

Q. Do you know anything about a report that was prepared by Mr. Brewster just previous to the making of this 95 cent price? A. No.

Q. Did you ever hear of any such thing as that in connection with your duties? A. I have no recollection of hearing of it.

Q. Have you any personal knowledge of your company's affairs which immediately preceded the issuance of this 95 cent price? (Objection sustained).

Q. Have you any knowledge of any steps that were taken by any of the officers of your company, or of the sales board in particular, in reference

to an investigation concerning the competitive conditions in the Central States just previous to the time when this 95 cent price was issued?

Mr. Katzenbach: I object to that question, because it contains the same vice—"when this 95 cent price was issued."

The Court: Yes, and another question becomes involved in this. Whether there was a general issuance of a 95 cent rate.

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Mr. Abbott: The price was issued, undoubtedly.

The Court: You might refer to this 95 cent rate.

Mr. Abbott: But that limits it.

Q. Do you know anything about a 95 cent price outside of what is shown by this document? A. For what period?

Q. Well, for any period? A. That is pretty general.

Q. Well, then, I will say from the time you began your employment with the du Pont Company at Wilmington and September 15, 1908? A. There were some 95 cent prices made in Pennsylvania, and as I recall it a 95 cent price obtained in the Hazelton District for a soft grain powder; but the 95 cent prices started with that list in May, 1905, and a few were given in May and a few more in June so on each succeeding month until the end of the period. There was not any general 95 cent price.

4791

Q. Then this list contains every customer or every person to whom the 95 cent price was made; is that correct? A. In the territory that Mr. Waddell operated in, yes, sir, as far as the record goes.

Q. This does not purport to cover any 95 cent

price that was made in the Hazelton district or the Pennsylvania district. Is that right? A. That is right.

Q. Now, then, can you tell me this: The first date shown here is May 5, 1905, upon which a 95 cent price was made. Is that correct? A. I think so, yes.

Q. Can you tell me what were the conditions in the affairs of your company just preceding the issuance of this 95 cent price on May 5, 1905, so far
4793 as an investigation of the competitive conditions in this district are concerned? A. Only in a general way, Mr. Abbott. I had not examined the records for all of the details, but I do know that prices had been forced down from a dollar, I will say from memory from $1.20 to $1.15 or $1.10 or $1.05 and to a dollar and had been steadily going down for a year, because of competitive conditions, new mills starting up and taking our trade; and we arrived at the 95 cent price in the orderly manner that we arrived at the dollar price.

4794 Q. I see. What I am trying to get at is this: Did your company authorize any person or persons to make an investigation of competitive conditions in this district and make any report to you on which you took action at that time? A. Not to my knowledge, no special action in reference to making a 95 cent price.

Cross examination by Mr. Katzenbach:

Q. Mr. Coyne, the document that you have prepared at the request of Mr. Abbott and have submitted here today and which has been marked Plaintiff's Exhibit 1248 is the authorizations of the sales board of the du Pont Company from May 5, 1905, down to October 14, 1907, of a 95 cent. price of powder, as I understand it? A. Yes, sir.

Q. When you speak of the sales board, is that the sales board of the du Pont Company that you refer to? A. Yes.

Q. And that sales board, I think you have testified as to how it was composed heretofore, have you not? A. Yes.

Q. In effect, that was that there was no one else a member of the sales board except the representatives of the du Pont Company, that there were no members of any other powder companies that sat with that board during this period that you have 4796
mentioned? A. That is correct.

Q. And that sales board was composed of yourself as a director of sales, and your predecessor, and the assistant directors of sales, and other members were the du Pont Company, were they not? A. Yes.

Q. Now, referring to those authorizations which you have referred to as being authorizations of a 95 cent price, will you state what territory they covered? A. They covered the States of Ohio, Indiana, Illinois, Kentucky, Missouri, Kansas.

Q. That territory that was comprised in what 4797
Mr. Waddell has specified as Buckeye territory? A. Yes.

Q. And that was for business that emanated from your Chicago, St. Louis, Kansas City and Cincinnati offices, was it not? A. Yes.

Q. Was there any authorization of any 95 cent price to all customers of the du Pont Company? A. No.

Q. Or those that the du Pont Company might have desired as customers or to users of this class of explosives generally? A. No.

Q. Now then, when you say that there was a 95 cent authorization made to any user or to any customer, will you just state what the sales board

4798 *William Coyne—Recalled—Cross*

did in making an authorization of a 95 cent price to any user of powder? A. Of course, I cannot be specific as to any specific customer.

Q. No, but just generally? A. The general practice was for the assistant director of sales in charge of the branch office territory that made the application for the price to appear at the sales board with his reasons why a 95 cent price was necessary. He got those reasons either orally or in writing from his branch office, possibly from salesmen he
4799 might see, and if the necessity for the price is made apparent to the sales board, they, as a rule, authorized it. Many times, of course, they did not feel that it would be necessary to reduce the price to meet competitive conditions.

Q. Then I understand that the assistant director of sales in a particular territory, for instance, we will say in the State of Illinois, would make a statement to the sales board that his competitive conditions in reference to such and such a customer were so and so, as for example that that customer had
4800 been quoted a price of 95 cents, or a lower price than 95 cents, and that information would be given to the sales board sitting as a board, and they would determine whether this 95 cent price authorization would be made or not; is that correct? A. Yes.

Q. So that in every one of these instances of the 95 cent authorization the sales board acted independently upon that particular case after the receipt of information from your representatives as that information would be in a general way communicated by the assistant director of sales in that locality? Is that correct? A. Yes.

Q. In making up any of these 95 cent prices that are recorded upon this Exhibit 1248, was there any action at any time ever taken upon the authorization of a 95 cent price as directed against the Buckeye Powder Company exclusively? (Objected to.)

By the Court:

Q. Were you present during all this time? A. In a majority of cases.

The Court: Of course this witness cannot speak from hearsay.

Mr. Katzenbach: Not at all, not at all.

By Mr. Katzenbach:

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Q. You were a member of this sales board during the years 1905, 1906 and 1907? A. Yes.

Q. In any meeting of the sales board you attended during the years 1905, 1906 and 1907, did you hear any action taken by that sales board or participate in any action taken by the sales board, by act or word, in reference to the Buckeye Powder Company and its competition other than as a general competitor, with other powder companies in that locality? (Objection overruled.) A. No.

Q. Now, Mr. Coyne, will you state how many users of powder in this territory that you have described the 95 cent price was authorized to as shown upon this list? A. Approximately it totals up 445. 4803

Q. 445. Now, then, how many of those authorizations were made in the year 1905?

Mr. Abbott: Does not the list speak for itself?

The Court: Yes, but it may save time. It speaks for itself only in one sense. Somebody would have to bring it out anyway.

Q. Yes. And we might as well bring it out by the man who made it. A. I would have to refresh my memory on that.

4804 Q. You have a notation showing that? A. I have only one of these statements in my pocket.

Q. How many authorizations were made in 1905? A. 98.

Q. And how many in 1906? A. 209.

Q. And how many in 1907? A. 93.

Q. When you state that an authorization of 95 cents was made to a customer does that mean that you sold that customer at that price? (Objection overruled.) A. No indeed.

4805 Q. Of the authorizations that you have referred to, the 445 authorizations made during the years 1905, 1906, and 1907, as set forth in Exhibit 1248, please state the number of companies to whom that price was authorized whose trade you failed to obtain. (Objection overruled.) A. 144.

Q. Out of that number, of how many did you lose the trade at this 95 cent authorization, fail to sell after it was made?

Q. How many of your customers that you failed to sell to after you made the authorization, that

4806 had previously been your customers? A. Fifty-two.

Q. Then how many of these 445 that had been customers prior to the authorization of the 95 cent price and to whom you had sold prior to that authorization did you obtain by the 95 cent price? (Objection overruled.) A. 154.

Q. 154 of your own customers you retained at that price. In making that authorization of 95 cents in each one of those individual instances did you in any instance of that kind act upon information received by the sales board at the time that this matter was under consideration of a price lower than 95 cents being made by a competitor? (Objection overruled.) A. We had frequent reports of lower than 95 cent prices.

Q. Did the sales board to your knowledge, during the years 1905, 1906 and 1907, ever make a price lower than the price that you had information of and which information was being acted upon by the sales board at that price by a competitor?

Q. Based upon your own knowledge of what transpired at the Board, did the duPont Company ever make a lower price than that which they had been informed the competitor had made in that particular locality ? A. Not knowingly. We may 4808
have been deceived in one or two cases, but we never felt it necessary to go lower than any competitor.

Mr. Katzenbach: That is all.

Redirect examination by Mr. Abbott:

Q. Who were the 144 persons to whom you made the 95 cent price and did not make any sales; have you a list of them? A. I have a list in Mr. Katzenbach's office, in my grip.

Q. Will you produce that list? A. I can pro- 4809
duce it in five minutes if I can bring my grip over here.

Q. Who were the names of the 52 persons you failed to sell to? A. I can give that too if I have my grip.

Q. And the 152 customers you retained by that price? A. Yes.

Q. Will you produce those lists? A. I can read the names off to you because I have them marked.

Q. If you have a list prepared which you have checked up I would like to have that list so as to save time? A. Very well.

Q. From whom did you get the information upon which the action taken by the trade with reference to making any particular price was had? A. You mean from whom the board got the information?

Q. Yes; whom did you get the information from? A. From the branch office manager.

Q. Where did they get information? A. First hand themselves sometimes, and other times, most frequently I presume, from their salesmen in the field.

Q. Were those reports made to your office? A. Copies of the reports came to our office.

Q. What form are they in? A. Trade reports largely.

4811

Q. Trade reports. Will you state what correspondence and what trade reports contained the information upon which the action of the Board was based? Can you do that? A. I don't quite understand that.

Q. I want to know now the particular reports upon which you based that action when you made your 95 cent price.

Mr. Katzenbach: That is, to each individual?

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Mr. Abbott: To each particular customer, when you made your 95 cent price for each particular person named in this list.

A. State that again, please. I don't quite understand it.

Q. Is not the question clear? A. I would like to hear it again.

Q. You stated on your cross-examination by Mr. Katzenbach that you based your 95 cent price in every case upon some information or report which had been made to you, and what I am now trying to get at is the particular information upon which you based your particular action. In other words, I want to know exactly who it was and what was the report that was made to you. A. Well, I would have to get that from the record.

Q. Yes. Well, now, is that a large amount of information or is it a small amount of information? A. It involves a search in our files all through that period, and they have been so robbed for the Government suit and this suit that we are hardly able to say today what we can produce or what we cannot produce.

Q. You have not produced any letters or anything from any of your general agents in this case, have you? A. I do not recall any, no.

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Q. As a matter of fact, have you examined recently any of your records to know whether or not you based any of the action relative to the 95 cent price upon any particular reports which were in your possession? A. We have refreshed our memory from such records as we could find, yes.

Q. Then, can you tell me of any particular person named on this list of 95 cent prices, concerning whom you have made an investigation of the reports upon which that price was made, recently? A. Yes, I can tell you a few, I think, although not all of them of course, and may be not any appreciable percentage of them. That information is in my grip also. I remember one or two of them but they are so far back that I would rather testify from the record absolutely.

4815

WILLIAM COYNE, (recalled) for the Plaintiff and testified as follows:

Direct examination by Mr. Abbott:

Q. When you left the stand the other day you had some lists, I believe, with reference to various matters in connection with the 95 cent statement.

4816 Have you those lists with you at the present time? A. Yes, sir.

Q. Will you produce them? (Witness produces list.) Will you indicate what this first one is, headed N. O. ? A. That is a list of the trade that our 95 cent authorization did not interest.

(The same was marked Plaintiff's Exhibit 1359.)

4817 Q. You say you were not able to get any business of these people on the 95 cent rate? A. Yes, sir.

Q. Did they make any answers to the offers which you made them? A. I presume they did.

Q. You do not know what their reason was for declining to do business with you? A. They had a lower price or the same price—

Q. Do you know that to be the fact? A. Only from my general knowledge of the powder business, that if we quote equal prices or lower prices we get a great deal more—

4818 Q. Then you really don't know that except from general information and through your general knowledge? A. That is my understanding.

Q. That is purely guess-work, is it not? A. Oh, no.

Q. Have you any facts, written or otherwise, upon which to base that statement? A. I have not any facts with me, but if necessary to produce them, I could.

Q. You can produce the evidence? A. Yes, sir.

Q. Are you sure you can? Isn't that merely an assumption on your part, Mr. Coyne? A. No.

Q. You know positively that is the reason they refused to do business with you, because somebody made them a lower price? A. No, I didn't say that.

Q. What did you say? A. The same—or a lower price.

Q. You stated a week ago that you knew what the facts were. A. I said from my general knowledge of the powder business I knew that among that 140 or 150-odd names there were a great many of them we did not get, and I could show we did not get them because they had the same or a lower price from competitors.

Q. You say a great number. Will you take this list and show the particular ones you did not get because they had a lower price? A. I cannot do that. That is 1905. 4820

Q. Then, as a matter of fact, you do not know anything about it at this time and it is a mere matter of guess-work? A. It is more than guess-work.

Q. Then please point out those on there you do know about. If you know you must know as to some of them. A. I cannot point out any particular one.

Q. I show you this next table, B. and A., and ask you to state what that is? A. The trade we held under the 95 cent authorization, that we sold "before and after." 4821

(The same was marked Plaintiff's Exhibit 1360.)

Q. I show you this other statement and ask you to state what that is a statement of? A. That is trade we lost; trade we had at the time we made the authorization and lost in trying to get 95 cents.

(The same was marked Plaintiff's Exhibit 1361.)

Examination Concluded.

Thereafter certain documents were received in evidence by the court as plaintiff's exhibits, which said documents were marked in plaintiff's iden-

tification P-3 and known Petitioner's Exhibits in the case of United States Government v. E. I. du Pont de Nemours & Co. Equity Case No. 280, in the United States District Court for the District of Delaware as follows:

Government exhibits 101-A, 101-B, 102, 102-C, 102-D, 103, 104, 109, 110, 116, 117-A, 117-B, 117-C, 117-D, 117-E, 117-F, 117-G, 117-H, 117-I, 117-K, 117-L, 117-M, 117-N, 117-O, 117-P, 117-R, 118,
4823 118-A, 118-B, 118-C, 118-D, 118-H, 118-I, 118-J, 118-K, 118-M, 118-N, 118-O, 118-P, 118-Q, 118-R, 118-S, 118-V, 118-W, 118-X, 118-Y, 118-Z, 118-AA, 118-BB, 118-CC, 118-DD, 122, 122-A, 122-B, 122-C, 122-D, 122-E, 122-F, 122-G, 122-H, 122-I, 122-J, 122-K, 123, 124, 124-A, 124-B, 124-C, 124-D, 124-E, 124-F, 124-G, 124-H, 124-I, 124-J, 124-K, 124-L, 124-M, 124-N, 124-O, 124-P, 124-Q, 124-R, 1248, 124-T, 125, 125-A, 125-B, 125-C, 125-D, 125-E, 125-F, 125-G, 125-H, 125-I, 125-J, 125-K, 125-L, 125-M, 125-N, 125-O, 125-P, 125-Q, 125-R, 126,
4824 126-A, 126-B, 126-C, 126-D, 126-E, 126-F, 126-G, 126-H, 126-I, 126-J, 126-K, 126-L, 126-M, 126-N, 127, 128, 128-A, 128-B, 128-C, 128-D, 128-E, 128-F, 128-G, 128-H, 128-I, 128-J, 128-K, 128-L 129.

JONATHAN HASKELL, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. You reside, I believe, in State of New Jersey? A. I do.

Q. At what place? A. At Middletown Township.

Q. Have you any business that calls you elsewhere; I mean do you have a business office elsewhere than where you reside? A. I have an office in New York City and also an office in Wilmington.

Q. What is the business you are engaged in at the present time? A. Vice-President of the E. I. du Pont de Nemours Powder Company.

Q. And how long have you been such? A. Since the company was formed, I think in 1903.

Q. Previous to the time that you became an officer of that company what was your business, as far back as 1890? A. In 1890 I was general manager and treasurer of the Rochester & Pittsburgh Coal & Iron Company. In 1892 I became vice-president and a month later president of the Rapauna Chemical Company and the Hercules Powder Company. In February, 1895, I became president of the Laflin & Rand Powder Company. I retained the presidency of the Laflin & Rand Powder Company until its dissolution. 1826

Q. And when was that? A. I don't remember. Last year some time. 1827

Q. During the time that you were president of the Laflin & Rand Powder Company, or just previous to that time, when you entered the powder business or the explosives business, in what line did you first engage? Was it blasting powder business? A. In high explosives.

Q. How long did you continue to be engaged in that class of the business before you entered the Laflin & Rand Company as its president? A. I was president of the Rapauna Chemical Company and the Hercules Powder Company until they were dissolved.

Q. They were exclusively high explosives companies, were they? A. Yes.

Q. Where was the plant of the Rapauna Company located? A. Thompson's Point, New Jersey.

Q. Where did it sell its product? A. All over the country and for export.

Q. Did you sell any of your products in Mexico? A. We did; yes, sir.

Q. The balance of it was mostly sold in the United States? A. Yes.

Q. Do you know anything about a company that was called the Atlantic Dynamite Company? A.
4829 What Atlantic Dynamite Company?

Q. I am asking you if you know of any company? A. I know of three.

Q. Will you kindly state what company was known as the Atlantic Dynamite Company, what company first bore the name of Atlantic that you know of? A. The Atlantic Dynamite Company, which had a plant at Kenville, New Jersey. I think it was organized under the laws of California. It was owned in greater part in California.

Q. What was the next Atlantic Dynamite Com-
4830 pany? A. The next Atlantic Dynamite Company was a concern formed by the Eastern Dynamite Company to take over the works and property of the Atlantic Dynamite Company of California.

Q. And the Atlantic Dynamite Company of California had previously taken over properties of the Hercules Company and the Rapauna Company? A. No.

Q. It had not? Did it at any time have anything to do with either of those two companies? A. Not so far as I recollect.

Q. What was the third Atlantic Dynamite Company? A. It was a small corporation organized by the Eastern Dynamite Company to operate a plant in Wisconsin.

Q. Take the Eastern Dynamite Company. Do

you know anything about that company? A. I was president of the Eastern Dynamite Company when it was first organized.

Q. When was it first organized? A. 1895.

Q. What was the purpose of the organization of that company? A. They had very wide powers in their charter.

Q. I am not asking you for its charter purpose, but what was the object you had in view; was it for the purpose of taking over any of these other companies? A. The Eastern Dynamite Company 1832
was organized at the time it purchased stock of the Rapauna Chemical Company and Hercules Powder Company and the assets of the Atlantic Dynamite Company of California.

Q. And was it organized for that purpose? A. Yes.

Q. What was the capital stock of that company? A. Two million dollars.

Q. How much of that was exchanged for the purchase of these other interests? A. All of it.

Q. $600,000 of it went to the Atlantic Dynamite 4833
Company, did it not? A. It did.

Q. And fourteen hundred thousand went to whom—to the Rapauna and Hercules Companies? A. The former stockholders of the Rapauna and Hercules Companies.

Q. When was this accomplished, who were in control, what particular interests were in control of the Eastern Dynamite Company? A. The largest stockholders were the Laflin & Rand Powder Company, the Hazard Powder Company and the E. I. du Pont de Nemours & Company.

Q. Then the interests which you represented and the interests which the du Ponts represented at that time were in control of the Eastern Dynamite Company, were they not? A. These three companies had control.

Q. Yes; and the interests which you represented at that time, you and the du Pont interests? A. I simply represented the Laflin & Rand Powder Company as its president, being its president.

Q. When I speak of you I mean the company which you controlled had this interest? A. Yes.

Q. Then this first Atlantic Dynamite Company was dissolved about that time, was it not? A. It was.

4835 Q. What became of the second Atlantic Dynamite Company; is that still in existence? A. It was carried on as an operating and selling company until it was dissolved, I don't remember when.

Q. How recently? A. I cannot recollect the date of its dissolution.

Q. Was it after 1908? A. I don't remember.

Q. What became of the third Atlantic Dynamite Company? A. That was dissolved by the E. I. du Pont de Nemours Powder Company, and at the same time a number of other small corporations were dissolved.

4836 Q. When the Eastern Dynamite Company was first organized who became the original board of directors of that company? A. My recollection is they were identical with the directors of the former Hercules and Rapauna Companies.

Q. Did the California interests have any representation on the board at that time? A. No.

Q. They retired entirely. After the Eastern Dynamite Company was incorporated and acquired these other companies you have spoken of, did it acquire any other plants or companies that were manufacturing high explosives? A. It did.

Q. What were those companies? A. I don't know that I can remember all of them.

Q. Well, I will ask you if the United States Dynamite Company was one of them? A. Yes, sir.

Q. With a plant at Toms River, New Jersey? A. Yes, sir.

Q. The American-Forcite, with a plant at Hopatcong? A. Yes.

Q. And the Dittmer at Farmingdale? A. Yes.

Q. The Gogebic Company? A. I don't remember whether we bought the Gogebic.

Q. Well, were there a number of plants in Pennsylvania that you purchased at that time, too? A. There were several.

4838

Q. Can you recall the names of those plants? In order to assist you I will ask you if the Climax Powder Company was one of them? A. My recollection is the Eastern Dynamite Company bought only a portion of the stock of the Climax Company.

Q. Did it acquire a considerable interest,—was it a majority? A. My recollection is it was not a majority.

Q. Did they ever acquire a majority interest of the stock of that company? A. I don't think so. It sold that stock that it had.

4839

Q. Oh, yes. To whom did it sell it? A. To either the E. I. du Pont de Nemours Company or the E. I. du Pont de Nemour Powder Company, I don't remember which.

Q. About that time did you acquire the following companies: I will give you their names. The Brooklyn Glycerine Company——

Q. Do you understand the question? A. Whether we purchased the Brooklyn Glycerine Company?

Q. Yes. A. I believe the Eastern Dynamite Company did purchase the Brooklyn Glycerine Company.

Q. A. Kirk & Son Company? A. No.

Q. Robena Falls Company? A. No.

Q. The Rock Glycerine Company? A. I don't remember. I think they did.

Q. A. Speece Powder Company? A. No.

Q. H. Julius Smith Company? A. No.

Q. The Thompson Torpedo Company? A. I don't recollect whether it purchased that or not.

Q. Are you testifying now from the best of your recollection or have you looked the matter up recently? A. I have not looked it up at all.

Q. I ask you that because my information is from your testimony in the former case that that is the way it read. I will ask you, then, if you know who
4841 did become the owners of these companies the names of which I have read, that were not purchased by the Eastern Dynamite Company? A. They all eventually became owned by the E. I. du Pont de Nemours Powder Company.

Q. Do you know when that was? A. I do not recollect.

Q. Can you give us approximately the date? A. Some time after the formation of the E. I. du Pont de Nemours Powder Company in 1903.

Q. Was it a short time or a considerable time?
4842 A. A year or two, according to my recollection.

Q. You bought some companies in New York; that is to say, the Eastern Dynamite Company bought some companies in New York, did it not; for instance, the Clinton Dynamite Company? A. Yes, sir.

Q. And the Hudson River Powder Company? A. Yes.

Q. And the James Macbeth Company? A. Yes, sir.

Q. And the Electric Exploder Company? A. I don't think it bought the Electric Exploder Company. My recollection is the Electric Exploder Company was organized to take over and to do an exploder business after its stock was owned by the Laflin & Rand Company and one-half by the Eastern Dynamite Company.

Q. At the time you entered the black powder business in 1895 and became president of the Laflin & Rand Powder Company had you had any previous connection with the black powder interests in any way; was that your first entry into the black powder business? A. Yes.

Q. Did you at that time have any knowledge of an association between the manufacturers of explosives in the United States of any kind?

Mr. Katzenbach: Black blasting powder? 1844
Mr. Abbott: I am asking about explosives.

A. There was an association of black powder manufacturers existing at the time I believe.

Q. Yes. Did you become a member of that association in any way yourself? A. As President of the Laflin & Rand, it was a member of the Association.

Q. Did you at any time represent Laflin & Rand in the meetings of this association? A. Yes; I was a member of the standing committee or advisory committee—I don't remember which it was called. 1845

Q. And you attended the general meetings of the association, did you? A. Naturally.

Q. What was the condition of the black powder blasting trade in the United States between the years 1890 and 1895, when you entered the Laflin & Rand Company, if you know? A. A correct answer to that question must be a very long history.

Q. Well, I do not care to have a history of the matter; what I want to know is this: Was the association active during this period or was it inactive? (Objection, and question withdrawn.)

Q. Do you know of your own knowledge what was the general condition of affairs in the United States, with reference to the black blasting powder trade? A. From what time?

Q. From 1890 to 1895. A. I have no knowledge regarding the conditions in the black powder trade prior to 1892.

Q. 1892? Well, you say that you entered at that time into the dynamite business exclusively and continued in that until 1895? A. Yes.

Q. How did you have personal knowledge of the conditions of the black blasting powder trade during the period from 1892 to 1895? A. In the sale of high explosives it very frequently occurs, par-
4847 ticularly on construction work, that it is necessary to sell black blasting powder in connection with high explosives, and because of the necessity of selling in connection with our contract trade for high explosives black blasting powder I almost immediately became cognizant of the general conditions of the black powder business in 1892.

Q. At that time did you make any investigation concerning the prices which were obtaining in the country at large for black blasting powder? A. Not excepting as I was interested in getting prices for
4848 specific pieces of trade.

Q. Did you make any inquiries at that time concerning the operations of this association? A. No.

Q. Did you know anything about the operations of the association at that time, from 1892 to 1895? A. The only recollection I have of what occurred at that time is the fact that through the many new competitors having entered into black blasting powder, the governing body, whatever it might have been called at that time, had given each company instructions or advice, to meet the competition of outside competitors.

Q. Yes. Now you know that of your own knowledge? A. Yes.

Q. Were you present at any of these meetings previous to the time when you became a member of the Laflin & Rand Company? A. No.

Q. Were there any agreements in existence in 1889 or 1890 between these various associates or members of this association, that you know of? A. I believe there were.

Q. But do you know of them of your own knowledge? A. I recollect having seen some agreements, which I believe extended over those periods.

Q. Do you know what they were called, what the technical designation of those agreements was? A. No; I can't recollect at this time.

Q. Was one of them known as a fundamental 4850
agreement? A. I believe it was.

Q. I show you Plaintiff's Exhibit 1116 and ask you to look at that and state whether or not that is the agreement known as the "Fundamental Agreement," which you were familiar with at that time? A. It purports to be an agreement——

Q. Don't state what it purports to be, but whether you have any recollection—— A. I have no recollection of the details of that agreement at all.

Q. You have no recollection of the details of 4851
the agreement known as the "Fundamental Agreement" previous to the time you were connected with the Association? A. No recollection, no.

Q. What agreement was it, then, you say you knew was in existence at the time—1889 or 1890?

A. There were agreements in 1895 between the Laflin & Rand Powder Company, E. I. du Pont de Nemours Powder Company and other companies. What they were in detail I cannot say.

Q. You have stated that there was competition between the various manufacturers of black blasting powder at this time, the time you entered the dynamite business? Now, do you know what that competition resulted in so far as the low price of black blasting powder was concerned during this

competitive period? A. It resulted in very low prices all over the country.

Q. Can you state about what was the lowest price that was reached during that period? A. I recollect only one isolated case that I have heard of: 78 cents a keg.

Q. What case was that? A. I don't remember the name of the case, but the price was made, the sale was made, with King powder.

Q. That was in Ohio, was it not? A. I believe
4853 it was.

Q. And that was in 1895? A. I should think so.

Q. Was there any profit in selling black blasting powder at that price? (Objection overruled.) A. There might have been. However, it would depend on how near the mill the sale was made and what expenses attached to that particular piece of trade.

Q. Did you not say in the Government case that there was no profit in manufacturing blasting powder at that price? A. On a general average,
4854 yes.

Q. Is it true or not that during this period from 1892, which you have testified to, down to 1895, there was any special observance of the regulation existing between the associations concerning competition on black blasting powder? A. I cannot speak with any personal knowledge regarding the observance by the black powder companies of their own regulations, because I was not in the black powder business at that time.

Q. But you stated you knew about the conditions in the black blasting powder trade at that time and I want to know whether it is a fact that there was a complete breaking away or a partial breaking away concerning the regulations for black blasting powder during this period? A. My recollection of

my testimony is that I only had cognizance of the prices that were made through the high explosive companies for their own business.

Q. I will ask you to state whether or not in the Government case you testified as follows: Page 1060. (Reading.) "When you entered upon these duties in February, 1895, what did you find the condition to be in the black blasting powder business in regard to prices, production and competition? A. The prices were lower at that time than they have been since, in 1892, owing to the increase 1856
of productive capacity, brought about by the building of several new and large competitive mills, the supply had far outstripped the demand, so much so that in 1892 it became necessary for the associated black powder companies to recommend to each producing concern that it defend its own trade against competition. In 1893 the panic came on and this aggravated a condition which was already bad enough, so that when I assumed the presidency of the Laflin and Rand Powder Company I found the keenest competition and, practi- 1857
cally, all observance of anything like uniform prices discontinued by the Laflin and Rand Powder Company, the du Pont Powder Company, and the other older powder concerns. Q. Then, as a matter of fact, any contracts at that time, which were in existence in 1889 or 1890, have become dead letters, have they? "A. As regards the observance of prices on blasting powder, yes." Do you remember testifying that way? A. That was my testimony.

Q. And that was a correct statement of the facts, was it not? A. Undoubtedly.

Q. Since you have connected yourself with the black blasting powder trade your relations with the du Pont interests, as known previous to the organization of the Powder Company under the con-

trol of Mr. Eugene du Pont and subsequent control of those interests, was very close, was it not? A. Yes.

Q. Your personal relations with Mr. Eugene du Pont were very close? A. Very much so indeed.

Q. You resided for a time at Wilmington, did you not? A. Yes.

Q. That was from 1882 to 1895? A. From 1892 to 1895.

Q. And after you left there you continued to care
4859 for the interests of the Dynamite Company in New York—was it? Did you go to New York from there? A. My office was in New York after 1895.

Q. And that is where you have continued to care for the interests of the dynamite companies or the dynamite interests which you represented? A. I have always spent more or less time in Wilmington.

Q. Do you remember the names of the companies that were members of the association at the time when you became a member of that association, when the Laflin & Rand Company under your man-
4860 agement was a member of the Association? A. I can remember some of them, yes.

Q. Can you state them from memory? A. E. I. du Pont, de Nemours & Company, Hazard Powder Company, Laflin and Rand Powder Company, American Powder Mills, Miami Powder Company, Austin Powder Company, Schaghdicoke Powder Company, Sycamore Mills. There may have been others but I don't recollect them.

Q. The Oriental Mills? A. Yes, sir.

Q. The Ohio Powder Company? A. Yes.

Q. Kink Powder Company? A. To what period does this relate?

Q. This relates to the time when you entered the association yourself, when you became president of the Laflin & Rand Powder Company? A. The King

Powder Company withdrew for a short period from the Association, I think in 1895. Whether they had withdrawn prior to February or not, I don't know.

Q. Did it come into the Association again? A. In 1896.

Q. The Chattanooga Powder Company; was that one of them? A. No.

Q. It came in later, did it not? A. Yes.

Q. When did it come in? A. In 1896.

Q. The Chattanooga Powder Company, by the way, was one of the companies that you had reference to that was engaged in competition? A. Yes. 4862

Q. In the black blasting powder trade? A. Yes.

Q. And one of the companies which were responsible for the low prices prevailing? A. Yes.

Q. The Phoenix Powder Company was another one of those? A. Yes.

Q. And the Equitable Powder Company? A. Yes.

Q. Those three companies were at that time specifically and specially engaged, were they not, in making a price war on black blasting powder? A. I don't think I could say they were engaged in making a price war. 4863

Q. Well, they were cutting the regular prices in the powder business, were they not? A. Necessarily.

Q. The Equitable Powder Company came into the Association later, did it not? A. Yes.

Q. In 1896? A. In 1896.

Q. Now, take the Aetna Powder Company. Was the Aetna Powder Company a member of the Association at any time after you became interested—— A. What association?

Q. The association you have testified to, between the manufacturers. A. No.

Q. Do you know whether or not these companies

4864 the names of which you have just enumerated as having been at some time members of the Association, after 1896, were at any time connected with what is known as the E. I. du Pont de Nemours Powder Company? Did they become in any way connected with it? A. Some of them did.

Q. What ones did? A. The Laflin and Rand Powder Company, the Hazard Powder Company, the Oriental Powder Company, the Chattanooga Company, the Phoenix Company; and several others.

4865 I could point them out if I had the list before me.

Q. The Shaghticoke? A. Yes.

Q. The Sycamore Powder Mills? A. That was always owned by du Pont.

Q. The Ohio Powder Company? A. Yes.

Q. The King Powder Company? A. No.

Q. When was the time that these companies became associated with or merged into the E. I. du Pont de Nemours Powder Company—these companies that you have named? A. 1903.

Q. That was at the time of the organization of that company, was it not? A. Yes.

4866 Q. The Austin Powder Company and the Equitable Powder Company and the American Powder Mills and the Miami Powder Company, as I understand it, did not become merged into and become a part of the E. I. du Pont de Nemours Powder Company; is that correct? A. They did not.

Q. How long did this association that was formed in 1896, you say, after 1896, this agreement, how long was that continued, do you know, Mr. Haskell? A. I don't think I have testified regarding any agreement in 1896.

Q. I understood you to say that there was an agreement made in 1896. Is that correct? A. I said that these companies joined the so-called Association in 1896.

Q. Well, then, from the time that these companies joined the Association in 1896, was there any kind of an agreement which they entered into? A. No written agreement.

Q. What kind of an agreement, if it was not a written agreement, was it? A. There was a verbal agreement evidenced by a memorandum of some kind.

Q. Was that a written memorandum? A. I think it was, yes.

Q. Did you ever see it? A. I must have seen it. 4868

Q. Do you know what it was called? A. I don't remember what is was called.

Q. Was it not called "The Understanding"? A. It may have been.

Q. As a matter of fact, was not that an agreement or document which you yourself prepared, Mr. Haskell, or prepared under your direction? A. I was present at the meeting when it was prepared. I don't recollect of personally drawing up the document; but I should say not.

Q. Do you remember the first meeting of the Association that you attended? A. I don't recollect. 4869

Q. Was it May 8th, 1895? A. It may have been but I should think probably it was earlier than that.

Q. You represented the Laflin & Rand Powder Company at that meeting, did you not, or at the meeting you attended? A. (No answer).

Q. Now, I will ask you to state whether or not at that time a committee was appointed for the purpose of forming a new agreement between the associates embodying such changes as might be deemed desirable? A. I don't recollect it.

Q. I show you the minutes of that meeting at page 952 of Plaintiff's Exhibit P3 and ask you to

examine it and state whether or not it refreshes your memory as to what occurred there that day? A. (After examination) This seems to be a record of that but I have no personal recollection other than this.

(Mr. Abbott read aloud the minutes re-referred to, as follows):

"On motion of Mr. Coleman, seconded by Mr. Fay: That a Committee of three per-
4871 sons be appointed to formulate a new agreement embodying such change as it may deem to be desirable; that copies of the same be sent to all of the parties; and that the Committee shall report to a meeting of the parties here represented to be held on the 5th day of June proximo. Carried.

"The Chairman appointed to serve on this Committee Mr. Haskell, Mr. Greene and Mr. Colvin."

Q. Do you recall what that revised agreement
4872 was, Mr. Haskell? A. I have no recollection at all.

Q. I show you Government Exhibit 106, calling attention to page 958, of Plaintiff's Exhibit P-3, and I ask you to look at it and state whether or not that was a document which was referred to in the minutes just read? (Objection overruled). A. I cannot say whether that is a correct copy or not, it has been so long since I have seen any authoritative copy that I am unable to say.

Q. Do you not remember any of the provisions in the agreement? A. I don't remember any of them.

Q. Could you not remember them by looking this over; would that refresh your memory as to what

they were? A. I probably would remember some of them.

Q. Please look that over, then, and state whether there are any provisions in there that you do recall? A. (After examination): I have no personal recollection of any of these provisions.

Q. Do you remember whether any action was taken after this meeting, Mr. Haskell, with reference to the agreements which are indicated in this matter that I have just read to you? A. I have no further recollection at all. 4874

Q. You have no recollection of it at all. What was the object and purpose of the agreement which was finally entered into in 1896?

Q. Can you answer that question? A. Broadly speaking it was for the purpose of conducting a business with reasonable degree of profit.

Q. What I want to get at is what were the terms of that understanding between the members of the Association? A. In what way?

Q. Well, in order to assist you, Mr. Haskell, I refer you to Government Exhibit No. 111, page 973 of the same book, which I showed you a while ago, 4875 and I ask you to look at it and state whether or not that is the agreement which was made in 1896 between the various members of the Association? A. (After examination): I cannot say whether that is a copy or not.

Q. Will you kindly examine it carefully and state whether or not you can recall any of the provisions that are set forth there? A. (After examination): I can recollect some povisions, yes.

Q. Will you kindly state what you can recall as you go along? What is the first one in the document that you recall—the names of the parties? Never mind; I see that they are not in that order there. Just take it in its order? A. I recollect the definition of blasting powder. It is defined to be

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such a powder as is made of nitrate of soda mixed with charcoal and sulphur. I recollect the general preamble clauses. I recollect the exemption of the anthracite region of Pennsylvania. I recollect the exception of Rutland County, New York. I recollect the general definitions of the various territories. I recollect the penalties for over-sales provided. I recollect the period for the settlement of adjustment of business. I recollect the provision for the election of a board of trade of five mem-
4877 bers. I recollect the provision for the three companies being considered as a unit.

The Court: Two companies, you say?
The Witness: Three companies.
The Court: That is all.
The Witness: That is all.

Q. Do you know anything about this so-called key? A. I recollect that there was a key.

Q. Do you know whether this key as set forth here is the correct key or not? A. I cannot say as
4878 to that.

Q. Do you remember what the purpose of the key was? A. I do not at this time.

Q. I will ask you whether or not the purpose was not this: The agreement being a private and confidential agreement, a single copy of it, one copy only, was made, and signed, and that was kept in the possession of the secretary, and this key was made to represent the names of the particular companies who were members, and they were to be known by the key letter and not by the name of the company. Is not that the fact? A. I suppose that must have been the fact from the list of names on the attached letter.

Q. I will read those portions of the agreement which you state you recall.

Mr. Katzenbach: We object to that. I do not see that the portions which the witness can recall can be read out of a printed book where there is no proof of the execution of the agreement.

The Court: I have a misunderstanding, I fear, of this: The witness testified that there was an oral understanding. Now it would seem that that oral understanding had been put in writing——

4880

Mr. Abbott: He said that there was an oral understanding which was based on a written memorandum.

The Court: (To the witness): Was that it?

The Witness: I think it was the reverse of that; and there was a written memorandum based on an oral understanding.

Q. Then this was the written memorandum based on an oral understanding?

Mr. Katzenbach: The witness has not said so at all. 4881

Q. I am asking him that question. A. I cannot tell whether it is or not.

Q. Well, these are the conditions that you recall as having been a part of that written memorandum or that understanding? A. I recollect certain conditions which are evidenced by certain parts of that written, printed exhibit.

The Court: You are not entitled to read them but you may place them in the hands of the witness and ask him to state, after he has looked at the different provisions, and

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he says he recalls some of them, what his present recollection is.

Q. Then I hand you this document again and I ask you to state there what was the preamble clause that you recall?

The Court: (Addressing the witness): You can read it, and then state what your present recollection is.

4883 A. (After examination of the document): My recollection is that there was a preamble clause which decited a theretofore unsatisfactory condition in the business in black powder in the greater part of the United States.

Q. Is that all of the preamble clause you recall? A. That is all I recall.

Q. Very well. What was that portion you recall there concerning the exemption of the anthracite companies? A. This agreement, this verbal agreement, did not apply to the anthracite region of Pennsylvania.

4884 Q. What are the facts, then, regarding the exemption of the anthracite regions?

The Court: (To the witness): You can refresh your recollection but you are not to read from the book it self, but give your best recollection after your memory has been refreshed.

A. The anthracite region of Pennsylvania had had powder sold in it only by the du Pont Powder Company and the Laflin and Rand Company, and because other companies in this verbal understanding had not participated in the anthracite region business that business was excluded from this agreement. (Motion to strike out as not being responsive denied.)

Q. What were the facts concerning the exception of a certain county in New York? A. I recollect that there was an exception concerning Rutland County. As to its tenor I cannot at the moment recall anything.

Q. What do you recall with reference to the definitions of the various territories? A. I recall that there were subdivisions of territories in several districts. The exact bounds, unless reading from or referring to this, I could not give. 4886

Q. Can you by referring to that refresh your memory so as to give those bounds? A. Practically by reading the whole thing.

The Court: (To the witness): After reading it do you know that that is a fact?

The Witness: I do not think I could say that this is a correct record of what then existed.

The Court: That illustrates the difference between evidence by documents and evidence by recollection. 4887

Q. Well, can you recall any one of the districts that is mentioned there? A. No, I don't think I can give the exact bounds of any of the districts.

Q. Can you recall the names of the districts? A. They were numbered.

Q. Only by number? A. Yes.

Q. What numbers, how many numbers are there? A. I don't recollect how many numbers there were except by referring to this book.

Q. Then will you kindly read the document with reference to the divisions of territories there and state whether or not you can give a statement as to the distinctions between the various districts. Will you kindly read that to yourself? A. I don't

understand the question, whether the distinctions are geographical distinctions or what.

Q. As I understand it, territory must geographically distinguished. If there is any other feature in there that distinguishes them I would like to have you point that out? A. (After examination): The only district I can speak of as having a present recollection of is the Neutral Belt which embraced the state of Colorado, Utah, New Mexico, Montana.
4889 I don't recollect whether there were any more or not.

Q. Do you know what was the object and purpose of the establishment of that Neutral Belt? A. I do not.

Q. What were the provisions in the agreement which related to penalties and oversale, if you recall? A. I recall the 85 cent basis for blasting and the difference between that and the selling price being established as the penalty, or compensation.

Q. What was the reason for this penalty, what was the purpose of it? A. The purpose of the es-
4890 tablishment of a penalty was to compensate those who failed to sell the quota allotted them, all that portion of the business which they did not do.

Q. In other words, if a company was allotted under this agreement a hundred thousand kegs and did not sell a hundred thousand kegs they received something from the party who sold more than a hundred thousand kegs? A. That is correct.

Q. This trade, then, was divided between each one of these members upon some basis of allottment, and a certain portion of the black blasting powder trade; was that it? A. That is my recollection.

Q. Can you recall how that trade was allotted; that is to say, in detail what amount was allotted to one company and what to another? A. I don't remember the allottments at all.

Q. Do you remember what was allotted to the Laflin & Rand Powder Company? A. I do not.

Q. The term over-sale, as I understand, applies to one who had sold more than the amount of his allottment? A. That is my understanding.

Q. For which he must pay a penalty to one who has sold less? A. That is correct.

Q. Do you remember whether the Laflin & Rand Powder Company at any time ever paid any penalties on account of over-sales? A. My recollection is that the Laflin & Rand Powder Company almost 4892
always was an underseller.

Q. So they received pay from others on account of undersales? A. That is my recollection.

Q. You say that in order to determine the difference between the 85 cent rate and the selling price—or, rather, the difference between the 85 cent rate and the selling price constituted the penalty, or was the penalty a fixed amount? A. The penalty varied according as the selling price varied, according to my recollection.

Q. Was it at any time ever a fixed amount? A. It was practically a fixed amount at one time, at 4893
the beginning of the 1896 agreement.

Q. And how much was it at that time? A. I don't recollect.

Q. You say that you recall that there were provisions in that agreement with reference to periods of settlement and adjustment. What were those provisions? A. The settlement was made quarterly, I believe.

Q. And how were those settlements arrived at? A. Reports were received by the secretary from the various companies and a computation made of the correct proportion, and the allottment of each company, and then the statement was then made showing who had sold more than its allottment and who less, and transmitted to the various companies.

Q. For example, when the Laflin and Rand Company desired to obtain an adjustment and settlement, would the secretary of that company make up a list of such black blast powder as it had sold and send that in to some person? A. Yes.

Q. Who would the person be, who would receive that list? A. It was sent to E. I. du Pont de Nemours and Company.

Q. And would the calculation and adjustment be made there? A. No.

4895 Q. Where would it be made? A. It would be made by the secretary.

Q. The secretary of what? A. The secretary of the Association.

Q. Then would it have to be sent some way through the E. I. du Pont de Nemours & Company to the secretary of the Association? A. My recollection is that the so-called five companies at that time reported to the Association as a unit.

Q. Which were the so-called five companies? A. They were E. I. du Pont de Nemours & Company,

4896 the Hazard Powder Company, the Sycamore Powder Company, Laflin & Rand Powder Company, the Schaghticoke Powder Company.

Q. And they reported as a unit. Were there any other companies that reported as a unit to the secretary? A. Not that I recollect.

Q. Will you state what the provision was in that agreement with reference to the election of a board of trade, with five members, if you recall? A. I recollect that the understanding arrived at called for the election of five members of the Board of Trade. That is all.

Q. You stated in regard to the five companies that were a unit—or was it three companies? My memorandum is that you stated there were three companies that were a unit. Was there at one time three companies that were a unit? A. In the earlier

agreement I think three companies were named, but in the 1896 agreement I think there were five companies. In the five company unit there were three companies—the three du Pont companies—and two companies, the Laflin & Rand Company and the Schaghticoke Company.

Q. Do you recall anything in connection with the agreement as to the exact percentages which were allotted to the various companies? A. No, I do not.

Mr. Abbott: At this time I desire to read the minutes of the meeting of August 20, 1896, at page 967. 4898

(Mr. Abbott read aloud the minutes referred to.)

Q. Now, Mr. Haskell, does the reading of that matter refresh your memory in any way as to what occurred concerning the adoption of the understanding? A. I have no detailed recollection of what happened at all. It has been so many years ago.

Q. Do you recall anything about the personal agreements that were recommended by you, it being moved by you that it should be considered? A. I recollect some talk about a personal agreement. Whether one was actually made or not I cannot recollect. 4899

Q. What was to be the object and purpose of those personal agreements? (Objection sustained).

Q. I show you Government exhibits 107 and 108, pages 960 and 962, and ask you to state whether or not your memory is refreshed so that you can testify concerning that matter of personal agreements? A. I have no present personal recollection at all.

Q. Do you recall any of the circumstances or subject matter? A. My recollection is so hazy I cannot recall the details of a personal agreement at all.

Q. Do you recall anything about that agreement mentioned in the matter I have just read to you called the "Revised Agreement?" A. I have no recollection of it at all.

Q. Do you recall what document, if any, there was embracing the so-called "Understanding" which was to be sent out to the various members of the Association as stated in the matter which I have just read to you? A. I recollect that there was some kind of a paper sent out to the Associa-
4901 tion. What it was I have not the slightest recollection.

Q. Do you recall it as the "Abstract"? A. I don't know what the name of it was.

Q. Did you ever hear of that name? A. Only in this court room.

Q. That was the first time? A. I may have heard of it, but I have no recollection of having heard it.

Q. You know there was such a document, though? I mean you know there was a document sent out? A. I know there was a memorandum of some kind sent out to the various associates.

4902 Q. I show you Government's Exhibit 113, the same book I showed you awhile ago, and ask you to state whether that refreshes your recollection as to the document which you know was sent out? A. I cannot say whether that is the document that was sent out.

Q. Are there any of the conditions or provisions in there that were contained in this document that was sent out? A. I cannot recollect any provision of the document at all.

Q. How often did you see the document which was sent out? A. I don't think I have seen it since then. I don't know that I ever saw it then. I was not very familiar with the details that were carried on in the advisory committee and did not always read the minutes.

Q. Do you know when the copy of the document was received by the Laflin and Rand Powder Company? A. I do not.

Q. Do you know where it was kept? A. In the office of the company in New York, in the files of the office.

Q. Under whose care? A. I do not remember what officer of the Laflin & Rand Powder Company was custodian.

Q. Would it be the secretary? A. Not necessarily. 4904

Q. Who was the secretary at that time? A. Mr. A. W. Higgins.

Q. In 1896? A. Yes, sir.

Q. How long did he remain secretary of the company? A. Until its dissolution.

Q. Do you know whether there was an arrangement of any kind made between the companies the names of which you have given here that were formerly members of the powder association that were afterwards merged into the powder company, and the companies that were not merged into the powder company after the organization of the powder company for the continuation of the agreement between those companies for a period of time? 4905 (Objection overruled.)

Q. It may assist you some, Mr. Haskell, to put another question to you first. When was this association that you say began in 1896, dissolved? A. June 30, 1904, as I recollect it.

Q. After that time was any arrangement made between the companies that did not merge with the Powder Company and the Powder Company itself for a continuation of the arrangements for a limited time? A. For nine months there was an agreement made between the Powder Company and Mr. Sullivan, and on the other hand between Mr. Sul-

livan and the Aetna, Miami and American. That is my recollection.

Q. How long did that agreement last? A. My recollection is it lasted until March 31, 1905.

Q. That takes in the American, Miami and Aetna Companies. So there were left on the outside only the Equitable Company, the Austin and the King. Is that correct? A. I don't remember the names of the companies left outside. This agreement was in no sense a continuation of the old agreement.

4907 Q. Well, what was it? A. It was an agreement for adjustment of proportions of the trade.

Q. Can you state the nature of that agreement at this time; what was the adjustment of the trade? A. Simply an adjustment of proportions of business. It had nothing to do, as I recollect it, with fixing prices.

Q. In what way did it adjust proportions of business; can you indicate that? A. I don't remember which side undersold or oversold at this time. I presume, of course, one must necessarily have done

4908 so, but which I do not remember.

Q. But there was an arrangement so if there were oversales or undersales there was to be an adjustment between the parties. Is that correct? A. Yes.

Q. In the same general way that it had formerly existed? A. I don't remember the details.

Q. Do you recall making an agreement with Mr. A. O. Fay some time during 1896? A. I recollect making an agreement with Mr. Fay in 1895 or 1896. I don't remember the exact date.

Q. I show you a paper and ask you to examine it and state whether or not that is a duplicate copy of the agreement? A. I cannot state. I presume it must be because I know Mr. Fay's signature and I believe that is appended to it.

Mr. Abbott: We offer this paper in evidence.

The Witness: But it does not seem to be signed by me.

Q. Then will you look at it and state whether or not it was a paper that was authorized by you? A. I recollect that there was an agreement made. Whether it is a correct copy of the agreement that I eventually signed or not I cannot state.

Q. Will you kindly read it to yourself and state 4910
whether it is. A. I could not recollect after all these years whether it is correct.

Q. Well, in the meantime, to assist you in determining that, I show you another paper and ask you to examine it and state whether or not that is your signature? A. That is my signature.

Q. And the other signature is that of whom? A. That of Mr. A. O. Fay.

Q. And that is an agreement that was entered into between you and Mr. A. O. Fay? A. In August, 1895, yes.

Q. This is the one you had in mind? A. Yes. 4911

(The document referred to received in evidence and marked Plaintiff's Exhibit 1328, and read to jury.)

Q. I will ask you whether the agreement that is referred to here in Plaintiff's Exhibit 1328 as having been made August, 1895, is not this agreement which I hand you again (indicating)? A. I can't tell whether it is or not. I know that is Mr. Fay's signature. Whether that is a draft of something that was not executed by me I cannot tell.

Q. Will you look in that and see whether or not you find the two provisions referred to in the provision contained in that memorandum? A. What provisions?

4912 *Jonathan Haskell* —Direct.

Q. Those two. A. They seem to be identical causes, two causes in both papers.

Q. Well, you did make an agreement, then, with Mr. Fay, previous to this agreement, No. 1328, which has just been read? A. Yes.

Q. And one which is referred to therein. Is that correct? A. Yes.

Q. What was the purpose of the original agreement that you made with Mr. Fay? A. To establish proportions of trade between the interests he
4913 and I represented.

Q. What were the interests he represented? A. The Aetna Powder Company.

Q. And what were the interests you represented? A. The Eastern Dynamite Company.

Q. You referred a while ago to an agreement which was made by Mr. Sullivan as representing some interests. That interest was the Powder Company was it; did you say that? A. We made an agreement with Mr. Sullivan and Mr. Fay's Company also made an agreement with Mr. Sullivan.

4914 Q. Whom did Mr. Sullivan represent? A. He represented both parties.

Q. Oh! He was acting for both parties?

The Court (to the witness): What do you mean by "both parties"—what parties?

The Witness: He executed separate contracts between himself and the powder company on the one hand——

The Court: And you mean what by the "Powder Company?"

The Witness: The E. I. du Pont de Nemours Powder Company. He made also, I believe, a contract with Mr. Fay's company.

Q. Do you remember what the terms of that agreement were? A. I do not.

Q. Do you remember what the purposes of it were?

Mr. McCarter: I do not think that is proper.

The Court: It might be, in a general way, if he knows.

A. I have already testified, for the purpose of establishing quotas of trade.

Q. Yes. I now show you a paper writing and ask you to examine it and state whether or not it 4916
has any bearing on the agreement which you testified was made by Mr. Sullivan and Mr. Fay? A. The attached papers seem to provide for an adjustment as between the du Pont interests and Fay.

Q. In accordance with the plan which was furnished as you have indicated?

Mr. Katzenbach: That is objected to as a document proven would speak for itself.

The Court: What is there besides this evidence that relates to that Sullivan-Fay document? 4917

Mr. Abbott: This is the first, if your Honor please. We are establishing through this, if your Honor please, the continuation of this conspiracy in combination with the Powder Company.

The Court: Establishing it? I think the objection is good as far as you have gone. What does he know about it?

Mr. Abbott: This witness has already stated it.

The Court: He knows in a general way, of course, that there was an agreement.

Mr. Abbott: I am only asking him whether this was the agreement.

4918 *Jonathan Haskell—Direct*

Mr. Katzenbach: It does not purport to be at all.

Mr. Abbott: I am asking the witness for his information on that.

The Court (to the witness): Have you seen the agreement?

The Witness: I do not remember whether I have seen it or not. I do not think there was any agreement.

4919 Q. Did you not so state a while ago? A. In the sense of a written agreement.

Q. Oh! There never was any writing on the subject? A. I don't know whether there was or not. I recollect that there was an agreement for undersales and oversales.

Q. Do you recollect on what basis they agreed to pay for undersales and oversales? A. Certain quotas of trade.

Q. Can you mention what those quotas were? A. I have no recollection at all.

4920 Q. That was continued for how long? A. My recollection is, until March 31, 1905.

Q. And was it then cancelled by mutual consent? A. That is my recollection.

Q. Was it cancelled in writing? A. I don't know; I don't remember about that.

Q. Was there any provision in that agreement for making statements, rendering statements, from time to time between the parties, so that their quotas might be adjusted? A. I don't know whether there was such a provision or not, but I presume there must have been.

Q. Do you remember whether there was a provision in that agreement that the difference in the percentages should be two cents per pound for explosives, 35 cents per keg for blasting powder and

two dollars a keg for sporting powder? A. I have no recollection of the details.

Q. Do you remember whether there was a provision in that agreement for the appointment of an arbitrator to adjust these differences in case the parties could not agree? A. I could not recollect any such provision.

Q. The King Powder Company was not one of those that was merged into the du Pont Powder Company, I believe you said? A. It was not.

Q. There was a contract and agreement, was 4922
there not, in existence between the King Powder Company and the Powder Company which had been entered into at some time previous which was to run for twenty-five years? A. There was such a contract, I believe, for the sale of the King Powder Company's blasting powder.

Q. Did you ever see the agreement? A. I presume I must have done so. I signed a copy.

Q. I show you a paper writing and ask you to examine it and state whether or not this is the agreement. A. (After examination) It is an agree- 4923
ment to which my signature is attached.

Q. Do you recognize the signatures of any of the parties there? A. Yes; I recognize Mr. Fay's signature and Mr. Peters' signature.

(The paper referred to was offered and received in evidence and marked Plaintiff's Exhibit 1329, and read to the jury.)

Q. Mr. Haskell, paragraph second of this agreement says that the parties of the first part are to select some one from the companies controlled by them with whom from time to time the party of the second part is to transact its business. What companies were there that were controlled by the parties of the first part that were selected for that pur-

pose? A. What is the date of that agreement?

Q. The date of the agreement is the 31st of December, 1897. A. That referred to the Rapauno Company, the Hercules Company—the Atlantic Dynamite Company of New Jersey—and Mr. Fay's company, the Aetna Powder Company.

Q. Were those of the companies controlled by the Eastern Dynamite Company at that time? A. I don't recollect. Some were purchased before or after that.

4925 Q. They were to make returns and receive instructions from those companies as to prices. This says:

"And the party of the second part is to transact its business, make its returns and receive its instructions as to prices, terms and so forth at which powder is to be sold."

Who gave those instructions? A. I don't recollect which company was selected.

Q. It was one or the other of those companies, was it? Did the Eastern Dynamite Company itself

4926 act in any manner in that connection? A. I don't recollect whether it did or not; probably not.

Q. For the time being, under the terms of this agreement, the Aetna Powder Company was to be the concern to which this cause applied. Is that correct? A. I have no recollection.

Q. Do you know when this agreement was finally discontinued or cancelled? A. I don't remember the date.

Q. Can you give approximately the date? A. I should think it was the latter part of 1906.

Q. The fact is, then, that at the time when the Powder Company took over all of these companies the names of which you gave us this morning as having been merged into that company, there were no companies on the outside except the American,

Miami, Aetna, Equitable, Austin and King, and the American, Miami and Aetna Companies had made a contract which was to be continued for nine months after the association was disssolved, and the King Company contract, which was made in 1897, was still in existence and did remain in existence until 1906, and the Equitable and the Austin Companies were owned partly by the Powder Company, were they not? A. Yes; the Powder Company owned 49 per cent. of the Equitable, and I think 33 per cent. of the Austin. 4928

Q. Were there any other companies outside of the companies the names of which have been read here which were representatives in 1896? A. Outside of what?

Q. Outside of the lists of names that have been read to you. A. I don't understand the question.

Q. Were there any other companies outside of the E. I. du Pont de Nemours & Company, the Hazard Company, Laflin & Rand Powder Company, Sycamore Powder Company, Shaghticoke, Oriental Powder Company, Ohio Powder Company, King Powder Company, Miami Powder Company, Austin Powder Company, Chattanooga Powder Company, American Powder Mills, Equitable Powder Company, that were interested in the 1896 agreements? A. The King Powder Company and the Austin and the Equitable were outside. 4929

Q. Were outside? A. And the Miami and American——

Q. In the 1896 agreement? A. No; I understood the question to relate to the time and the termination of the agreement in 1904.

Q. No; it does not relate to the termination of it. I say were they outside the pool or assocation which was formed in 1896; were there companies except those the names of which have been read to you

4930 that were outside of this association? A. Doing business? I understand this list as read embraces all powder companies that existed in 1904. They were all taken in the Powder Company with the exception of the King, Miami and American, Equitable and Austin, which were left outside.

Q. They were left outside, but they had these agreements, had they not?

Mr. McCarter: What agreements?

4931

A. The so-called Sullivan agreement extended beyond 1904 for nine months.

Q. And the so-called Sullivan agreement represented what companies? A. The Miami Company and American Company for black powder; the Aetna Company for dynamite.

Q. I show you another paper. Do you know anything about the other signature there (indicating)? A. No, I am not sufficiently familiar with the signature of the Hancock Chemical Company.

Q. That was an agreement entered into between
4932 the Eastern Dynamite Company and the Hancock Chemical Company, was it? A. Yes.

Q. Signed by you? A. Yes.

(Document referred to, offered and received in evidence, marked Plaintiff's Exhibit No. 1301 and read to the jury.)

Q. Now I show you another paper writing and ask you if you know anything about it (handing witness paper). A. (After examination) I recognize my signature to that agreement, and also Mr. A. O. Fay's signature, president of the Aetna Powder Company.

Q. Do you recognize the agreement itself? A. I recall now that such an agreement was made.

(The paper referred to was offered and received in evidence and was marked Plaintiff's Exhibit No. 1332, and was read aloud to the jury.)

Q. What part, if any of consequence, did the use of the nitro-glycerine play in the manufacture of high explosives at the time this contract was made with the Hancock Chemical Company? A. Nitro-glycerine was one of the principal ingredients of high explosives at that time. 4934

Q. And the Hancock Chemical Company largely controlled a good deal of that product, did it? A. No.

Q. Then what was the purpose of making this agreement? A. The capacity of the Eastern Dynamite Company and the Aetna were not very much in excess of the business. The Lake Superior region was remote from the manufacturers, of all three companies, excepting the Lake Superior, which was a comparatively small plant, and it was thought desirable to have the Hancock Chemical Company as an alternative reserve works to draw upon. 4935

Q. The Hancock Chemical Company was in close competition, was it not, with the Lake Superior Powder Company? A. As a rule it sold very little excepting to its own companies.

Q. These high explosives in which nitro-glycerine plays a considerable part were used in copper mining and other mining, were they not? A. Yes.

Q. And not in mining coal? A. No.

Q. Do you recognize this document, Mr. Haskell, or know anything about it? A. I do not recollect this contract at all.

Q. You know nothing about the contract. Do you know anything about the signatures attached to it? A. I know Mr. Call's signature and Mr. Lewis' signature.

(The paper referred to was offered and received in evidence and marked Plaintiff's Exhibit 1333 and was read to the jury.)

Q. Mr. Haskell, you were an officer and director in the following companies at various times, were you not? I will read the names and as I read them, if you find any company in which you were not an officer and director, kindly check me.

4937 Mr. Katzenbach: I object to it as immaterial—

Mr. Abbott: It is to save time that I ask the question in that way. I will ask about each company, then.

Q. The Laflin and Rand Powder Company? A. Yes.

Q. You were a director in that company? A. Yes.

Q. And president? A. Yes, sir.

Q. The E. I. du Pont de Nemours Powder Company? A. Yes.

4938 Q. You were director and vice-president? A. Yes.

Q. The Delaware Investment Company? A. Yes.

Q. You were a director? A. Yes.

Q. Were you any other officer? A. I don't recollect.

Q. The Delaware Securities Company? A. I think I was a director in the Delaware Securities Company; I am not sure.

Q. Were you any other officer of that company? A. I don't recollect.

Q. The Eastern Dynamite Company. I believe you said you were a director and president of that company? A. Yes.

Q. The Lake Superior Powder Company? A. Yes; vice-president and director.

Q. The Marcellus Powder Company? A. I was a director and vice-president, I think.

Q. The Indiana Powder Company? A. I was president and director at the time of its dissolution.

Q. When was it dissolved? A. I don't recollect the exact date.

Q. About what time? A. I don't recollect at all.

Q. The Northwestern Powder Company? A. I don't recollect whether I was an officer or director of that company.

Q. Were you not president of that company also? 4940
A. I don't recollect.

Q. The Oriental Powder Mills? A. I was a director of the Oriental Powder Mills.

Q. But not an officer? A. I may have been vice-president, but I am not sure.

Q. The Mahoning Company? A. I was a director and I think vice-president of the Mahoning Company.

Q. The Phoenix Company? A. I was director of the Phoenix, and at the time of its dissolution I think I was its president.

Q. The Schaghticoke Powder Company? A. I 4941
was director, but I was not an officer that I recollect.

Q. The National Torpedo Company? A. I was director and chairman of the board.

Q. The American Storage and Delivery Company? A. I don't recollect whether I was an officer or not; I was a director.

Q. The King Mercantile Company? A. I was a director; I don't remember whether I was an officer.

Q. Were you not also vice-president? A. I may have been but I don't recollect it.

Q. The International Smokeless Chemical Company? A. I am a director and vice-president.

4942 Q. You are now? A. Yes, sir.

Q. How long have you been such? A. About nine years, I think.

Q. The Equitable Powder Company? A. I am a director and I think I am vice-president.

Q. How long have you been such? A. Since 1896.

Q. The Rapauno Chemical Company? A. I was president and director.

4943 Q. The Hercules Powder Company? A. President and director.

Q. The Hecla Powder Company? A. President and director.

Q. The American Forcite Company? A. Director. I don't recollect whether I was an officer or not.

Q. All these companies, the names of which I have read to you, at some time became merged in the E. I. du Pont de Nemours Powder Company, did they not, except the Equitable Powder Company and the International Smokeless Chemical

4944 Company? A. As I recollect the list, yes, sir.

The Court: You did include the Eastern Dynamite in that, did you not?

Mr. Abbott: The Eastern Dynamite is included in that question which I just put.

The Court: You did not exclude that in your question?

Mr. Abbott: No. The Eastern Dynamite Company has been absorbed, as I understand it, by the E. I. du Pont de Nemours Powder Company.

The Court: It is absorbed?

Mr. Abbott: Yes.

The Court: It is one of the defendants here?

Mr. Abbott: So is the International Smokeless, but it is a defendant. But it was absorbed, as I understand it. I think it may have maintained its corporate entity, but until recently it was owned and controlled by the Powder Company.

Q. Is not that right? A. Eventually the Powder Company owned all its stock.

Q. Is it in existence? A. I think it was dissolved by decree of the court. 4946

Q. To what decree do you refer?

Mr. Katzenbach: Objected to as immaterial.

The Court: It is in evidence, I think.

Mr. Abbott: But as the witness has stated that, I think he should be allowed to state what decree he refers to.

Mr. Katzenbach: The objection has been made before and the Court has sustained it.

The Court: Is it a decree that has been made since the beginning of the suit? 4947

The Witness: It is a decree since the beginning of the suit.

The Court: That will be sufficient without going into details.

Mr. Katzenbach: I understand, but really we are just spending time over things that are of no consequence.

Q. How about the du Pont International Smokeless Company, Mr. Haskell; ;were you an officer of that company? A. I don't think so.

Q. You had no official connection with it as director or otherwise? A. I think not.

Q. What was the principal reason for the organization of the E. I. du Pont de Nemours Powder

Company? A. It was to bring together under one corporate entity a number of separate units owned by the same owner.

Q. Anything else? A. I cannot answer that question; it is too broad a question.

Q. You say it was for the purpose of bringing together certain corporate units owned by the same interests. What interests do you refer to? A. The E. I. du Pont de Nemours & Company of Delaware, which was in business itself and it owned a number
4949 of other corporations that were doing business in that line, and in certain other explosive lines; and in order that they might be brought into one corporation and eventually made an operating and selling company doing all the business, the E. I. du Pont de Nemours Powder Company was organized.

Q. Are the companies you have enumerated here today some of the companies which this E. I. du Pont de Nemours Powder Company was authorized to take over in the manner in which you have indi-
4950 cated? A. That is my recollection.

Q. Were there any other companies outside the list of names which have been read here today that it was organized to take over? A. There may have been, but I don't recollect them.

Q. You say it was organized for that purpose. Did it proceed to do that? A. Just as quickly as it could.

Q. Immediately after its organization? A. Within a year or two.

Q. Do you know anything about an agreement that was known as the European or Foreign Agreement? A. I knew such an agreement existed, yes.

Q. Did you ever see it? A. Yes.

Q. Why was the Association between the gunpowder manufacturers or explosive manufacturers,

discontinued on the 30th of June, 1904? A. It had outlived its usefulness. No meetings had been held, as I recollect it, after the spring of 1903, and it was terminated because one or two of the outside companies gave notice; and if they had not done so we probably should have done so.

Q. What companies were those one or two that gave that notice? A. My recollection is the Equitable and Austin.

Q. The Equitable and Austin were still owned, though, 49 per cent and 33 1/3 per cent respectively by the Powder Company, were they not? A. Yes. 4952

Q. What was the last meeting of the Association which you attended? A. It was in the spring of 1903; I don't recollect the exact date.

Q. Did you ever see at any of the meetings Mr. T. C. du Pont? A. Yes.

Q. When did you first see him there? A. In the spring of 1902.

Q. And when did you last see him there? A. I don't recollect.

Q. Can you state about when? A. I don't re- 4953
collect whether he was present at the meeting just before I went abroad in 1903 or not.

Q. Did you ever see Mr. Pierre S. du Pont at any of those meetings? A. Yes.

Q. When did you first see him there? A. I don't recollect. Not as early as I saw Mr. T. C. du Pont.

Q. Do you know when you last saw him there? A. No. He was never a member of the advisory committee.

Q. He was not a member of the advisory committee but he attended the meetings of the Association representing the du Pont interests, did he not? A. I don't think so. He may have done so, though.

Q. Now I show you Government Exhibit 119, known as P-3, in this Court, and ask you to look at

it and state whether or not that has any relation to this document which you state you knew as the foreign agreement. (Objection overruled.) A. It purports to be a copy of the so-called "Foreign Agreement." I do not know whether it is correct or not.

Q. Will you kindly read it off and see whether or not it is according to your recollection a copy of the foreign agreement as you remember it? A. (After examination.) I recollect certain parts as
4955 having appeared in the agreement.

Q. When you have finished reading it then I will ask you in detail about it, Mr. Haskell. A. Do you want me to read the whole thing?

Q. Yes; I would like to have you read the whole thing, if you will. In order to save time, if you will read it and then state what you recognize as you go along, that will save re-reading it the second time.

Mr. Katzenbach: We object to that.

The Court: If the purpose is to put in this
4956 as evidence he must be able to speak of it as an entirety.

Mr. Abbott: All right.

Q. Will you answer that question? A. What was the question?

(The question was repated by the stenographer.)

A. I recollect certain phases of the "Foreign Agreement" that seem to coincide with what is herein set forth.

Q. Do you recognize the agreement as a whole as being similar to the agreement which you saw? A. I cannot speak as to it being a complete copy.

Q. I do not mean a complete copy word for word, but I mean in substance. (Objection overruled.) A. I recollect some of the paragraphs.

Q. Do you recognize now whether it is substantially the language of the "Foreign Agreement" which you say you saw? (Objection overruled.) A. With regard to certain clauses.

Q. What are the clauses in there which you think it is substantially alike?

4958 Mr. Katzenbach: That is objected to. If the plaintiff is to introduce a copy of the agreement he has got to introduce it by somebody who can testify to it being a copy.

The Court: This is not a case of that kind—

Mr. Abbott: It may be that he recognizes all or most of the agreement.

The Court: He may read it and if it is composed of clauses or a subject matter which he recognizes he may designate briefly what he recollects.

4959 Mr. Katzenbach: If those could be designated by number and not by reading——

The Court: I don't care how he designates them as long as he does not attempt to give what the document itself says.

Mr. Katzenbach: You could give the number or paragraph.

The Court: Is it paragraphed?

The Witness: Yes, sir.

Q. Tell us the number of the paragraph, then. A. I don't understand whether I am to give the substance or—

The Court: The number of the paragraph.

Q. Give the number of the paragraph. A. I recollect the substance of paragraph 2, paragraph 4, paragraph 5, part of paragraph 6.

Q. Will you indicate what part you refer to, down to what lines? A. The part appearing on page 1126. I recollect the substance of the last ten line of paragraph 7. I recollect paragraph 9. I recollect paragraph 11. I recollect paragraph 18. That is all.

Q. Do you know anything about the parties
4961 named on page 1123? A. I recollect that—do you want me to give them by number or name?

Q. Give the names.

Mr. Katzenbach: Give the number.

Q. Well, if you will give the number I will take the number. A. I recollect No. 1, 2, 3, 4, 5, 6, 8, 9, 11 and 12. The others I don't recollect of having been parties to this agreement.

Q. While you have that book in hand I will ask you if you have any recollection whatever relating
4962 to the substance of paragraph 7 other than the part which you say you do recall? A. I have no recollection at all.

Q. Have you any recollection whatever of any kind of the provisions of paragraph 8?

Mr. Katzenbach: Eight was omitted.

Mr. Abbott: I know it was.

A. I have no recollection of those terms.

Q. Have you any recollection whatever of the provisions in paragraph 10, or any of them? A. No.

Q. Or of paragraph 12? A. No.

Q. Or of 13?

Mr. Graham: Those are omitted paragraphs.

Mr. Abbott: I am asking if he has any recollection of any of the provisions in those paragraphs. (Objection overruled.) A. No.

Q. Any of the provisions of paragraph 14? A. No.

Q. Or any of the provisions of paragraph 15? A. No recollection.

Q. Or any of the provisions of paragraph 16? A. 4964
I have no recollection.

Q. Or any of the provisions of paragraph 19? A. No.

Q. Or any of the provisions of paragraph 20? A. No.

Q. Do you know anything about how that "Foreign Agreement" came to be made? (Objection overruled.) A. The agreement was made between Mr. du Pont and several gentlemen who went went abroad for the purpose of making it.

Q. And how did it come that these various companies the name of which you have indicated came 4965
to be interested in that "Foreign Agreement?" (Objection overruled.) A. When the agreement was made several companies that were presumed to be interested in the various phases of the high explosives and black powder situation were asked to become parties to it and did become parties to it.

Q. He asked them to become parties to it? A. I don't recollect, now.

Q. Do you know anything about a plant that was being built by some other foreign powder manufacturers at Jamesburg, New Jersey, about the time this foreign agreement was entered into? A. I believe the plant was started for the manufacture of caps.

4966 *Jonathan Haskell—Direct*

Q. Was or was not that one of the moving reasons for making the foreign agreement? A. That had something to do with it, yes.

Q. I call attention to the minutes of the annual meeting, the general meeting of the manufacturers of gunpowder, held at 44 Cedar Street, New York City, October 28, 1897.

(Mr. Abbott read from the minutes referred to as follows:)

4967 "Mr. Fay made a statement to the meeting concerning a visit made to Europe by himself and Mr. H .M. Barksdale (Mr. Eugene du Pont and Mr. B. Peyton having joined them later) their object being to negotiate with certain manufacturers of explosives, who had purchased land in the United States, and begun the erection of a plant, with the intent of making here detonators, dynamite and black powder. This visit lasted for several months, the negotiations being of a very important character, and at last concluded

4968 in a satisfactory manner.

"On motion of Mr. Haskell, seconded by Mr. Peters, That, after mature deliberation, and consideration of the representations made by Mr. Fay and others regarding the London agreement, we approve as far as we may, of the action taken: the representatives here present of the several companies obligate themselves to use their best endeavors to secure the signature of their companies to the Agreement, assuming their share of the obligations imposed.

"On this motion the roll was called and all of the parties present, or represented, answered in the affirmative, and the motion was declared carried.

"On motion of Mr. Peters, seconded by Mr. Coleman, That in the opinion of the meeting, Mr. Fay and Mr. Barksdale are justly entitled to compensation for valuable services rendered in connection with their mission to Europe, and that the Black Powder interest in the United States (not including the Pacific Coast Manufacturers) hereby obligate themselves to pay $2,000, and recommend that the other interests appropriate $8,000, thus securing a fund of $10,000, to be divided 4970
equally between these gentlemen.

"On this motion the roll was called, and all of the parties present, or represented, voted in favor thereof, and the motion was declared carried."

Q. Do you recall anything in connection with that? A. I recollect that action being taken, yes.

Q. Was the E. I. du Pont de Nemours & Company of Delaware a party to that agreement? (Objection overruled.) A. I believe they were.

Q. Were the Laflin & Rand Company in this suit 4971
a party to the agreement? A. I would say they were.

Q. Was the Eastern Dynamite Company of Wilmington, Delaware? A. Yes.

Q. The Miami Powder Company of Xenia, Ohio? A. Yes.

Q. The American Powder Mills of Boston, Massachusetts? A. Yes.

Q. The Aetna Powder Company of Chicago? A. Yes.

Q. The Austin Powder Company of Cleveland? A. I don't recollect that it was.

Q. The California Powder Works of San Francisco, California? A. Yes, sir.

Q. The Judson Dynamite and Powder Company

of San Francisco? A. I don't recollect whether it was or not.

Q. The Vereinigte-Koln-Rottweiler Pulverfabriken of Cologne. A. Yes.

Q. The Nobel Dynamite Trust Company Limited of London? A. Yes.

Q. Now, will you state, after refreshing your recollection from an examination of paragraph 2 of the document in your hand what portion of that agreement you remember as contained in that para-
4973 graph? (Objection overruled.)

Q. Do you understand now what you may do in answer to the question which I have propounded? A. I think so. I recollect a provision in the agreement to the effect that lists of controlled companies should be exchanged by both parties.

Q. Anything else in that paragraph? A. No.

Q. I would like to have you again examine paragraph 3 of the document and state whether or not after reading it it refreshes your memory so you can state what your recollection is in regard to that
4974 matter. A. I recall that at that time there was a provision for the purchase by the American factories of some detonators. Nothing else in the paragraph do I recall.

Q. Do you recall any condition at that time with reference to the abandonment of the plant which had been started at Jamesburg, New Jersey? (Objection overruled.) A. I recall the plant was abandoned, and while there may have been provisions in that in regard to it I don't recall it.

Q. You recall the reading of the minutes on the subject yesterday, do you not, in which it was stated that the plant was not to be completed? A. I rrecall hearing it, yes.

Q. Do you recall whether there was any understanding between these different parties that that abandonment was to be the result of the agreement?

A. I suppose there must have been such an understanding, but just where it appeared I have no idea.

Q. Now, if you will turn to paragraph 4 of the document in your hand, after reading that state whether it refreshes your recollection as to the contents of the original document so far as relates to the subject matter there. A. I recall the provisions of the 1897 agreement whereby each party agreed not to build plants in the other's territory for the manufacture of black blasting powder.

Q. Take the next paragraph, paragraph No. 5. 4976
Do you recall the subject matter of that paragraph? A. I recall a similar provision regarding smokeless powder, as indicated by section 5.

Q. Now take paragraph 6. Will you examine that and state whether or not it refreshes your recollection of the contents of the original document so far as it relates to the subject matter? A. I am under the impression that the agreement carried a provision that no military smokeless plant should be erected in the other's territory by the other party.

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Q. Do you remember whether there was any provision in there with reference to inquiries which might be submitted by any Government to any of the parties with reference to purchases or prices on powder or other explosives? (Objection sustained.)

Q. I will ask you, Mr. Haskell, whether you have any recollection that there was a provision in that agreement to the effect that any inquiry which was made by any Government or either of the parties to the agreement, that that inquiry was to be referred to the other party before any action was taken upon it, with all of the information contained in the inquiry? Do you recall any such provision as that?

Mr. Katzenbach: I desire to make the same objection.

4978 *Jonathan Haskell—Direct*

The Court: I confess I do not exactly understand the question. In the first place, may he not be asked whether he recalls anything in the agreement relating to Governments. That is a general question—just as to governments?

Q. I will ask you that. Do you recall anything in that respect? A. Yes; I recollect something.

Q. What is your recollection on that? A. My
4979 recollection is that the agreement contained a reciprocal provision whereby if the American factories received an inquiry for European smokeless powder, military powder, it was necessary for them to ask the European factories for the price to be charged, and vice versa.

The Court: That is an illustration of what I have suggested. By merely suggesting the word Government to him he recalls matter pertaining to it.

Mr. Abbott: In this particular case I
4980 think it has been very clearly brought out.

The Court: That method should be first exhausted.

Q. Oh, very well, your Honor. Now, then, were there any other provisions in the agreement that related to any of the governments?

The Court: Any particular government?

Q. (Continuing): Yes; any particular government? A. I recall no other.

Q. Now, come to the question of territory. Can you recall what territory was mentioned in that agreement? A. The only clear recollection I have of the territorial minutes was that the American

factories had in the agreement the geographical territory of the United States, Mexico, Central America, and the islands in the Carribean Sea, and that South America was joint territory for both.

Q. And what was said, if anything, about the other portions of the globe? A. Europe and certain other territory, just what I don't recall, was allotted to the European factories.

Q. Do you remember whether anything was said regarding Canada or the British possessions? A. There was a provision, but what it was, I don't recollect. 4982

Q. Was there anything said about the islands in the West Indies? A. I have already spoken of those islands.

Q. Was anything said about the Spanish possessions? A. Not that I recollect.

Q. Was anything said about Colombia and Honduras? A. There was a reference to it but what it was I have no recollection.

Q. Do you know what the territory which you have mentioned as being territory in which you 4983
were jointly interested was called, what it was denoted in the agreement? A. I don't recollect at the moment.

Q. Do you remember whether there was anything in the agreement concerning "Syndicated Territory?" (Objection overruled.) A. South America may have been called "Syndicated Territory," I do not recollect.

Q. In the territory that you referred to in South America, what were the privileges, if any, that obtained as between the two parties in that territory? A. Both sides sold to the trade in South America.

Q. And as to the other territory which you mentioned, the territory which was awarded to the American companies, what right, if any, did the

4984 European factories have in that territory? A. I think they agreed not to sell in this country.

Q. What rights, if any, did the American factories have in the territory which was awarded to the European factories? A. I presume it was a reciprocal clause that worked both ways. I would like to qualify that, my answer to the other question. I am not at all clear whether that was universal, whether it applied to all classes of goods or not.

4985 Q. Was there any penalty provided in the agreement in case either of the parties should enter the other's territory for any purpose? A. I don't recollect whether there was or not.

Q. Was there any provision in the agreement with reference to the erection of mills or plants in each other's territory? A. I have already testified to that.

Q. I didn't so understand you. I understood your answer applied to selling goods in each other's territory. A. Paragraphs 4, 5 and 6 covered that.

4986 Q. But I do not think I asked you as to this—

The Court: You are still referring to paragraphs.

The Witness: I testified specifically regarding the building of plants of the several kinds in the different territory.

Q. O, very well. I did not so recall the testimony. Will you mind stating again what the facts were, as I do not recall in regard to that particular matter? A. The American factories agreed not to build plants in Europe, and vice versa.

Q. Oh yes. Was there any provision in this agreement with reference to how the affairs of the various parties were to be managed? A. There were reference, but I have no recollection as to the de-

tails.

Q. Do you know whether or not there was any officer that was appointed by the agreement or provided for under the agreement who was to represent either of the parties? A. Yes, I think there was an American chairman and a European chairman.

Q. Do you recall how far the duties of either of those chairmen applied, how far they went, and what they had to do with reference to the affairs of the parties under the agreement? A. I recall 4988
nothing regarding the details of it at all.

Q. Do you know who was the American chairman? A. I think the first American chairman was Mr. Eugene du Pont.

Q. And do you know who succeeded him? A. Mr. T. C. du Pont, I think.

Q. Do you know whether Mr. T. C. du Pont was the chairman at the time when the agreement was cancelled? A. I believe he was, yes.

Q. Do you know who was the foreign chairman? A. I have no recollection at all.

Q. Was there any provision in that agreement 4989
with reference to the basis upon which prices were to be fixed for the products of the various parties? A. I have no recollection at all.

Q. Do you know whether there was any penalty or any provision in the agreement as against either of the other parties in case they violated any of the provisions with reference to prices? A. There may have been; I don't recall the details.

Q. Do you know anything about whether there was a fund which had been established under the terms of that agreement, any kind of a fund? A. I recollect a fund being created by a certain amount being paid into each chairman upon shipments being made to South America, which eventually reached the sum of 12,000 or 14,000 dollars.

Q. Do you remember whether there was any

other fund in connection with it? A. Not that I recall.

Q. Do you know what that fund was called that you have in mind now? (Objection overruled.) A. I have no recollection.

Q. Did you, as president or as an officer or director of the Laflin and Rand Powder Company ever make any payment to the chairman under that European agreement? A. Yes, sir.

4991 Q. Do you recall how much they amounted to? A. I have not the remotest idea—I will ask that that question be read again. I don't understand it exactly. (Question repeated by the Reporter.) Yes, my answer is correct. It did.

Q. But you do not remember the amounts? A. No.

Q. Do you remember how often you made any payments of that character? A. No, I do not.

Q. Do you remember what those payments were for? A. They were under an agreement at that time, a part of this agreement; but I don't recall

4992 the provisions at all, because that part of the agreement is not here.

Q. You were an officer, as you state, of the Equitable Powder Company, and I belive you said you had been for some years, since it came into the Association. Now, it is in evidence here that the Equitable Powder Company paid something like—well, a very large sum of money—into the hands of the Chairman of this Association. Do you know anything about that? A. Nothing other than that they must have paid, because I recollect that they agreed to.

Q. And that same agreement applied to all the American companies that had signed this agreement or had become parties to it? (Objection sustained.)

Q. Do you know how long that agreement was to continue? A. For ten years.

Q. Do you know when it was executed? A. In 1897.

Q. Did it continue until 1907? A. No; it was cancelled in 1906.

Q. Do you know the reason why it was cancelled? (Objection sustained.)

Q. I will ask you, Mr. Haskell, whether at the time the agreement was cancelled there was any consideration paid for the cancellation of the agreement? 4994

Mr. Katzenbach: That is objected to.

The Court: Does not Mr. T. C. du Pont speak of that, is that not covered by the record? If so I do not know that it is necessary to repeat it. (Objection overruled.)

A. I know a very considerable sum of money was paid. Whether it was in the consideration for the cancellation of the agreement or not I don't know what it would be called. 4995

Q. Do you now recall what that sum of money was? A. I do not.

Q. As an officer of the Eastern Dynamite Company did you ever make any payments into the hands of the chairman of the association? A. No. I was president of the Eastern Dynamite Company and the president does not make disbursements.

Q. That may be true, but do you know of any payments that were made by your company? A. Payments must have been made, because they bore a part of the agreement.

Q. Yesterday, Mr. Haskell, I started in to call your attention to the relation of the King Powder Company to the Association and how that relation terminated, and I showed you a contract which was

read to the jury, and then I also showed you another contract which was Plaintiff's Exhibit 1330. That was objected to and then it was withdrawn. Now you stated in reference to that contract that it appeared therefrom that the agreement from the King Powder Company had been cancelled in 1901, and that you were under the impression it was 1906. Now I ask you whether or not there was another concern with which the Association had something to do known as the King Mercantile Com-

4997 pany? A. There was, yes.

Q. Was there an agreement made with the King Mercantile Company of which you had any knowledge? A. I don't recollect any.

Q. What was the King Mercantile Company? A. It was a selling company organized to sell for the King Powder Company some blasting powder and some smokeless.

Q. When was it organized? A. I don't recollect the date.

Q. Do you know about what date it was? A.

4998 No, I cannot place it at all.

Q. Were you an officer of that company? A. I don't recollect whether I was or not.

Q. I show you Government's Exhibit 333 on page 2393 of volume 4 of the petitioner's exhibits in the Government case and ask you to look at it and state whether or not you have any knowledge concerning that document or any other document to which it has similarity? A. I am under the impression that an agreement was made between the du Pont and Laflin and Rand Companies on the one hand and the King Powder Company on the other whereby their product was to be sold.

Q. You mean whereby the King or the Powder Company was to be sold? 9. Yes.

Q. Do you recall whether this agreement that

you have in mind as the one which you have just testified was entered into, was the agreement which was cancelled in 1906? A. That is my recollection.

Q. Do you remember what was paid for the cancellation of that agreement, if anything? A. A large sum of money; I cannot recollect the exact amount.

Q. Was it as much as a hundred thousand dollars? A. It was about that; I don't remember the exact amount.

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Q. And that was paid to the King Powder Company, was it not? A. Yes.

Q. By whom was it paid? A. I don't recollect.

Q. I mean by what companies? A. I don't recollect whether that payment was made entirely by the du Pont Company or whether some other companies participated in it.

Q. The Laflin and Rand Company was a party to the agreement? A. The time of its cancellation was after Laflin and Rand had gone out of active business and if any payment was made it would have been made by the du Pont Powder Company.

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Q. Do you know what the reason was for the cancellation of that agreement? (Objection overruled.) A. We were advised by counsel as to some question as to its legality.

Q. I show you a document and ask you to examine it and state whether or not you know anything about the paper? A. The paper bears my signature as president of the Eastern Dynamite Company.

Q. Do you know the other signatures? A. I know the signature of Mr. Birmingham, president of the California Powder Works, and of Edward G. Lukins, president of the Judson Company, and of Mr. Fay, president of the Aetna Company.

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(The document referred to was offered and received in evidence as Plaintiff's Exhibit 1334 and read to the jury.)

Q. Mr. Haskell, do you know whether that agreement was ever terminated? A. It was terminated, yes.

Q. When was it terminated? A. I don't recollect the date.

5003 Q. Can you recollect about the date? A. I haven't the remotest recollection.

Mr. Katzenbach: What was the date of the agreement, Mr. Abbott?

Mr. Abbott: That particular one was the first day of October, 1898.

(Mr. Abbott read further from the exhibit, memorandum of agreement supplementary to the agreement of October 1st, 1898, relating to Mexican business.)

5004 Q. On the 13th day of October, 1899, then, this agreement was still in force, was it, Mr. Haskell—the original agreement was still in force? A. I have no recollection of the date they cancelled it.

Q. When were you first elected a member of the advisory committee? A. Immediately upon my election as president of the Laflin and Rand Powder Company, in February, 1905, I became a member of the governing committee. Whether it was called the Board of Trade or the Advisory Committee at that time, I do not know.

Q. Were you in pretty regular attendance upon the meetings of the association after you became a member of it? A. Yes.

Q. And upon the meeting of the Advisory Committee after you became a member of that committee? A. Yes.

Q. As a matter of fact, you attended those meetings about as regularly as any one in the association, did you not? A. That is my recollection.

Q. Do you know anything about a document or a series of rules known as the compendium of rules? A. I have a recollection of something of the kind; but nothing regarding the details.

Q. Did you ever make use of it in performing your duties as a member of the Association in any way? A. Well, the only use that could be made of it as a member of the association would be in connection with the consideration of a number of its provisions or something of that kind. 5006

Q. What was the object and purpose of the advisory committee, what were its powers? A. The advisory committee was created before I came into the powder business. I found it there.

Q. I know; but I am asking you now what was its purpose, what were its powers? A. I suppose it was intended to recommend prices to the various members of the association.

Q. Do you know whether it did do that? A. Yes.

Q. Do you know whether it did that at every meeting which it held? A. I don't think it did. 5007

Q. What else did it do, what were its other powers besides that? A. Discussed matters of interest to the trade in general.

Q. And take final action? A. It was not always possible to take final action.

Q. Well, I am asking you whether it did not take final action in any particular case. A. I presume it did; I don't recollect any particular case.

Q. Did it have anything to do with making or authorizing contracts? A. Yes.

Q. Did it have anything to do with making or authorizing special prices? A. It was in its power to do so. Just when it did it and when it did not I don't recollect.

Q. Did it have anything to do with directing or authorizing any action with reference to competition? A. Not excepting the formulation of prices designed to meet competition, to meet competitors.

Q. Was there another committee which operated as a part of the association known as a special committee? A. There was.

Q. What were the powers and duty of the special committee? A. The special committee was created for the purpose of advising the making of special
5009 prices to meet the competition of competitors between the meetings of the advisory committee, which were held semi-occasionally.

Q. How often were the general meetings held? A. I don't recollect.

Q. How often were the advisory committee meetings held? A. My recollection is they were held monthly.

Q. And the special committee meetings might be held at any time? A. Yes, sir.

Q. Do you know about how often they were held?
5010 A. The work of the special committee was largely carried on by correspondence.

Q. Was the special committee a large body or a small one? A. My recollection is it consisted of two members.

Q. About how many members did the advisory committee usually consist of? A. When I first became a member of it, there were five members, and later it was increased to seven.

Q. Did you at any time know Mr. Eugene du Pont as a member of the advisory committee? A. Yes.

Q. Did you at any time know Mr. T. C. du Pont as a member of the advisory committee? A. Yes

Q. Or Mr. Pierre S. du Pont? A. No.

Q. Did you at any time know Mr. Moxham as a

member of the committee? A. I don't remember whether he was a member of the advisory committee or not. He may have been.

Q. Do you remember at any time of seeing Mr. Moxham or Pierre S. du Pont present at any of the meetings of the advisory committee? A. Yes.

Q. When was it you saw them present at the meetings? A. Between the spring of 1902 and 1903.

Q. You mean during that period you saw them often? A. I don't remember how often. 5012

Q. But you did see them a number of times at the meetings of the committee during that period? A. Yes, sir.

Q. Do you remember a meeting held some time in December, 1902, at which Mr. Moxham was present, when he made some remarks to the committee? A. I don't remember what meeting it was that the remarks I suppose you refer to were made.

Q. You do know some meeting at which he was present and made an address? A. He made an address almost every time he was present. 5013

Q. He was an active visitor, then; but he was not a member of the committee, you say? A. I don't recall when he became a member of the committee, but I think he was a member after Mr. Colvin's retirement.

Q. Oh, yes. He was active in its affairs. Did the advisory committee keep minutes of its doings, its actions? A. Yes.

Q. Did the special committee keep minutes of its actions? A. Yes.

Q. Did you ever seen any of those minutes? A. Yes.

Q. Mr. Haskell, shortly after the organization of the E. I. du Pont de Nemours Powder Company was there a board established known as the sales

5014 *Jonathan Haskell—Direct*

board? A. My recollection is that the sales board was organized before the organization of the E. I. du Pont de Nemours Powder Company.

Q. How long before? A. I don't remember the exact date, but in the spring of 1903.

Q. What company was it at that time that the sales board was made a part of its organization? A. The sales board was a body organized by me personally for the purpose of caring for the various questions which arose in regard to the sales depart-
5015 ments of the various companies then owned by E. I. du Pont & Company of Delaware.

Q. Was that organization carried on after the Powder Company came into existence? A. It is still in existence.

Q. Well, it was carried on immediately after the Powder Company came into existence, was it? A. Yes, sir.

Q. And under your direction as before? A. Until I relinquished the care of the sales department.

Q. And when was that? A. In June, 1907.

5016 Q. What did you do in organizing that board; did you issue some orders in writing? A. I presume I did. I don't recollect at the moment.

Q. Will you state briefly how it was organized, who were the members of it? A. The sales department as then organized by me consisted of a director of sales—I would like to correct that, because the director of sales was not called such until after the organization of the Powder Company and I became vice-president. The organization consisted of various assistant directors of sales for the various districts of this country—the Eastern District, the Western District, the Central District, and so forth —and a sales auditor. They, together with my first assistant, Mr. Patterson, constituted the sales board.

Q. How often did the sales board meet? A. I don't recollect exactly, but I am under the impression that it met three times a week.

Q. And it was subject to call, was it not, and met sometimes oftener than that? A. There were regular days for its meeting, but if occasion arose it was called together oftener.

Q. Did you yourself retain any official or superior authority over the action of that board? A. I always presided over the board when there and in case of decisions regarding prices, if I was not 5018 there, the advice was sent to me in New York, and unless countermanded was promulgated the next day.

Q. You had the power of reversal or veto of any action of that board, had you not? A. Yes.

Q. And you kept very close watch over its affairs? A. Yes.

Q. And directed its movements. During the time that this agreement between the American and—well, what I will call for convenience the Fay companies—and the Powder Company, was in existence in 1904, which was continued for nine months, 5019 was there any communication in any way between the sales board and those companies with reference to prices? A. No.

Q. None whatever? A. Not that I can recollect.

Q. What was the general nature and purpose of the agreement that I have just referred to?

Mr. Katzenbach: That is objected to—the general nature and purpose. The agreement, it seems to me, would speak for itself.

Mr. Abbott: I am speaking of the agreement that was made between the Fay companies—the American, Miami and Aetna companies—and the Powder Company,

which carried the organization down to 1905.

The Court: It is in evidence?

Mr. Abbott: No, those agreements are not in evidence. That has only been stated by the witness.

Mr. Katzenbach: I thought you produced them here. Did you not?

Mr. Abbott: If you Honor please, so that your Honor may get this straight, as I understand it, this witness has testified that after the association was dissolved in 1904 there was an agreement made between the Powder Company and the American, Miami and Aetna companies, to continue their cooperation for a period of a year.

The Court: Nine months, I think.

Mr. Katzenbach: Nine months.

Mr. Abbott (continuing): Which was limited afterwards to nine months. It was cancelled in nine months. Now that is the agreement which the only evidence we have of is the testimony of the witness. There is no written agreement to that effect that I have any knowledge of. Is that correct?

The Witness: I don't think your statement is quite correct as to my testimony?

Q. Then I would like to have you state it as it should be. A. I do not wish to convey the impression that the so-called Sullivan agreement, which was the means of a trade adjustment between the Fay interests—the American, Miami and Aetna—and the Powder Company, was in any sense a perpetuation of the old trade agreement for the fixing of prices and so forth, because it contemplated nothing and effected nothing. It was simply an adjustment. Prices were no part of it.

Q. Then were the terms of agreement or the adjustment of the agreement made then? Just state them, please. A. I don't remember the exact terms; I don't remember the proportions of trade or the penalties that we paid for oversales; but there was an adjustment arrangement as between the companies.

Q. I showed you yesterday a document or memorandum which appeared to be something in relation to the Sullivan Agreement, which you did not recognize as being that agreement. Do you recall 5024
the paper? A. I recall being shown several detached sheets.

Q. I will show you the same document again, the same being numbered 201 as an exhibit given in the deposition of Mr. Addison G. Fay, and please state whether or not now, on looking at that document you can refresh your memory as to the terms of the agreement which was in existence between the Powder Company and the Fay companies from 1903 for a period of nine months. A. It does not recall to my memory anything further than I have 5025
already stated.

Q. Then I will have you state definitely, in view of the fact that you have interpreted the agreement, what are the terms of that agreement? A. I have already stated the thing as clearly as I can.

Q. No; you stated your interpretation of it. I would like you now to state just what the agreement was.

The Court (To the Witness): Pertaining simply to allotments?

A. That is all.

Q. What was it that was allotted by that agreement? A. Trade in explosives.

Q. How was the allotment made up? A. On certain proportions; I don't recollect the proportions.

Q. Were the proportions the same as those that had prevailed while those companies were members of the Association? A. I don't recollect at all.

Q. Do you know whether they were similar to them? I mean by that, not exactly in the same ratio, but the general proportion maintained? A. I don't recollect anything in regard to the proportion of the trade.

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Q. But there was an allotment of trade? A. Certainly.

Q. Can you state what portion of the trade, if any, as to territory, was allotted to those companies? A. I have no recollection regarding the territorial limitation.

Q. Was there any penalty fixed for violation of the terms of the agreement by either party? A. The only penalty was the payment for oversales in case there were oversales. Each party paid its proportion.

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Q. Was it the same general penalty provision that applied to the members of the association? A. I don't recollect the terms.

Q. Well, would you say it was not? A. I don't know at all.

Q. You don't know. Now, as a matter of fact, do you at this time recall any of the terms of the agreement definitely? A. I have no recollection of the details of the agreement at all.

Q. Then will you state why you interpret the agreement to be different from the arrangement which preceded it while the same companies were members of the association? In what way was it different? A. It was different in this way: That all the arrangements which preceded it contem-

plated, affected a certain government as to prices.

A. After June 30, 1904, there was no exchange of information, as near as I can recollect, or any attempt to govern the prices that the Fay companies should make or that we should make.

Q. But there was an attempt, was there, to distribute and allot and apportion the business in explosives between these companies and the companies which you represented. Is that correct? A. It was only an allotment in so far as it required 5030
a payment from one to the other in case either exceeded a certain proportion of the trade which was agreed upon.

Q. But why should that proportion be required with that penalty unless there was some specific trade that was set off to one party or another; how could you determine it? A. It was simply based upon certain proportions of business to be done by one or the other in toto.

Q. Will you state what was the reason, if any, why you made any difference between that arrangement that you then entered into with the Fay Com- 5031
panies as to prices and the arrangement which had formerly prevailed between the members of the Association? (Objection overruled.) A. My recollection is that at that time it was deemed entirely unnecessary and perhaps unwise to have control exercised by either of the other sales as regards prices.

Q. Why was it unwise? A. At that time I had no general instructions forbidding consultation with other competitors as regards prices. I didn't care to do anything different in this case.

Q. Why did you forbid consultation regarding those matters at that time? (Objection overruled.) A. Because the Association has been dissolved and I thought it was very much better that the company

should make its own prices and let others make their prices.

Q. Better for what reason? A. More to the interest of the company.

Q. Well, was there any other reason? A. Not that I recollect.

Q. Now, as a matter of fact, was not the reason you did not want to make that arrangement regarding prices because you had been advised that your association was unlawful under the Sherman
5033 Act? A. I don't think so.

Q. Have you not so stated? A. I stated with regard to some agreement, regarding the cancellation of some agreement at a later date. At that time I don't think we had been so advised.

Q. What agreement was this that you were advised at a later date was contrary to the terms of the Sherman Act? A. I don't know, I have been shown so many.

Q. You stated that in reference to some agreement you had been so advised and I would like to
5034 know what agreement you had in your mind.

Mr. Katzenbach: He stated it this morning, that it was in reference to the King Company——

The Court: Let the witness testify.

Mr. Katzenbach: But I was just stating that, to which he testified——

The Court: You have the objections and I have ruled.

A. I recall now, from what Mr. Katzenbach said, that it was in reference to the King Company.

The Court: Of course. That is the reason the Court stopped counsel. We want the

witnesses' testimony. You have a right to examine him, Mr. Katzenbach, upon cross examination.

Mr. Katzenbach: I do not profess to know a thousandth part of the powder business that this witness knows, but I did remember he had testified that.

The Court: Yes, he knows more about it than you do.

Mr. Katzenbach: Certainly he does. And I do not profess to have any special knowledge of it, except that I remembered about his testimony in that respect. 5036

The Court: Proceed.

Q. I will ask you to state whether it is not a fact that the reason you made this arrangement in the form you have testified you did make it, with the Aetna Powder Company and the Miami Powder Company and the American Powder Company, was for the purpose of avoiding what you had been advised was an unlawful act? A. My recollection is not distinct as to the time when we sought and obtained advice, but I should answer, as far as I can see, in the negative; I believe that this action took place before the general discussion of the Sherman Act and our relation to it. 5037

Q. Have you ever testified to the effect that you did take that step on account of the action being regarded as unlawful under the Sherman Act? A. I may have done so, but I do not recollect it.

Q. Do you know anything about the origin of what was known as the contract system? A. I cannot speak of its origin at any particular time—or did it have an origin? As I understand it, it has always existed.

Q. Then do you know anything about its origin so far as the trade association was concerned? A.

Contracts were being made, as I recollect it, when I became president of the Laflin and Rand Powder Company in 1895.

Q. Do you know anything about when the first contract was authorized to be made by the Association? A. No.

Q. Do you know anything about when the matter was first brought up in the Association? A. No.

5039 Q. Did you have anything to do with it? A. I imagine it was brought up while I was in knickerbockers.

Q. I am asking you now whether you know anything about what was done in the Association. Was the Association established when you were in knickerbockers? A. Long before. In 1871, as I recollect it.

Q. And you know that fact? A. I know from having read about it—

Q. There was an Association in 1871 that you had heard of from some other people? A. I am

5040 under the impression that there is testimony in the Government case to that effect. That is the first thing I knew of it.

Mr. Abbott: We have been trying to get it in here but have not been able to do so. Thank you, Mr. Haskell.

Mr. Katzenbach: You have it in now.

Q. I will proceed to the reading of these minutes. "Government's Exhibit No. 117-N.

"At a general meeting of manufacturers of gunpowder, held at the Park Avenue Hotel, New York City, on the 2nd day of December, 1896:"—

And then follows a list of those present, among whom was Mr. J. A. Haskell. It is not necessary to read all those names.

(Reading further:)

"On motion duly made and seconded, Colonel H. A. du Pont was made Chairman of this meeting.

"The Minutes of the last General Meeting, held October 15th, 1896, were read, and approved after amendment substituting Tallapoosa Powder Mills for 'Southern Powder Company Interest.'

"Referring to the Minutes of the last General Meeting and to a motion made and Carried thereat, That a Committee be appointed to confer with a representative of a certain jobbing house in Hardware 5042
having contract for Sporting Powder with the Equitable Powder Manufacturing Company, with a view to determine a method for securing conformity to prices and terms on the goods purchased by said Jobbing House from the Equitable Company, and to the appointment by the Chair of Messrs. Haskell, Colvin and Olin as said Committee; Mr. Haskell of the Committee made verbal report on the matter."

What jobbing house was that, Mr. Haskell? A. I think it was the Simmons Hardware Company of St. Louis.

5043

Q. I will continue with these minutes:

(Reading, page 1041:) "Referring also, to the Minutes of said Meeting of October 15th, 1896, and to a motion then made and Carried appointing a Committee to confer with certain other manufacturers, competitors in the business, for the purpose of making, if possible, some arrangement to restrain their recent action in their reduction of prices, the Chair having then appointed Messrs. Haskell, Brown and Lent as such Committee: Mr. Haskell of that Committee reported verbally, stating what had been done in this matter and that an informal agreement having been concluded with said parties, or two of them, a definite form of agreement would be prepared and a copy of the same

5044 should be sent to each of the parties here represented."

Q. Who were those other competitors in business at that time? A. At that time—I don't recall.

Q. (Reading further from minutes, page 1041:)

"On motion of Mr. Peters seconded by Mr. Colvin, That the proposed Agreement in this matter as stated by Mr. Haskell, is ratified, approved and confirmed as to its relation to A. Kirk & Son."

5045 Q. Do you recall anything now in connection with that matter? A. I have no recollection outside of the reading of the paper.

Q. I read further from the minutes:

"On calling the roll, all of the parties present or represented (excepting the Chattanooga Powder Company which declined to vote), voted in favor of the same, and the Chairman announced the motion Carried.

"After discussion, on motion of Mr. Coleman seconded by Mr. Eugene du Pont, That a Committee of five be appointed by the Chair to present to this

5046 Meeting a scheme of prices of Blasting Powder, advancing said prices in certain Districts, Carried. The Chair named as such Committee, Messrs. R. T. Coleman, Eugene du Pont, Fay, Peters and Haskell."

Q. Do you remember anything about that matter? A. No.

Q. I read further:

"The Committee, after some time spent in considering this matter, made report through Mr. Coleman its Chairman, as follows:—Second District, $1.25 except Maryland; Maryland $1.35. Third District, Michigan and Wisconsin South of 44th parallel of latitude, Kentucky except Ohio River towns and Counties and Pulaski, Wayne, Laurel, Whitley, Harlan, Bell and Knox in Kentucky; West Virginia South of Main Line of Bal-

timore & Ohio Railroad and including the Counties of Russell, Buchanan, Dickinson, Allegheny, Wise, Tazewell, Scott and Lee in the State of Virginia, $1.30; all other territory within the Third District $1.35. Fourth District, $1.40 except the State of Florida which State shall be $1.65. Fifth District, $1.50.

"On motion of Mr. Peters seconded by Mr. Haskell, That the report of Mr. Coleman on this matter and that the Resolution of Mr. Fay which had been offered and Carried, reading as follows:— Re- 5048
solved, That these prices shall be put in effect by a telegram from the Secretary to the Home Office of each party here represented, by night message this day, with instructions that this list of prices is to be in effect by telegram to every Agent, from and including Thursday, December 3rd, and that information of change in prices shall not be communicated by any person here present, directly or indirectly; and the prices shall prevail until the Advisory Committee shall, under its powers, modify the same—be approved and made obligatory on all
the parties. On this motion the roll was called, and 5049
all of the parties presented or represented, voted in favor thereof.

"After discussion, on motion of Mr. Fay seconded by Mr. Haskell, That the Memorandum of Understanding, now existing, be amended so that the statements of sales to be made to the Secretary for each period of three months, shall be rendered to him within thirty days from the expiration of all of said periods, and payments by the parties who have oversold shall be made within thirty days thereafter. On this motion the roll was called, and all of the parties present or represented voted in favor thereof.

"Considering the matter of having some understanding with E. B. McAbee, on motion of Mr.

Coleman seconded by Mr. Eugene du Pont, That the Ohio Powder Company is hereby requested to negotiate with E. B. McAbee with the view of making him Agent for the sale of Blasting Powder, whereby he (McAbee) will sell only Powder manufactured by the Ohio Powder Company, the same was Carried.

"On motion of Mr. Haskell seconded by Mr. Eugene du Pont, That permission is hereby given to take order for delivery after January 1st, 1897, but no contracts shall hereafter be made for a period exceeding one year, the same was Carried.

"Discussing the question of contracts for future delivery of Blasting Powder and of discounts to large buyers, on motion of Mr. Peters duly seconded, this matter was referred to the Advisory Committee with power.

"On motion of Mr. Peters seconded by Mr. Coleman, That this Meeting do now adjourn *sine die*, Carried.

"Adjourned.

"(Signed) Edward Greene,
"Secretary."

Q. I will read the minutes of the meeting of June 10, 1897. Among those present was Mr. J. A. Haskell of the Laflin and Rand Company. I need not read all those present. You represented the Laflin and Rand Powder Company, the Schaghticoke Powder Company and the Lake Superior Powder Company. I will omit some of the immaterial matters.

(Reading from minutes:)

"Mr. Haskell, for the Committee informally appointed by the Advisory Committee May 27th, 1897, presented a report in the form of a Resolution.

"On motion of Mr. G. M. Peters, seconded by Mr.

Haskell, That the report be received and considered paragraph by paragraph, Carried.

"The report was considered, revised and amended, and Mr. G. M. Peters moved, seconded by Mr. Eugene du Pont, That it be adopted as finally read.

"The ayes and noes were called and all of the parties present or represented voted in favor of the Resolution which was declared Carried unanimously, as follows:

"Resolved, That the following course of pro- 5054
cedure is adopted, and the Advisory Committee authorized to carry out its provisions:

"After presenting full data to the Advisory Committee, any principal may be authorized by said Committee to make confidential contracts in specific cases, it being understood that, until such authorization be given, no customer or employee shall be in any manner communicated with by any principal or by his representative, concerning a contract at less than list prices, and that a copy of every contract entered into shall be immediately filed with the Secretary of the Advisory Committee. 5055

"No contract shall be made for less than two or more than five years.

"Within the above limits of time, the prices on contracts authorized shall not be less than those indicated in the following clause:

"All Powder shall be billed at the price fixed at time of shipment for the territory in which delivery is made; deduction, however, to be made by customer in remitting, from prices prevailing at the date of this Act as follows:

"15 cents per keg in case of buyer who shall have purchased 10,000 kegs per year, or more;

"10 cents per keg in case of 5,000 or more per year;

"5 cents per keg in case of 2,400 kegs per year, or more.

"And provided further, any principal may guarantee contract customer against decline in price of Powder by himself under similar conditions.

"Futhermore, it is to be specified in contract that in case of advance of price of Nitrate of Soda above 1.80, contract price is to be advanced 1 cent per keg for each 5 cents per 100 pounds advance in Nitrate of Soda, during the time that Nitrate of
5057 Soda remains above 1.80.

"The Authorization to sell below full schedule prices to be made to one principal only, unless upon full consideration it appears that more than one concern has sold any considerable portion of the business, or for other good and valid reasons.

"No contract shall be made unless the mines or work upon which the Powder is to be used is specified and enumerated in the contract, the intention being that Powder contracted for is intended for the buyer's own consumption and not for sale excepting to his miners or employees. Provision can,
5058 however, be made for furnishing such additional mines as purchaser may acquire during life of the contract.

"It is understood that all contracts shall provide that the party supplying the Powder shall have the right to furnish any good, merchantable Powder in lieu of his own brand.

"No contracts shall be made at less than full carload prices or obligation entered into to furnish Powder at less than schedule, by any employee; that is to say, such contract can only be signed by proper authority at the general office of seller.

"In extraordinary and exceptional cases, the Advisory Committee shall have power to authorize contracts on terms or at prices different from the foregoing.

5059

"Mr. G. M. Peters moved the following:

"Resolved, That in any given application for contract at reduced rates, each principal shall be requested to furnish the Advisory Committee a statement of Powder sold the party with whom it is proposed to make contract, for a period of two years previous to May 1st, 1897, and to furnish such other data as any principal may desire to submit bearing on the question.

"The motion was seconded by Mr. Coleman; the ayes and noes were called; all of the parties present or represented voted in favor thereof, and the motion was declared Carried unanimously. 5060

"On motion of Mr. Haskell seconded by Mr. G. M. Peters, That at the adjourned meeting of the Advisory Committee, each principal shall come prepared with a list of those carload customers, in which he is interested, showing sales by months for two years ending May 1st, 1897, to which he can refer if necessary, Carried unanimously."

Now, Mr. Haskell, do you remember that action taken by the Association while you were a member of it? A. I remember an action taken to resume the making of contracts, yes. 5061

Q. You say that they "resumed" making contracts. Will you state when there was any action had before that in which the Association made contracts?

Mr. Katzenbach: I object to that question —"In which the association made contracts."

The Court: Authorized contracts.

Mr. Abbott: Well, the witness said "resumed." I will take his statement for it.

The Court: Authorized the making of contracts.

Mr. Abbott: Yes, put that in the question, "authorized" the making of contracts.

A. I cannot state regarding the minutes of the association. My only knowledge is derived from the first experience I had coming into the high explosive business and being confronted with the necessity of making contracts for the period of the work, the first notable case was in connection with the Chicago Drainage Canal, where it was necessary to sell on a long term—the work was supposed to last four or five years—powder at a definite price, and I immediately took up with the black
5063 powder manufacturers the matter of getting black powder to supply that trade.

Mr. McCarter: What year was that?
The Witness: That was in 1892.

Q. Do you know of any action that was had by the Association as early as 1892 with regard to making contracts? A. I know nothing regarding the details of the action of the association prior to the time I became a member of it in 1895.

Q. So when you used the word "resumed," you
5064 had in mind, did you, that at this time the association began making contracts, not that it resumed making contracts but that it began making contracts, contracts theretofore having been made by others, who were dealing in explosives. Is not that what you have in mind? A. On the contrary, I made contracts as president of the Laflin and Rand Powder Company. I cannot recall any details at the moment, but it has always been the method of doing business—to make contracts.

Q. That is an answer to my question, but it does not answer this point: Were the contracts which were made by the Laflin and Rand Powder while you were president of that company before this date authorized to be made by the association? A.

They were not; because, as I have before testified, in 1892—this I learn by hearsay, and of course—

Q. What I want to find out now is definitely, so far as you know, whether there was an earlier date at which the association began authorizing specific contracts to be made. A. I started to explain that at the time I assumed the presidency of the Laflin and Rand Company each associate had authority to make any prices it chose. So it was not necessary to get any authority.

Q. What I want to get at is this: With that 5066
authority, given you by the association— A. It had been given the Laflin & Rand Company before I assumed the presidency.

Q. Will you just answer whether that authority was given by the association? A. It was.

Q. Very well. Do you remember whether there was a time shortly after you became a member of the Association when the making of contracts was entirely suspended by the members of the Association, both individually and as members of the Association? A. Yes.

Q. Now will you state when that time was? A. 5067
At the time that the prices and terms were established, immediately after the making of the 1896 agreement.

Q. Yes. Now, what was the reason that you suspended the making of the contracts at that time? A. There was a very serious difference of opinion as to whether those contracts should be made. I always opposed its discontinuance; although there were practical difficulties in the way of making any at that time. All contracts made for powder in the United States were made payable in currency, and at that time the silver agitation was at its height. Mr. Bryan was before us as a possible candidate and we did not like the idea of making long-term contracts payable in United States legal tender

when we might have to buy nitrate of soda, paying for it in gold on its importation from Chile. Consequently, notwithstanding our customers objected very seriously to being confined to short term agreements, we discontinued the making of contracts, mainly on that account.

Q. Yes. Now, then, you did discontinue at that time. That was in what year? A. 1896

Q. Between 1896, at this time when you suspended this method of making contracts, and June
5069 10th, 1897, was there anything done by your association in making contracts of this character, authorizing them? A. I don't recollect whether there was or not.

Q. Is it not a fact, then, that it was on June 10th, 1897, when you entered upon a general plan authorizing the various members of your Association to make contracts in accordance with the terms of this resolution which has just been read to you? A. I have no recollection of the exact date. It was some time in 1897.

5070 Q. Well, do you recall the resolution? A. I recall the resumption of making contracts.

Q. Do you recall the resolution as read to you? A. I don't recall all of it, no.

Q. Do you recall any part of it? A. I recall in general terms the plan that was adopted.

Q. Is it not a fact that the terms and conditions set forth in that resolution are practically the same as the terms and conditions set forth in all of the contracts which have been made since that date by the members of the Association? A. I don't think so.

Q. In what way would it be different, can you state? A. I don't know how the associates are making contracts now.

Q. Well, I am speaking, if you will understand me, I want to carry it down to as late as 1908——

A. Of course I have no knowledge of the terms of contracts of competitors.

Q. I hold in my hand a large bunch of contracts which have been produced under subpœna duces tecum from the files of the E. I. du Pont de Nemours Powder Company. Do you know anything about the contracts that are in the possession of and have been authorized by the E. I. du Pont de Nemours Powder Company? A. I know nothing except that contracts have been authorized. 5072

Q. Have you ever examined any of those contracts at all to know what their contents were? A. I may have done so, although I don't recollect having done so.

Q. Do you know as a matter of fact, without going into any unnecessary details on that point, that the general terms and conditions set forth in this resolution have been carried out with some variations in one contract and some variation in another, but that these terms and conditions have been practically carried out down to the time at least when you left the active control of the sales board in 5073 1907? A. I cannot recall the terms of the contract at all.

Q. Very well. As a member of the advisory committee, you from time to time authorized contracts to be made, did you not? A. Yes.

Q. And you authorized those contracts to be made upon information which was supplied to you by various members of the association, did you not? A. As a member of the special committee, yes.

Q. Yes. And as a member of the special committee. Now, did the various members of the association, from time to time, make such contracts as you had authorized them to make? A. I don't know whether they did or not.

Q. Do you not know as a matter of fact that they

made such contracts and returned copies of those contracts to the association? A. I know that there was a provision made that they should return contracts, but I never saw any of the contracts so returned.

Q. You did not follow them up to see whether or not they were returned? A. No.

Q. Was the E. I. du Pont de Nemours & Company one of the companies that the E. I. du Pont de Nemours Company was organized to take over?

5075 A. Yes.

Q. And the Sycamore Powder Mills? A. Yes.

Q. And the Hazard Powder Company? A. Yes.

Q. And the Laflin & Rand Powder Company? A. Yes.

Q. And the Schaghticoke Powder Company? A. Yes.

Q. And the Oriental Powder Mills? A. Yes.

Q. And the American Powder Mills? A. No.

Q. And the Austin Powder Company? A. No.

Q. And the Miami Powder Company? A. No.

5076 Q. And the King Powder Company? A. No.

Q. And the Ohio Powder Company? A. Yes.

Q. And the Marcellus Powder Company? A. Yes.

Q. And the Lake Superior Powder Company? A. Yes.

Q. And the Chattanooga Powder Company? A. Yes.

Q. And the Equitable Powder Company? A. No.

Q. The Southern Powder Company? A. The Southern Powder Company had been dissolved some years before.

Q. How dissolved and by whom? A. My recollection is that the works of the Southern Powder Company were purchased and the companies dissolved almost immediately thereafter.

Q. Purchased by whom? A. By the companies associated at the time in the black powder business.

Q. I would like to know what you mean when you say the "associated companies at the time." I want to get this straight this time, Mr. Haskell. A. Certain companies met together periodically, appointed a standing committee, an Advisory Committee, I should say, and co-operated for their mutual benefit in the black powder business.

Q. Is that the association that was organized in 1896? A. Certain companies were associated together under the 1896 agreement. Some of them had been in under an agreement before that. 5078

Q. I am asking you now whether the companies that took over this Southern Powder Company were associated together under the 1896 agreement? A. They did not take it over as a body. Each of these concerns, according to my recollection, purchased some of the stock of the Southern Powder Company, and my recollection is that it was almost immediately dissolved.

Q. Yes, and went out of business? A. It had gone out of business before. 5079

Q. Very well. All of the property and assets of that company had been absorbed by one or the other of these companies that was in this association, then. Is that right? A. Yes, they and all the plant. There was not any business.

Q. Very well. Then there was no Southern Powder Company in existence at the time of the organization of the E. I. du Pont de Nemours Powder Company? A. That is my recollection.

Q. Now, the Phoenix Powder Manufacturing Company? A. Yes.

Q. The California Powder Works? A. No.

Q. Did you not take that over subsequently? A. That is my recollection.

Q. Well, it was organized, was it not, for the pur-

pose of taking over that company along with others?

The Court: That company?

Mr. Abbott: Yes; the California Powder Works.

Mr. Katzenbach: That is to say, the E. I. du Pont de Nemours Powder Company was organized for the purpose of taking over the California Powder Works; is that the ob-

5081 ject of the question?

Mr. Abbott: I said that among others.

The Court: What is the answer?

A. That is not my recollection.

Q. Did it acquire it very shortly afterwards? A. It owned and had owned for a great many years a large minority interest, and it did acquire certain other shares which gave it a majority interest.

Q. Very shortly afterwards? A. Yes.

Q. California Investment Company. That was a company organized primarily, was it not, to ac-

5082 quire the California Powder Works? A. It was not.

Q. It had not anything to do with it at all? A. Nothing.

Q. Were you an officer of that company? A. I do not think so.

Q. How do you know, then, what it had to do in that matter? A. I know that it did not have to do the thing you asked me.

Q. How do you know, if you were not an officer? A. Because I know what it was organized for.

Q. How do you know it? I am asking you that. A. Well, it was organized for the E. I. du Pont de Nemours Powder Company, of which I was an officer at the time.

Q. You knew, then, all about its business and

affairs by reason of the fact that you were an officer of the Powder Company? A. Yes.

Q. And it was organized, was it not, before the E. I. du Pont de Nemours Powder Company was organized? A. I don't think so, but I don't recollect the exact date.

Q. At the time when these various companies, the names of which I have just read to you, and you indicated were taken over by the E. I. du Pont de Nemours Powder Company, all of their properties, and all of any subsidiary companies that they had 5084
or were operating with were acquired and taken over at the same time, were they not? A. If the company took over the controlling stock it must have taken over everything they owned.

Q. Then your answer is yes? A. If I understand the question, as I have answered it.

Q. You were giving a conclusion. I come back now to this other question in regard to these contracts, and I will ask you to state whether all the contracts which had been before entered into, that is, entered into before any of these companies were 5085
taken over and absorbed into the Powder Company, were also taken over by the Powder Company in case such contracts were then in existence and the companies that I may refer to are the following: E. I. du Pont de Nemours & Company, Sycamore Powder Mills, Hazard Powder Company, Laflin & Rand Powder Company, Schaghticoke Powder Company, Oriental Powder Company, Ohio Powder Company, Marcellus Powder Company, Lake Superior Powder Company, Chattanooga Powder Company, Southern Powder Company, Phoenix Powder Company. Now, can you answer that question? A. If the question is whether we caused the companies that were acquired at the time of the formation of the Powder Company to repudiate any contract they had, I would answer in the negative.

Q. Of course, I have not asked you whether they repudiated any contract, Mr. Haskell. I am simply asking you whether they took over such contracts as they found these companies had made and were still in existence at the time they took them over? A. I cannot understand the question, unless it is a question whether we allowed these companies to continue to carry out contracts they then had, and if your question was whether we caused them to abrogate any, my answer is no, we did not

5087 Q. I have not asked you any question covering the abrogation of these contracts. What I want to know is whether you acquired such contracts as these companies had at the time you acquired the companies. That is as plain as if I asked you whether they had any other piece of property which you acquired. A. I don't understand it at all, because we acquired the companies and naturally whatever contracts they had we continued to carry out.

Q. Then your answer is that you did acquire the

5088 contracts they had, if they had any?

Mr. McCarter: I think the question is confusing in that it assumes that because they got the stocks of the company they got the personal property and everything. Of course the contract went in.

The Court: I think the witness has said that.

Mr. Abbott: Very well.

Q. Do you know anything about the time when the Chattanooga Powder Company came into the association? A. They became a party to the 1896 agreement, yes.

Q. Then they came in in 1896, did they? A. Yes, sir.

Q. Do you know anything about when the Phoenix Powder Company came into the association? A. It came in at that time.

Q. The Equitable? A. Yes.

Q. At that time? A. Yes.

Q. Previous to the time when they came into the association had they been disturbing the prices of the association for black blasting powder in the districts where they operated? A. Their injection into the powder business at the time they commenced operations caused the demoralization which 5090
existed for the next few years.

Q. I want to read Government's Exhibit 117-B at page 1009. (Reading): "At a meeting of manufacturers of gunpowder, held at the Park Avenue Hotel, New York, on the 21st day of May, 1896"—— I omit the names of those present except Mr. J. A. Haskell. Among those present was Mr. G. M. Peters, who was he? A. President of the King Powder Company.

Mr. Abbott (reading):

5091

"On motion duly made and seconded, Colonel du Pont was made chairman of this meeting.

"After some discussion, Mr. Fay suggested that a committee be appointed to confer apart with Mr. G. M. Peters respecting the allotment to be made him under the proposed new arrangement of quotas of blasting powder, and the committee was made to be as follows: Mr. Haskell, Mr. Coleman and Mr. Colvin.

"A recess of the meeting was taken to allow this committee to consider and report.

"Later, the committee reported, by Mr. Haskell, that Mr. Peters, on behalf of the King Powder Company agreed, subject to further consideration, between Mr. O. E. Peters and himself, to accept 85,-

000 kegs of blasting powder as its quota, instead of 100,000 kegs as alloted in 1886.

"On motion of Mr. Coleman, seconded by Mr. Riker, that the report of the committee be adopted, the roll was called and all of the parties present or represented, voted in favor thereof.

"On motion of Mr. Haskell, seconded by Mr. Colvin, that the meeting take up the matter of penalty for oversales of blasting powder. Carried.

5093 "Mr. Fay moved that so long as the price of 'B' blasting powder in the second district shall not exceed $1.10 per keg the penalty for oversales shall be 25 cents per keg, and whenever the price shall advance beyond $1.10 the penalty shall be increased by as many cents per keg as the price shall have been advanced.

"Mr. Fay withdrew his motion, and Mr. Brown, seconded by Mr. Riker, moved that the penalty for oversales of blasting powder shall be the difference between 85 cents per keg and the carload price in the second district.

5094 "On this motion of Mr. Peters, seconded by Mr. Haskell, that hereafter settlements for overloads of blasting powder shall be made quarterly on the sworn statements of actual sales for the quarter.

"On this motion the roll was called and all of the parties present or represented, voted in the affirmative.

"On motion of Mr. Haskell, seconded by Mr. Riker, that the Phenix Powder Manufacturing Company be given a quota of 65,000 kegs of blasting powder, and furthermore, that as a matter of equity the Phoenix interest is entitled to the same quota compared with their sales as shall be allotted to the Equitable and Chattanooga Companies; whatever excess over or above the 65,000 kegs there may be ascertained as due them shall

be apportioned to the subscribers to the Phoenix purchase in proportion to their interests."

Q. Now was there at that time a purchase of the property of the Phenix interest by the various companies in the association, Mr. Haskell? A. Certain companies purchased the stock of the Phoenix Company.

Q. And when it was taken in it was given an allotment in accordance with what is stated here; do you recollect that? A. I recollect it was given an allotment; just what I don't recollect. 5096

Q. I will read the rest of these minutes:

"On this motion the roll was called and all of the parties present or represented voted in the affirmative.

"On motion of Mr. Coleman, seconded by Mr. Weightman, that the allotment to the Southern Powder Company for sales of blasting powder shall be 30,000 kegs, and on this motion the roll was called and all of the parties present or represented voted in the affirmative."

Q. Was this the same Southern Powder Company that you say was afterwards dissolved? A. It had been dissolved then or soon after. 5097

Q. Soon after this time? A. Yes.

Q. I read further:

"On motion of Mr. Haskell, seconded by Mr. Turck, that the chair appoint a committee to treat with Mr. Connable (who was near at hand in another room) respecting an allotment of blasting powder for the Chattanooga Powder Company. The chair appointed as such committee Messers. Coleman, Peters and Brown, and the committee retired."

Q. Now what was the idea at that time of treating with Mr. Connable? A. Mr. Connable, together with his associates, owned 49 per cent, or there-

5098 abouts, of the Chattanooga Powder Company. Having a large individual interest, he naturally had to be treated with to establish the percentage of business that he was entitled to do under the new agreement.

Q. That was done, was. You finally made the arrangement with him? A. Yes.

Q. And he was given an allotment? A. Yes.

Q. I believe you said you were an officer and president at one time of the Indiana Powder Com-
5099 pany? A. Yes.

Q. When did you become president of the Indiana Powder Company? A. I don't remember the date.

Q. Can you state about when it was? Let me ask you this first, perhaps it will assist you: Were you president at the time when it was organized? A. No.

Q. How long after it was organized did you become president? A. My recollection is I became president after it was purchased by the du Pont, Laflin and Rand and other companies.
5100

Q. That was in what year? A. I don't remember the year.

Q. Did the Indiana Powder Company at any time have anything to do with regard to disrupting or affecting the arrangements between the association with regard to the sale of black blasting powder? A. It took more or less of the business of the association, of certain of the associates.

Q. In other words it was a competitor for the trade? A. Yes.

Q. I will now read from Exhibit No. 122-b, found at page 1156 of this volume:

"Meeting of March 22nd, 1898.

"Upon application the committee recommended the price to be $1.50 per keg delivered, for blasting

powder, to contractors on the Washington County Railroad, in Maine.

"The committee authorized a rebate, not to exceed 10c. per keg, upon powder sold to granite companies, upon Cape Ann, when they shall transport the powder so sold by their own boats, from Boston, or from any other New England port.

"The matter of the competition of the Indiana Powder Company was considered and the subject referred to the next General Meeting.

"Also the question was deferred to that meeting 5102
concerning the competition in the Pittsburgh District, Pennsylvania, by the Cressona Powder Mills.

"The secretary was asked to call the attention to each of the parties to the exact terms of the rule relating to discount to City Trade, asking all of them to conform thereto.

"The matter of prices for Powder for Export Trade was considered and postponed till the next General Meeting."

The rest of the matter I will pass for the present. I read now on page 1175. This is a general meeting 5103
of the Association held on the 8th of October, 1898. Among others present was Mr. J. A. Haskell. After some reference to the election of officers and various members of the committee, these minutes read as follows:

"At the General meeting held April 21st, 1898, the Advisory Committee was asked to fix the price on powder to be exported to the Republic of Mexico.

"Colonel du Pont at this time, reported for the Advisory Committee, as its Chairman, that prices for powder delivered in the Republic of Mexico had been fixed, and that the Secretary had advised all of the parties of such prices.

"At the meeting of the Advisory Committee, held September 22nd, 1898, the question was presented

of their reduction of the discount to City Trade, from 10% to 5% at St. Louis, Memphis and New Orleans, and after some discussion, the matter was referred to the next General meeting.

"There was therefore this day some further discussion of the matter, and

"On motion of Mr. Peters, seconded by Mr. Coleman, That this subject be referred back to the Advisory Committee, carried unanimously.

"A statement was made to the meeting setting
5105 forth the conditions of the contract with Messrs. du Pont & Company and the Laflin & Rand Powder Company had made with the Belmont Powder Works, and its proprietor, which resulted in a pecuniary burden resting upon the two concerns first named, and which it was suggested should not be borne by them entirely, inasmuch as said contract had been made for the general good.

"After considerable discussion and a statement of the amount, approximately, of this pecuniary burden;

5106 "On motion of Mr. Haskell, seconded by Mr. Fay, That one-half of the burden of expense incurred in this contract be borne by the parties here represented.

"On this motion the roll was called, and all of the paties present or represented, voted in favor thereof, excepting The King Powder Company; Mr. O. E. Peters declaring that he would not vote or commit his Company to the payment of any sum of money."

Q. What about that Belmont Powder Works matter; do you remember that? A. I remember the Belmont Powder Works was the property of John B. Griswold, and the contract was made by the Laflin and Rand Powder Company and du Pont Companies to buy its output, to resell it.

Q. And that contract imposed a burden upon

the du Pont Company and Laflin and Rand Company which was afterwards shared by the associates. Is that correct? A. That is my recollection. I don't know whether it was afterwards shared. It appears from that record it was not.

Q. I didn't catch that. A. It appears from the record you read that the King Powder Company declined to participate.

Q. The King declined to vote on that. Mr. Peters was present at this meeting representing the King Powder Company. 5108

Mr. Katzenbach: It went a little further. He declined to vote.

Mr. Abbott: Did it go further than that?

Mr. Katzenbach: Yes.

By Mr. Abbott:

Q. I will read that again.

(Mr. Abbott repeated the last part read and continued the reading of the minutes referred to as follows): 5109

"Upon presentation of the matter of the purchase of the Globe Powder Company, by Messrs. du Pont & Company and the Laflin and Rand Powder Company at a cost of $30,000.

"On motion of Mr. Coleman, seconded by Mr. Brown, That Messrs. du Pont & Company and the Laflin & Rand Powder Company be reimbursed in the sum paid by them, by the parties here represented, for the purchase of the Globe Powder Company.

"On this motion the roll was called, and all of the parties present or represented, voted in favor thereof, excepting The King Powder Company; Mr. O. E. Peters declaring that he would not vote

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5110 *Jonathan Haskell—Direct*

or commit his Company to the payment of any sum of money."

Q. Do you remember the Globe Powder Company, Mr. Haskell? A. I remember the Globe Powder Works were purchased.

Q. What was the purpose of purchasing those works? A. I don't recall at this time. It was a very small plant in western Pennsylvania.

Q. And the expense of that purchase was shared by the Association? A. Apparently not, because
5111 the King Company declined to pay.

Q. All except the King? A. I don't know how it was eventually taken care of. I imagine it was.

Q. I read further:

"Considering the question of making some arrangement with the Indiana Powder Company, which may in some measure restrict its competition in the future:

"At the General meeting held April 21st, 1898, this subject was committed to the Advisory Committee, with power to act.

5112 "On April 22nd, the Advisory Committee appointed two persons, as a Committee, representing it, to confer with some of the members of the Indiana Powder Company, and said Committee of two now made a verbal report of progress, which was considered.

"On motion of Mr. Fay, seconded by Mr. Haskell, That the Committee heretofore appointed to deal with the Indiana Powder Company be authorized to act in this matter, with power in full degree, and we bind ourselves to abide by the result.

"On this motion the roll was called and all of the parties present or represented, voted in favor thereof.

"The King Powder Company having made application to the Advisory Committee for permission to contract with the Texas and Pacific Coal

Company, and the Committee having referred this application to this meeting:

"There was discussion upon the subject, and afterward Mr. O. E. Peters withdrew said application."

Q. Do you remember having taken such action with regard to the Indiana Powder Company at that time? A. I do not.

Q. Do you remember about the appointment of any committee at all in reference to that matter? A. I have not any recollection regarding the appointment of a committee. 5114

Q. Did you have anything yourself to do in regard to the conduct of the negotiations subsequently had with the Indiana Powder Company to purchase the plant? A. Yes.

Q. What did you do in that matter? A. I was one of those who met the representatives of the Indiana Powder Company at the time the purchase was finally made. They had approached us two or three times before to buy them out.

Q. Yes. Who were the parties with whom you negotiated at that time? A. There were two or three. I recollect two of them. Mr. Tally and Mr. Rood. 5115

Q. When was it that they first approached you to buy them out? A. I don't remember the date.

Q. Can you remember approximately? A. My recollection is they approached us about every year.

Q. They came right along? A. Yes.

Q. You were in active contest with them, were you not, for the business? A. They were competitors of ours.

Q. And you were contesting actively with them, were you not? A. We were trying for the business just as they were.

Q. And you were trying to put them out of business, were you? A. No.

5116 *Jonathan Haskell—Direct*

Q. You were trying to get the business away from them, weren't you? A. We were trying to get some business for ourselves, just as every other powder company was.

Q. You were trying to get the business from the Indiana Powder Company and you were cutting prices with them in order to get the business? A. Our chief endeavor was to keep them from getting business from us.

Q. And in doing so you cut prices? A. We never
5117 made any lower price than others were selling to the same customers.

Q. Do you know that? A. That is my recollection.

Q. You are only stating from recollection and not what you know, is that right?

Mr. McCarter: What else could he rely on?

Mr. Katzenbach: You know that, do you not?

The Witness: I know I never authorized
5118 any sale to any customer knowingly at a lower price than some one else was offering that customer.

Q. I see. That applies to everybody? A. Yes.

Q. In this matter of the Indiana Powder Company—please confine yourself to that for a while—you say you never authorized any prices. What power did you have at that time to authorize prices to be made with the customers which the Indiana Powder Company had? A. Some of the customers of the Indiana Powder Company were under contract; others were not.

Q. Just a moment. Will you please answer that question, what power you had in that matter? You say you never authorized these prices. Were you

in control of the matter of fixing the prices at that time which were to be made to the customers of the Indiana Powder Company? A. I was a member of the special committee and at times authorized prices to the customers of the Indiana Powder Company. I was also president of the Indiana Company and authorized the prices which it should make.

Q. Were you the only person who had the power to authorize those prices? A. No.

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Q. Who were the others? A. The advisory committee could authorize prices, but as a matter of fact during the period of the competition of the Indiana Powder Company most of the prices were made for carload lots by authority or advice of the special committee consisting of Mr. Eugene du Pont and myself.

Q. How long was it that this competition continued between the Indiana Powder Company and the members of the Association? A. The competition of the Indiana Powder Company and the companies that you call members of the association

5121

continued as long as the Indiana Powder Company existed.

Q. You say the companies that I call members of the association. I don't want to call anything a member of the association that you do not understand to be. So you must correct me in that and if you see my question goes to that extent I wish you would. The companies that you were representing at that time that were in competition with the Indiana Powder Company were members of the Association, were they not. A. Your question is so broad—At what time?

Q. The time when you say you were making prices in competition with the Indiana Powder Company. A. At the time I was making prices in

5122 competition with the Indiana Powder Company, in my capacity as a member of the special committee, that was before its acquisition by certain companies with which I was connected.

Q. Now if you will confine yourself to this point. You have stated you have made the prices which were made to the customers of the Indiana Powder Company and that you never knowingly made or authorized a price to be made at less than the price of the Indiana Powder Company. Now I
5123 want to know whom you represented at that time other than yourself, if anybody? A. I don't think I made the statement that I never authorized prices lower to the customers of the Indiana Powder Company than the Indiana Powder Company made.

Q. Then will you say what do you want to say on that subject, so as to make that clear? Who was it that made the prices that were made at that time to the customers of the Indiana Powder Company or to any other person from whom the Indiana Powder Company endeavored to get business? A.
5124 I understand the question to refer to this earlier stage of the Indiana Powder Company's existence when it was in competition.

Q. No, I want it to go to all the time that you say you made those prices or had anything to do with making those prices. I want you to testify of your own knowledge as to what those prices were and not what somebody told you, if anybody did tell you anything. A. Your previous question was broad enough to include the whole history of the Indiana Powder Company.

The Court: I think you ought to define the period you want information about. During the time the Indiana Company was in competition—he asked you whether you did not mean that limited period.

Q. That is the period I mean, Mr. Haskell. A. At that period the prices made by the so-called associated powder companies were recommended by the Special Committee of which I was a member.

Q. And that is what you mean; and it was the members of the Association that you were representing when you made those prices. Is that right? A. Your previous question embraced a very much larger period and I answered it categorically.

(Question repeated.)

A. That was not what I meant when I answered 5126
the previous question, which I understood covered a larger period.

Q. I am not asking now about the previous question.

Mr. Graham: I think he ought to have the privilege of explaining that, because the use of the word "customers" of the Indiana Powder Company here has led to confusion.

The Court: He has himself limited it to the time when they were competitors. It is 5127
during that period to which this question relates.

The Witness: I understood counsel to ask me a question regarding my previous answer.

Q. No, not at all. I will ask you the question again in order to get it clear. I want to know who it was that you represented at the time when you made prices to the customers of the Indiana Powder company, during the time that you were in competition with the Indiana Powder Company. Whom did you represent? A. I was a member of the Special Committee appointed by the Advisory Committee.

Q. And then you represented the members of the

Association, did you not? A. If you consider that the Association existed, I presume I did.

Q. You yourself have testified that there was an agreement between the members of the Association and that you were acting upon an Advisory Committee that was representing the Association, and a Special Committee. Now, what I am trying to find out is whether you were representing the members of the Association when you made those prices? A. I am in doubt as to the correctness of the term
5129 "Association"; but if you mean these powder companies that we have recited as participating in the 1896 agreement, yes.

Q. Very well, that is sufficient. At the time when you purchased the Indiana Powder Company did the prices of black blasting powder increase in the district where the Indiana Powder Company had previously operated? A. I don't recollect, but I believe not.

Q. You think it did not increase at all? A. I don't recollect.

5130 Q. Do you remember with reference to the Chattanooga Powder Company, whether or not after they came into the Association the prices in the district where the Chattanooga Powder Company operated increased or decreased or remained stationary? A. They did.

Q. How about it; did they increase? A. Yes.

Q. Very materially? A. Yes.

Q. How much? A. I recollect the initial increase of 25 cents a keg.

Q. And after that it continued to increase, did it not? A. I think another five or ten cents, I don't remember which.

The Court(to the witness): When was that, what period?

The Witness: After the Chattanooga Powder Company entered the 1896 agreement.

Q. There was a general advance of prices, was there not, at the time the 1896 agreement was made? A. Yes.

Q. All over the country? A. Yes.

Q. And do you remember what that general advance was, generally speaking? A. I have stated my recollection is that it was at first 25 cents a keg. 5132

Q. And you want that answer to apply to all the business—— A. Yes, that was quite general.

Q. You had another competitor a short time after that, did you not, known as the Birmingham Powder Company? A. I don't know whether the Birmingham Powder Company was after that or before it. I thought it was before.

Q. At any rate, whether it was before or afterwards, you acquired ultimately the property of the Birmingham Powder Company, did you not? A. Yes.

Q. And after you acquired that the prices were increased in that district, were they not? A. I think they were, yes. 5133

Q. How much? A. I don't remember.

Q. After the acquirement of the Indiana Powder Company you were not certain whether their prices were increased or not? A. I don't recollect; I believe not.

Q. What did you pay for the property of the Indiana Powder Company that you purchased? A. I don't remember.

Q. Have you any recollection about it at all? A. Not the slightest.

Q. Would you remember the figure if it should be given to you. Have you ever heard the figure? A.

I heard it at the time undoubtedly; several hundred thousand dollars.

Q. I beg your pardon? A. I know the amount was several hundred thousand dollars, but how much I don't recollect.

Q. What had been the price of black blasting powder in the territory in which the Birmingham plant operated previous to its acquirement; do you recall? A. No.

Q. I will ask you to state whether or not after it
5135 was acquired the price immediately rose to $1.35? A. I don't recollect the price at all.

Q. It was taken into the Association and given a definite allotment, was it not? A. Yes.

Q. And after that its plant was materially increased and continued in business? A. I don't think it was increased.

Q. It continued in business, did it, for some time? A. Yes, until a new plant was built nearby and that plant dismantled.

Q. I read the minutes of the 9th of February,
5136 1899, at page 1184. Among those present was Mr. J. A. Haskell.

"Considering the matter of devising some method for ameliorating the conditions now existing by reason of the injurious competition in the trade due to the active measures of the Indiana Powder Company:

"Mr. Eugene du Pont, as Chairman of the Committee heretofore appointed for consideration of this matter, reported verbally and also read some letters relating to the subject, and

"On motion of Mr. Fay, seconded by Mr. G. M. Peters

"That the report of the Committee be accepted. Carried.

"The motion of Mr. G. M. Peters, seconded by Mr. Fay.

"That this Committee be now discharged. Carried unanimously.

"After some further discussion

"On motion of Mr. G. M. Peters, seconded by Mr. Coleman

"That a new Committee be appointed to consist of five persons with Mr. Eugene du Pont as Chairman, and that they be empowered if they find a way open to continue negotiations with the Indiana Powder Company now, or in the future, and if they are firmly convinced that they cannot come to an 5138
agreement, they shall then undertake to recommend to the Associated Companies a line of policy which they deem to be desirable in dealing with this question."

Q. Now, you state that the Indiana Powder Company made the overtures to you to buy them out? A. Yes.

Q. Did your committee at any time make any advances towards them or suggestions that the contest might be ended by purchase? A. It was never necessary to make any advances.

Q. You stated, as I understood you, Mr. Haskell, 5139
that the advances were made by the Indiana Powder Company. I assume you meant by that some officer, Mr. Rood or somebody else, as possible persons with whom you had dealings. Now, did they alone make the advances or did you make advances to them on behalf of the associates? A. My recollection is that different individuals connected with the Indiana Powder Company, as large stockholders, made advances from time to time, as I have before stated, and that one of the times they came to us we discussed and settled a purchase.

Q. Then you had nothing to do with making any advances to them? A. No.

Q. You simply kept up the contest until they came to you? (Objection overruled. A. We kept

5140 up the business of selling powder to Indiana customers where we could get them, which was very seldom, and anyone else until the time came when they approached us wtih the view to selling out and the particular time when we actually did make a purchase of the property.

Q. And that same answer applies, does it not, to the contest, rather, if that term is objectionable, to the period of competition which you had with the Chattanooga Powder Company and the Birmingham Powder Company? A. I don't recall at all how it came about that the purchase of the Chattanooga Powder Company was made. I do recall, however, it being brought to our attention that the Birmingham Company were then ready, as they had expressed themselves several times, to sell out. They had sold out once before and they had organized this new company and were ready to sell out again.

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Q. And they came to you and after negotiations you bought them out? A. Yes.

Q. I will read the rest of these minutes.

5142 (Reading): "On this motion the roll was called and all of the parties, present or represented, voted in favor thereof, and the Chairman declared the motion carried unanimously.

"The Chairman appointed on this Committee:

"Mr. Eugene du Pont, Mr. G. M. Peters,

"Mr. J. A. Haskell, Mr. F. W. Olin,

"Mr. A. O. Fay."

Q. Mr. F. W. Olin was the president of the Equitable Company, was he not? A Yes.

Q. And Mr. G. M. Peters was the president of the King Powder Company? A. Yes.

Q. And Mr. Fay was president of the American and Miami Companies? A. Yes.

Q. And Mr. du Pont was president of the du Pont Companies? A. Yes.

Q. I read further:

"There was some discussion of the question of fixing an allotment for said Company with the idea that the operation of this plan would be to return eventually to those who have been assessed the sums that they are to pay at this time.

"On motion of Mr. Haskell, duly seconded

"That an allotment of 18,000 kegs of Blasting Powder shall be made to the Globe interest, and that the proceeds arising therefrom at the time of the quarterly settlements will be for the benefit of those who have submitted to this assessment, and 5144 that when such benefits shall have been sufficient to counterbalance the sum paid on such assessments, then the said allotment of 18,000 kegs shall cease and determine. The allotment thus made to the Globe Powder Company shall be to begin with January 1st, 1899.

"On this motion the roll was called and all the parties, present or represented, voted in favor thereof, and the Chairman declared the motion carried unanimously."

Q. This was the same Globe Powder Company matter to which we referred awhile ago, was it? 5145 A. I understand it was.

Q. And that is the allotment that was made upon them? A. (No answer.)

Q. I will ask you whether or not you know Mr. R. S. Waddell? A. I know him slightly.

Q. How long have you known him? A. I knew him first as Cincinnati agent of the Rapauno Chemical Company, at the time I was president in 1892 and 1893.

Q. And you have known him pretty continuously since that time, have you? A. I have met him perhaps a half dozen times.

Q. During the time when you first considered entering the black blasting powder trade in 1895,

if I am correct in that, did you at time have conferences with Mr. Waddell about going into that association? A. I don't recall any.

Q. Did he advise you in any way that it would be a good thing for you to do, to go into the association? A. I don't recall any cnversation of the kind.

Q. Do you know anything about his consulting with you in regard to the origin and formation of this association which has been discussed here?
5147 A. I cannot recall any conversation with him at all.

Q. D d he at any time exercise any influence over you in that matter? A. Not the slightest.

Q. Did he exercise any influence over you in going into the association? A. No.

Q. Do you know any member of the association or that afterwards became a member ot the association that Mr. Waddell did exercise any influence over in getting him into the association? A. He was agent of the du Pont and Hazard Companies. I suppose he influenced them to a certain extent.
5148

Q. He influenced them, you think? A. He may have; I don't know how much.

Q. You personally do not know of any member he influenced? A. No.

Q. Did he attend any meetings of the advisory committee that you know of? A. Not that I know of.

Q. Did he at any time come there and advise you to make the prices you made from time to time? A. Never.

Q. Did he make any suggestions to any of the other members of the advisory committee? A. I don't know about any suggestion he may have made to any other person.

Q. In regard to the Indiana Powder Company

matter, did you have any consultations with him in regard to that? A. I never have that I can recollect.

Q. Do you know of any influence he exerted over you or the associates in regard to the making of prices in that Indiana Powder Company matter? A. No.

Q. Did he influence you in any way to buy out the Indiana Powder Company and pay a good price for it? A. No, sir.

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Q. Do you know whether he influenced any of the other persons that were engaged at that time in negotiating with the Indiana Powder Company at that time to buy it out? A. I do not.

Q. Do you know at any time whether he attended any general meetings of the association? A. He may have attended one of the general meetings of the association after he came to Wilmington as a member of the sales department of du Pont & Company. I don't recollect whether or not he did.

Q. If so, did he represent the du Pont interests, at that time? A. I should think not.

5151

Q. Whose interests did he represent A. I should think he was merely there as an observer.

Q. Oh, yes. Did you ever hear him make any addresses to the association? A. Not that I recollect.

Q. Did he ever make any recommendations in the meetings in any way? A. I cannot recall any.

Q. In 1905 it is in evidence here that about May of that year there was a price made which obtained in certain localities of 95 cents for black blasting powder. Do you know anything about the time referred to? A. I don't know the exact time at which a 95 cent price was made. I know it was made.

Q. At that time you were in active charge and control of the affairs of the sales board, were you not? A. In 1905, yes.

Q. And you were keeping very close tab on that? A. In the summer of 1905 I was in Europe.

Q. In May, 1905, were you in Europe? A. I went abroad, I think, about the middle of May, 1905.

Q. Yes. Well, you were there as early as January, 1905, were you not? A. Yes.

Q. Do you know anything about a man then in the employ of the company by the name of David S. Brewster? A. Yes.

5153 Q. What position did he occupy? A. He was agent for Joplin at one time, and he was afterwards an assistant in the sales department in Wilmington, I believe.

Q. What particular division of the sales department did he preside in or serve in? A. I don't recall.

Q. Was it not in what was known as the competitive division? A. It may have been. I don't recall. He was simply a clerk.

Q. You did have such a division, did you not? A.

5154 Yes. There was at that time. I don't know whether there is still.

Q. I am speaking of that time. You did then have such a department? A. Yes.

Q. At that time, Mr. Brewster was connected with that department, was he not? A. I don't recall.

Q. Do you recall a conversation that you had with Mr. Brewster early in 1905 in which you gave him instructions to make an examination of competitive conditions in the middle West and make a report to you concerning that matter? A. I don't recall it.

Q. You have no recollection of it at all? A. No.

Q. Was any report made to you by anybody at that time concerning competitive conditions in that district? A. I have received many reports. I don't recall any particular ones—

Q. I mean any general report. A. Not that I recall.

Q. You have no recollection of it at all? A. No.

Q. Was that report made to you two or three months after it had been prepared? A. If I cannot recall it I cannot tell when it was made.

Q. I am asking you as a matter of time. I thought perhaps you were limiting it to January.

Q. Well, did you receive it from anybody? A. I don't recall. I received many reports and I cannot discover which you mean. 5156

Q. Did you have any report made to you at any time by any person in your employ in connection with the competitive division or otherwise operating under the sales department with reference to competitive conditions which obtained in the middle west at that time? A. I have had many reports made on competitive conditions. Regarding any particular one I cannot recall at the moment.

Q. Was there any person at that time to whom you gave instructions to make an investigation of the competitive conditions which were prevailing in the Middle West and make a thorough examination 5157 of your accounts and your reports to ascertain what the facts were and present those facts to you in proper form for consideration? A. I don't recall it.

Q. You don't recall it? A. No

Q. You don't recall ever having considered any such report? A. I cannot recall ever having considered any particular report.

Q. Did you consider a series of reports on that subject then, Mr. Haskell? A. There never was any series of reports. There were reports given me on all kinds of subjects and many reports asked for, and I don't recollect any particular one.

Q. At the time when you made that 95 cent price,

5158 *Jonathan Haskell—Direct*

Mr. Haskell, it was a very considerable reduction, was it not, from the prices which had then been prevailing? (Objection overruled.) A. What 95 cent price?

Q. I am asking for the 95 cent price which was made in 1905 and which obtained until a period in 1907. You know about such a price as that having been made, do you not? A. I know that such a price was made to several concerns.

Q. By "several"— A. To several concerns.

5159 Q. By "several" what am I to understand you to mean? A. Such a price was made to several customers.

Q. Will you state what you mean by "several" in that connection—how many? A. I don't know how many.

Q. Was it as many as ten? A. I presume it may have been; I don't know.

Q. Was it made with as many as 200? A. I should think not. It was made, as I recollect it, to a few important customers.

5160 Q. I show you plaintiff's exhibit 1248 and will state to you beforehand this is a document which was presented here and offered here in evidence through Mr. Coyne, a statement that was prepared by him under his direction, and which is now in evidence here. I will ask you to examine it and state whether or not from that you can assist your recollection as to the number of customers to which that 95 cent price was made.

The Court: The number is already in evidence, is it not?

A. I have no independent recollection of this paper. The number of customers I do not remember. I know it was not a general price and I am under

the impression that it was only made to a comparatively few important customers.

Q. Can you recall who those comparatively few important customers were? A. I cannot.

Q. Why was it made to those comparatively few important customers? A. Because as far as I can recollect 95 cents was the lowest price we sold to anyone, and we only sold at that price because others were already underselling us or offering our customers at that price and were forced to come to it in some instances. 5162

Q. And it was the particular customers to whom prices of 95 cents had been made by other manufacturers of black blasting powder that you made this price of 95 cents. Is that right? A. Those to whom they either had made or were making.

Q. Where did you get the information upon which you based your calculations or your knowledge, we will say, of what those other companies were doing in regard to making prices? A. The information was derived from the salesmen or branch office manager in charge of the office, and was transmitted to the general sales department in Wilmington through the division that handled that territory. 5163

Q. Was there a time, any time, prior to May 5, 1905, after you became the head of the sales board, when you made a 95 cent price to any customer? A. I don't recall the exact date that the first 95 cent price was made.

Q. If Mr. Coyne says it was made on the 5th day of May, 1905, would that be sufficient authority for you as to the date? A. I should accept any statement presented by Mr. Coyne here as authoritative.

Q. Very well. Then, if that is what is stated on this exhibit 1248, you would accept that, would you, as being correct? A. I should say so.

Q. Do you know of any customer to whom the price of 95 cents was made at any time prior to May 5, 1905? A. I don't recall the names of any customers to whom it was made.

Q. If Mr. Coyne's statement shows that the last 95 per cent. price which was made to a customer was on October 8, 1907, then that is the correct date, is it, upon which the last 95 per cent price was made? A. If Mr. Coyne says so I should say it is correct.

5165 Q. All right. What was the reason for your ceasing on that date to make the price of 95 cents to any of your customers? A. The price of raw materials had advanced to such a plane that it was necessary to advance the price on black powder, and in 1907 we did so.

Q. The matter of competition did not make any difference to you as long as the cost of manufacturing had gone up? A. I felt at the time that we had delayed the advance in the price too long, that we ought to have made it before that. The price of raw materials had gone up very, very much.

5166 Q. It had gone up quite a little time before that, had it not? A. I don't recall the time when nitrate of soda went up first, but it was some time in 1907, and we had information that in 1908 it was likely to be still higher.

Q. When was it you issued your first regular price list? A. That was issued after I relinquished charge of the sales department; I don't recall exactly.

Q. Some time in 1907, was it not? A. That is my impression.

Q. And since that time you have been issuing regular price lists? A. I believe so.

Q. Previous to that time, however, did you at any time have any regular price list which was accessible to your customers and the public generally?

A. I don't think there were any printed price lists excepting for sporting powder prior to the 1907 price list.

Q. I want to ask you a little about the system which I believe it has been stated you know something about, and that is the system called the trade report system. Did you have anything to do with the origination of that system in the business of dynamite, Mr. Haskell? A. Yes, sir.

Q. When did you originate it? A. In the summer of 1892. 5168

Q. How long after that was it continued exclusively in the dynamite trade? A. Until I took the presidency of the Laflin and Rand Powder Company and then afterwards did it come into the possession or use of the du Pont Powder Company? A. It was transferred—your first question was how long it continued to be exclusively employed.

Q. Well, it was extended to the Laflin and Rand Company? A. It was extended to the Laflin and Rand Company.

Q. And was afterwards extended to the du Pont 5169 Company? A. Yes.

Q. And has since been continued there. You are familiar with the system, are you, at the present time? A. I cannot say that I am.

Q. Were you familiar with it during 1903 to 1908? A. Yes.

Q. I show you plaintiff's identification No. 463 and ask you to look at it and state whether or not that is one of the trade reports.

Mr. Katzenbach: You offer these trade reports in evidence, do you?

Mr. Abbott: I am going to offer them in evidence.

A. (After examination) It seems to be.

5170 Q. Well, while counsel is looking at that I show you another one, which is plaintiff's identification No. 461, and ask you to state whether that is a trade report? A. (After examination.) It seems to be.

Q. I show you No. 463 again and ask you to state what that big red stamp indicates there, the word "competition." What does that mean? A. It would require quite an extended explanation, if I may give it—

5171 Q. I would like to hear your explanation. Not that particular one but whatever is represented by that stamp on there? A. There was a sub-division created by me in the sales department called the competitive division, for the purpose of carrying on with the branch offices correspondence pertaining to sales matters where the trade had passed from the Powder Company to a competitor. At that time the Powder Company had a very considerable portion of the business, very much more than it was possible to get from any competitors, and it was

5172 my desire that the heads of the several sub-divisions —Eastern, Central and Western Divisions—should be free from the care and annoyance which would pertain to the trade that we did not have, because the trade we had was so much more important than the trade that was in the hands of competitors. For that reason a competitive division was formed. Immediately thereafter each salesman was furnished with blank forms of trade reports, so that one copy could be marked "competition" in the case of those customers that no longer were sold by the company and in order that it might go automatically to the competitive division instead of going through the ordinary divisions which were not then interested in its care. Hence the stamp "competition" on the trade reports.

Q. I will ask you whether or not the color of the stamp had anything to do with the matter? A. I don't think it had.

Q. I notice that this word "competition" on No. 463 is in red. I show you 461 and I notice that the word competition there is in blue. Will you state what, if any, reason there is for that? A. I don't know why it was.

Q. Now I show you plaintiff's exhibit for identification No. 226 and I show you a stamp in red ink "trade record division." The word "competition" 5174
does not appear on there. Will you state what the distinction between that an the other two is? A. This is a form that was provided in order that it might go into the files of the trade record division. Each salesman made out two or three copies of the trade forms.

Q. As I understand it, then, this No. 226, with the words "Trade record division" on it is simply a record which goes into your files? A. Which should go into our files. That one evidently has not gone into the files.

Q. No. 461 and 463, with the word "competition" 5175
stamped in large letters indicates that there is something more to be done with that; is that right? And therefore it does not go immediately to the trade record division? A. It is simply a stamp for clerical purposes, in order that it may go to one division rather than to another.

Plaintiff's identification 226, 461 and 463 offered and received in evidence.

Q. I notice the word "active" left there, the other words being marked out. What does that word "active" mean, of what particular importance is that, if any, on the trade report? A. I don't recall why that was put on. That was after I left the sales department.

5176 *Jonathan Haskell—Direct*

Q. I want to show you plaintiff's identification 188 and ask you to look at it and state whether you recognize that as one of the trade reports. A. (After examination): Yes.

Q. You will note that that has a red arrow on it. Does that suggest anything to your mind as to what the purpose of that mark is? A. It purports to be a rubber stamp, showing that this printed report had had attention in Chicago.

5177 Q. Does that mean that there is another record which is final as to any matters indicated upon that report, which record is at Chicago? A. Each salesman in making a trade report made two or three copies, one copy of which was retained in the branch office; the other one or two copies being sent to Wilmington for the Wilmington office.

Q. Then any information that there would be in the Chicago office with reference to that matter would be in your office also? A. Not necessarily.

Q. Then will you please indicate what is the reason for the arrow, an important mark like that,

5178 calling your attention to the fact that this is receiving attention in Chicago? A. I am unable to state the particular significance of this stamp because I have never seen a trade report with it on before, but presume it must be some clerical means attached by the Chicago office.

Q. Yes. Now I show you plaintiff's identification 205 and ask you to look at it and state what is meant by the words "part competition" on that paper? A. I should take it to mean that part of the trade was held by our company and part by a competitor.

Q. Who was the competitor? A. From the trade report it would appear that the Buckeye was the competitor.

Q. So as to that, part of it was held by the Buck-

eye Powder Company, that is the competition company and that is the competition? A. I suppose so.

Q. And goes to the competition desk? A. I presume it did.

Q. In making up the information that appears upon the various trade reports which have been placed among the records of your office, where does that information come from? As you have already stated, it comes from your various agents, but where do they secure the information, as a rule? A. From the customer. 5180

Q. Always from the customer? A. As a rule.

Q. You say as a rule. Do they go outside at any time in any way to get information which would be reported to you? A. Naturally the salesmen visiting a customer at a certain place in the course of conversation would elicit information if they could regarding other probable buyers in that locality.

Q. Take, for instance, the class of information that you wanted to get. Any kind of information that they might think would be useful they are instructed to send in to you, are they not? A. The only kind of information the trade reports were intended to produce were the buyers of explosives of various kinds, the prices at which those buyers were buying, if they could get it, and the source of supply. 5181

Q. You only wanted facts, did you? A. That is all we wanted.

Q. Did they have instructions at times to secure gossip and rumor? (Objection overruled.) A. We had no desire to secure anything but the facts; nothing else could give us any assistance.

Q. Gossip and rumor might be of some assistance to you, might it not? A. I should not think so.

Mr. Katzenbach: I object to that.

The Court: That is argument, gentlemen. The question is whether they elicited it, not whether it would be useful but whether they obtained it.

Mr. Abbott: He said he wanted useful information and I asked if they obtained it, so it would come within that class.

Q. I call your attention to Plaintiff's Exhibit No. 1146 and ask you to look at it. It has already been
5183 read and there is no need of taking up the time of the witness in reading it.

Mr. Katzenbach: What book is that?

Mr. Abbott: This is Volume I of Exhibits, page 228 and 229. This, if your Honor please, purports to be a letter which has already been admitted in evidence and read to the jury, written by A. J. Moxham, as Chairman, to E. I. du Pont de Nemours & Company, Wilmington, one letter, and the other is to the Hazard Powder Company, Wilming-
5184 ton, Delaware. Among other things he says:

"In order to give the finance committee an intelligent starting basis will you kindly forward to us at once"—and then I omit A, and then it goes on; "We would further ask that from time to time and continually you forward everything of interest that may be picked up by any one of your firm bearing on the general situation, even including gossip and rumor."

Q. Do you know anything about that condition of affairs in the company, Mr. Haskell? A. I have no particular recollection regarding the letter you speak of.

Q. Well, it is true, is it not, that information of that character is from time to time collected and

has been sent to the company for its information? (Objection overruled.) A. Naturally——

Q. When you were connected with the company and in charge of its sales department did you at any time obtain any information from railway agents with reference to shipments that had been made by various competitors to various consumers of black blasting powder? A. I have no recollection of it.

Q. If such information, information of that kind, came in, you have no knowledge of it? A. No. 5186

Q. Did you at any time know a man in the employ of your company by the name of P. P. Laughlin? A. I think I recollect such a man, yes.

Q. What position did he occupy? A. He was a salesman for the Ohio Powder Company and afterwards I think a salesman in the Pittsburgh office of the du Pont Company.

Q. Did he at any time have any requests from your office to obtain information as to conditions relative to customers and their affairs, and so on, and report to the Wilmington office? A. He may have. I have no recollection. 5187

Q. As a matter of fact did he not refuse to get the information that you wanted in that way because he considered it was a dishonorable practice?

Mr. Katzenbach: I object to that unless this is in reference to some interview with this witness had by Mr. Laughlin.

The Court: If you have personal knowledge of it.

A. I have no personal knowledge of any such thing.

Q. And is it not a fact that he resigned, gave up his position in connection with your company, because you insisted he must do that, and he declined

to do it? A. I should say positively that that was not so.

Q. You would say it was not so? A. That would be my opinion.

Q. You are stating it merely as an opinion? A. Yes.

Q. It may be a fact notwithstanding that, may it not? A. Of course I am unable to know what was in his mind, if he did it. I do not recollect whether we discharged him or he resigned.

5189 Q. Well, I show you Government's Exhibit 429 on page 2781 of the rebuttal record and ask you to look at that paper and state whether or not from that you are able to refresh your memory concerning the matter. (Objection overruled.) A. I have no certain recollection concerning the matter touched upon in that letter at all.

Q. I believe you stated the other day that you kept in very close touch with everything that transpired in connection with the sales department of the Powder Company, did you not? A. As close as

5190 possible.

Q. You know Mr. Bumstead, do you? A. Yes.

Q. From time to time when your agents were endeavoring to secure custom or business from various consumers of black blasting powder were they at any time authorized to use any influence with the managers of the coal mines to induce them to recommend your powder to their employers? A. As a rule the only way of getting the trade of a coal company, getting them to purchase powder, was to get the good will of the manager and to get him to use, if he would, his influence, which would lead either to the continuance of the purchase or its adoption, if it was not then being sold.

Q. Did not that effort sometimes extend to the point of giving the mine manager a commission or making a payment to him in some way upon the

powder which his employer would use? A. I have no recollection of any payments of commissions to anyone, although at times cases of shells were given.

Q. (Taking up book) This was a meeting of the Advisory Committee at which it was stated that Mr. T. C. du Pont was elected a member of the Advisory Committee in place of Mr. Eugene du Pont, deceased. A. I don't recall it.

Q. At that meeting it was stated that a committee of three would be appointed by the chairman to 5192
formulate a plan for organization of the Storage and Transportaiton Company suggested in the report, conferring in the matter with a representative of the Wilmington High Explosives Company, to report to the next meeting, and it was carried. The chair appointed as such committee Messrs. T. C. du Pont, J. A. Haskell and A. Lent. Now do you recall it? On Page 1416, as part of the minutes of the meeting, there appears the following:

"Continental Coal Company, Columbus, Ohio, for mines owned or controlled by it, and such other 5193
mines as it may hereafter acquire or control during the term of the contract, at $1.10 a keg, with an allowance of five cents per keg to the general manager of the company; the contract to terminate July 11th, 1902."

Do you recall that matter that transpired that day? A. I do not.

Q. Can you conceive of any reason why the general manager of the company should be allowed five cents per keg in that case? A. I presume that it was an additional reduction in price.

Q. How would it be a reduction in price if it went to the general manager of the company. It was not for the benefit of the company, was it? A. It might have been.

Q. It might have been, but can you state any reason for having allowed the company a rebate in that way? A. I do not recall the circumstances upon which the price was based.

Q. The Continental Coal Company was a very large consumer of powder, was it not? A. I don't know. I don't recall it at all.

Q. Do you not know that it was one of the most important coal operating concerns in the State of Ohio? A. I do not recollect it.

5195 Q. Now, I call your attention to the meeting of June 25, 1902, which is reported on page 1436 and the following pages, and I call attention to the following on page 1437 and page 1438:

"The Miami Powder Company was recommended to renew its contracts with Mr. Harry Olmstead, covering the Sunday Creek Coal Company and other concerns, and with the Continental Coal Company, which contracts expire in July next, making new contracts, either individually or collectively, to cover this trade (for a term of one or more

5196 years, in the discretion of the Miami Company) at $1.10 per keg, allowing a commission of five cents per keg to the managers of the concern or conserns as the case may be." (Objection overruled.)

Q. Do you remember that matter? A. I have an indistinct recollection that a special arrangement was made with the Miami Company to allow permission to a man named Olmstead, because of the very large aggregation of trade which chose to buy through him and he placed their orders.

Q. Was Mr. Olmstead manager of the Continental Company and the Sunday Creek Company? A. I have no knowledge of his business connections.

Q. Do you not know as a matter of fact that Mr. Olmstead had nothing to do with those companies? A. I have no knowledge of Mr. Olmstead's affiliations.

Q. Do you not know that the manager of the Sunday Creek Coal Company at that time was J. H. Winder? A. I do not.

Q. Do you not know as a matter of fact that Mr. Guthrie was the manager of the Continental Coal Company at that time? A. No.

Q. Mr. Olmstead was nothing more nor less than a seller of powder to the various consumers of powder in that district? A. I have no recollection whatever what he was. I merely recollect his name in connection with a price being made. 5198

Q. The Sunday Creek Coal Company was a very large consumer of powder, was it not? A. I don't know.

Q. Did it not consume as much as 75,000 kegs of powder a year? A. I have not the remotest idea what it consumed.

Q. There was a practice, was there not, between the association during the time of the existence of the Association of respecting each other's trade? A. What Association and at what time?

Q. I am speaking of the Gunpowder Trade Association, at the time when it was in existence, from 1896 down to 1904. A. My individual effort was to make such an arrangement, and it resulted in it being done to a limited extent. 5199

Q. Now, what was it, how was that trade respected; will you kindly tell us? A. I cannot in a general way at all, excepting the competition when I became president of the Laflin and Rand Company was very much more keen between the du Pont, Laflin and Rand and other so-called associate companies than it was with the outside competitors.

Q. That was at the time when the association had told each member to defend its own trade, was it not? A. Yes.

5200 *Jonathan Haskell—Direct*

Q. They were defending their own trade at that time? A. Yes.

Q. Now, will you tell us what is meant by the term "respecting each other's trade"? A. At what time?

Q. I said during the existence of this Association of which you said you were a member from 1896 down to 1904, inclusive. Will you state what you meant by respecting the trade, by the members
5201 of the association, which was organized in 1896 and continued down to 1904? A. Prior to that date——

Q. No, I don't want prior to that date. I want to know now about this date. I am inquiring about the Association, how it respected its trade, the trade of its members. A. I cannot answer the question without the reason which led to my joining in an effort to do what you say.

Q. That is not the question I am asking. I am not asking you at this time for your reason; I want to know how it was done, the manner in which it
5202 was done. You can tell that, can you not, how you respected each other's trade? A. The only way the trade was respected after the making of the 1896 agreement was through the instrumentality of certain prices being made to individual companies which were not made to others.

Q. Yes. Now would you indicate whether or not there was at any time a respecting of the trade of a particular customer or the trade that another association had with a particular customer? A. There was never any objection, provided the sale could be made at the schedule price, or at an equal price according to the recommendations of the special committee or advisory committee, to any associate soliciting another customer's trade.

Q. Oh, there was no objection to that at all? A. Not the slightest.

Q. And it never was done? A. It always was done, always solicited each other's trade——

Q. I see. And there was no complaint made when they got a customer away from another member? A. There was always complaint made by dissatisfied agents who could not do all the business.

Q. I see. Now, in the carrying out of that rule you have just indicated, did you have any arrangement between the members of the association whereby a particular member of the association should 5204
have an equity in a contract made by another member of the association? A. Yes.

Q. Tell us what that equity was, will you? A. When the making of contracts was resumed in 1897 the advice to the several members of the Association to make lower than schedule prices was based upon the quantity purchased by such buyers during a certain specified time, and also who had held that trade, I think, during the two years' period then preceding, the aim being to have those companies that held the trade make the appropriate price for
the size of the trade, and to prevent agents by 5205
underhand or other methods diverting from the concern whose powder was liked and whose business it had acquired, and apparently had still retained.

Q. No effort was made to get that business; was that the idea? A. He was permitted to make all the efforts he chose. He was not permitted to go below certain prices.

Q. Tell me where your rules of equity came in as applied to that particular case. A. The rule of equity came in in this wise. It was generally not possible that more than one concern could make a contract with a given individual buyer, and it was arranged that if a particular concern was permitted to make a contract, if another concern had

sold that same buyer powder during the test period, that an effort should be made to get that buyer to use that amount which that other concern would be entitled to sell. Failing in that, equities were exchanged so a given concern might trade an equity in one trade for an equity in another trade and make a contract which would cover all the equities of the case.

Q. Now then, when the contract was once made with a customer by one of the members of the as-
5207 sociation, was not that contract respected permanently after that period and was not that particular associate permitted to make renewals of that particular contract from time to time? A. As a rule the previous seller was authorized to make whatever prices were necessary to continue to hold that trade.

Q. Yes, he was to continue to hold that trade. A. As merely against the other associates, however.

Q. I show you Plaintiff's Exhibit 26 and ask you
5208 to look at it and state if you know what that paper is? A. (After examination) A letter addressed by me to Mr. J. G. Miller under date of August 26, 1895.

Q. And has your signature attached to it? A. Yes.

Q. I read you the following part of this letter:

"From time to time trade reports calls will be sent out and we would indicate policy to be pursued in certain cases as far as local conditions will permit.

"While we are very anxious to enlarge our trade and agents will use their utmost endeavors to achieve that end, it is not worth while to divert trade from associate companies such as du Pont, Hazard, Oriental, Ohio, etc., by cutting prices, as

such a course will probably result in their meeting the price or perhaps cutting it and regaining the trade which merely hurts the former seller and does no one any good excepting the buyer."

Q. Does that meet your views as to what is understood as respecting the trade; does that come within the definition that you attempted to give awhile ago as respecting the trade of an associate? A. That was not what I had in mind when you asked me the question, no.

Q. What would you term that; would you not 5210
think that was respecting the trade? A. I should not think so, no.

Q. Then will you kindly distinguish it from your theory of what was respecting trade? A. That letter—

Q. Will you kindly answer that question now, just distinguish the two. I want to get this theory that has been set forth here by you and the other theory that you have announced from the stand, so as to get your idea of the difference between those two theories. I want to find out what respecting trade was during this period. A. That was instruc- 5211
tion to my salesmen.

Q. Yes. A. The other case was a method which you said had been employed, which, as far as I can recollect, may have been employed, and indicated the one means which could have been construed as coming within the terms you indicated of respecting trade.

Q. Well, but when you say here that it is not worth while to divert trade from associate companies, such as the du Pont, Oriental, Hazard, Ohio, and so forth, by cutting prices, what did you mean by that phrase, if it was not that you wanted their trade to be respected? A. I have always given the same instructions regarding every competitor's

trade, as I gave him in regard to this particular case.

Q. But you did not want him to take trade from competitors at all? A. Not by cutting prices.

Q. Oh, I see, your distinction is between taking trade and taking trade by cutting prices. But he was permitted to go out and get the trade if he could get it at the same price? A. Surely.

Q. The next sentence of the letter reads:

"If, however, trade has been diverted from us we
5213 want it back and you will at the earliest opportunity examine your records carefully and make trade reports on any former customers that may have been taken from you within the last few years, explaining as fully as possible the conditions, past and present, and write asking for assistance when prices given you are not low enough to enable you to recover lost ground." What did you mean by that, when you asked him for information of prices which would be low enough to recover lost ground? A. I meant this. This letter was written in 1895
5214 and this particular extract that you read is a copy of a circular letter theretofore sent to every salesman of the Laflin and Rand Powder Company. And immediately upon my assignment to the presidency of the Laflin and Rand Powder Company I narrowed the limits of control of the salesmen. Prior to that they had authority to meet any——

Q. That is going beyond my question.

Mr. Katzenbach: I beg your pardon. He is answering.

The Court: He may state that. I think when you ask him the meaning of a phrase in a letter, that you ought to let him refer to any antecedent condition.

A. (Continued:) Prior to that time salesmen

had authority to meet practically any prices that were made, and I immediately limited them to certain prices. What they were I do not recollect, but higher than the lowest prices that had been made. It was therefore necessary where an extremely low price had to be met for us to know the name of the customer, the freight rate it would take to reach that customer, before we could determine whether we would permit the salesman to sell him, and it might be that in some cases we would be 5216
willing to make a price which in other cases, owing to the higher freight rate, it would be unwise to make. Therefore we wanted them to apply to us for assistance where the prices already given were not sufficiently low to enable them to meet the prices and hold the trade, and regain trade that we had lost.

Q. And your answer to that would be that you furnished them with a price low enough to get the trade? Is that the idea? A. Not necessarily.

Q. Well, you said that you would not be guilty of cutting a price. Now what did you mean by this 5217
when you said "and write asking for assistance when prices given you are not low enough to enable you to recover lost ground"? A. I cannot answer in any other terms than I have stated.

Q. If you wanted them to write for prices that were low enough to recover lost ground you must have had in mind cutting a price, did you not? A. I never intended or authorized anyone to make a lower price to get or regain trade than that the customer was paying as far as I am aware.

Q. I understand that, but I want to know what you meant when you instructed your salesmen to inquire in a particular case and "write asking for assistance when prices given you are not low enough to enable you to recover lost ground"? A.

5218 *Jonathan Haskell—Direct*

I cannot answer it any other way than I have answered.

Q. And after summing up this circular, quoting from this circular, you say: "The gist of the whole matter is that if trade has been taken from us we want it back, but we do not think it wise to divert trade from du Pont, Hazard, Miami, Austin or Oriental Companies by cutting, as that would merely lead to retaliation and do no one any good." That was your theory, was it? A. Yes.

5219 Q. But you respected the trade they had and did not undertake to go in and get such customers away from them, such customers as they already had? A. At that time we were most anxious to get any customers we could.

Q. I call your attention to the meeting of the Advisory Committee of December 17, 1897, at page 1116 to 1118: (Reading) "The meeting considered the matter of the controversy between the Ohio Powder Company and the King Powder Company. Mr. Fay read a letter from the King Powder Com-

5220 pany addressed to the members of the Advisory Committee which had been sent to him for presentation. Mr. Brown made a verbal statement of the attitude and claims of his company and the matter under treatment. After prolonged discussion the following was offered:

"Whereas a charge was filed by The King Powder Company against the irregular action threatened by The Ohio Powder Company in connection with a contract made by The King Powder Company with the Vigo County Coal Company, The Ohio Powder Company, represented by Mr. Brown, disclaimed any intended threat in the correspondence, copies of which were presented to the Advisory Committee, declaring their purpose to have been only to make such a contract with permission given

by The King Powder Company and declared their present purpose to be to obtain only a just equity in the trade of the Vigo County Coal Company as may appear by statements of sales heretofore made by each to this Coal Company. It is therefore

"Resolved, That The Ohio Powder Company and The King Powder Company be each requested to report to the Secretary of the Advisory Committee, the quantities of Powder sold to the Vigo County Coal Company, from May 1st, 1895, to May 1st, 1897, for the purpose of enabling the Advisory Com- 5222
mittee to determine the equities of each in this trade as requested by The Ohio Powder Company.

"And the Advisory Committee rule that The Ohio Powder Company were unwise to ask that the equity of The Ohio Powder Company be stated in the contract, and the Advisory Committee also rule that The King Powder Company were unwise in including the Vigo County Coal Company in contract authorized to be made with Christian Ehrlich & Company, without permission first obtained from the Advisory Committee, for in no other way would Associates be furnished an opportunity to present 5223
claims for equity in the trade. Carried.

"The Committee then proceeded to the consideration of another contention between The King Powder Company and The Ohio Powder Company on another matter of some importance.

"There was offered the following:

"Whereas The King Powder Company has charged that The Ohio Powder Company had made a contract with Mr. F. S. Peabody, The Ohio Powder Company, represented by Mr. Brown, present, stated that they had not made such a contract, although they admit that they had offered to do so, on the same terms as The King Powder Company had made, but no better, and stated that the offer was rejected by Mr. Peabody, who said he could do better; therefore it is

"Resolved, That it is the sense of the Committee that The King Powder Company should contract with Mr. F. S. Peabody for the supply of all the Powder trade of the Brazil Mining Company and the Ohio & Mississippi Valley Coal & Mining Company, with due regard to the equities of all the parties in interest, and

"That if such equities cannot be adjusted by the parties themselves that the matter should be referred to the Advisory Committee for adjudication.

5225 Carried.

"The Ohio Powder Company having asked by letter to the Secretary for permission to contract with Bruelitts Creek Coal Company, Torrey Coal & Mining Company, Ehrman Coal Company, Ohio & Mississippi Valley Coal & Mining Company.

"Upon consideration of the matter it appeared that the Laflin & Rand Powder Company, by a letter to the Secretary, made an objection to such a contract with the Bruelitts Creek Coal Company, but Mr. Haskell withdrew that objection, and it appearing that there might be a question as to some

5226 connection between said Company and the Indiana Bituminous Coal Company with which The Hazard Powder Company has a contract, the question for permission to make contract with this concern was deferred."

Now I call attention to the meeting of January 28, 1898, and to that part of it found on page 1151 and 1152, as follows:

"There having been a question as to the equities of The Ohio Powder Company and The King Powder Company in the trade of the Vigo County Coal Company, and the Secretary having been instructed to write to each of those Companies for information as to the sales of each, within a definite period, to this Coal Company and having answers from them, which he presented to the meeting:

"The Committee decided that The Ohio Powder Company should have sixty-one per cent. and The King Powder Company thirty-nine per cent. of the trade of the Vigo County Coal Company, and that the Secretary should communicate to each of the said Companies the statistics upon which this decision has been based.

"The Ohio Powder Company was authorized to contract with the Bruelitts Creek Coal Company, with rebate of 15c per keg."

Q. Does that in any way assist you, Mr. Haskell, 5228
in recalling the methods which were used from time to time respecting the trade and dividing up the trade between the various members of the association? A. Not if I understand your question.

Q. Well, does it in any way? If you misunderstand my question, we can make it clearer. If you want me to do so I will try to make it clearer. But I want to get at the methods used by the Association in respecting the trade of each of its members, and in this rule of equities, as it is called? A. I cannot recollect any respecting of trade other than 5229
through the price fixed by the Advisory and Special Committees.

Q. You had in your Association a different rule, did you not, to apply for competitors—if you please to use that term—between the members of the Association and the associate members and others who were not members of the Association, did you not? A. I don't recall any.

Q. Was there any trade of an independent or a company that was not a member of the Association, that you respected at all? A. I don't recall respecting anyone's trade in the Black Powder Association excepting through the making of prices. If there was a great deal of trade it was not on contract at all, and the salesmen of the Laflin and

Rand Powder Company were at liberty to get any trade they could under the prices authorized, regardless of the holder, whether he was an associated company or a so-called outside competitor.

Q. You had a rule, did you not, concerning what was known as "inside" competition and "outside" competition? Was there any difference? A. I don't recollect any such rule.

Q. No such rule. Do you have any knowledge of the time when Mr. T. C. du Pont was elected a
5231 member of the advisory committee? A. I recollect he was elected in the spring of 1902.

Q. Were you present at that meeting? A. I don't recollect whether I was or not, but I presume I must have been.

Q. We have an exhibit offered in evidence here as plaintiff's exhibit 22, and I call attention to this part, on page 214: "C. That the above advance in prices be doubled provided the committee on competition will provide machinery which in the judgment of the advisory committee will restrain internal competition and which will put the question of
5232 external competition into the hands of a properly organized working committee." Now do you know anything about that matter of any rule or regulation which was for the purpose of restraining internal competition, such as you have indicated you had once in a while between your members, and the external competition? A. I don't recall anything that resulted from that particular clause.

Q. Do you not know as a matter of fact that there was a committee appointed shortly after this speech, which was known as the "Finance Committee," which was given ample powers to carry out that particular feature of Mr. Moxham's address? A. I recollect such a committee being appointed, yes.

Q. Was not that the purpose of that committee? A. My first answer applied to the preceding clause regarding the "internal" competition. I understood that to be your question.

Q. Who were the members of that "Finance Committee?" A. I don't remember now.

Q. Were you a member of it? A. I don't remember whether I was or not. I may have been.

Q. Do you remember when Mr. Moxham became a member of the Advisory Committee? A. As I stated the other day, I do not recall the date. 5234

Q. Can you recall about the time? A. I think it was 1902 somewhere.

Q. It was about the time Mr. T. C. du Pont came into the affairs of the Powder Company, was it not? A. A few months later.

Q. Since that time, or, rather, at that time, and for a considerable period after that, Mr. T. C. du Pont, Mr. Pierre S. du Pont, Mr. A. J. Moxham and yourself were on various boards, were you not, of the various companies which were then in existence and controlled by the same interests. Take, for instance, the du Pont Companies and the Delaware 5235 Securities Company and the—— A. Some of them I was a member of and others I was not.

Q. You have already stated the companies you were a member of; but I am trying to find out whether these other gentlemen were members of the same companies; that is to say, the companies that were in existence at that time. Take the Delaware Securities Company. Were they members of that company's board? A. Some of them, yes.

Q. Which ones of them? A. I cannot recall, but there were a number of different corporations in which they were directors.

Q. The Delaware Investment Company? A. I don't recall the membership of the several companies at all.

5236 *Jonathan Haskell—Direct*

Q. But they were members of the boards of the various companies? A. Yes——

Q. Upon which you sat? (No answer.) Do you know anything about a committee called the "Peoria Committee?" A. I have a recollection of such a committee existing but I don't remember much about it, or anything about it.

Q. Can you tell when it was appointed? A. I don't recollect.

5237 Q. Do you know who were the members of that committee? A. I do not.

Q. Were you a member? A. I don't know. I don't remember whether I was or not.

Q. Do you know what the "Peoria Committee" was? A. I don't recollect that.

Q. You know where Peoria is, do you not? A. Yes; it is in Illinois.

Q. That was where Mr. Waddell's Buckeye Powder Company was located, was it not? A. I so understood.

Q. I call your attention to the meeting of the Ad-
5238 visory Committee of May 27, 1903 (page 1559), and call your attention to the following language:

"Whereas the Peoria Committee recommended a certain course of action as regards customers at or near Peoria, Ill., which was adopted at the meeting of the Advisory Committee, held April 17th, 1903, and which has been rescinded, be it Resolved, That Peoria be continued as a Distributing Point, and that the sale of Sporting Powder through the agents there be continued as heretofore. Concerning Blasting Powder: That on June 1st, 1903, or as soon thereafter as existing contracts with agents will permit, no allowance for haulage from railroad depot to magazine at Peoria shall be made in excess of three (3) cents per keg, and no allowance for haulage from railroad depot shall be made on any pow-

Honor to charge, under Section 98 of the

der that is not actually delivered in magazine. Furthermore, interested parties are advised that they may discontinue the present agency agreements as far as they may pertain to sales to the former customers of their agents at Peoria, using less than 1,200 kegs per annum, and heretofore being sold, presumably, at the schedule price for lots of less than carloads ($1.50); in such cases, and to their former customers only, it shall be permitted to sell at any price in excess of $1.25 per keg. Reports to be made to the principal at not less than $1.25 per 5240
keg, net, to him or the goods, as the same had rested in the magazine, at Peoria. Shipments to be made to said magazines in not less than 400 keg lots."

Q. In this part of this I have just read can you tell who were the interested parties who were advised that they might discontinue the present agency agreements as far as they might pertain to sales to the former customers of their agents at Peoria? A. There had been five or six companies doing business in Peoria, and before this some time —I don't recollect the date—it had been found to 5241
be troublesome, so the agencies were reduced to one or two, according to my recollection.

Q. You do not recall the names of the companies? A. No.

Q. I refer you to page 1659 of P-3 and I call attention to the following extract from the report of the special committee.

"The Phoenix Powder Mfg. Company:—

"To renew its contract with the Germantown Coal & Mining Company, Germantown, Ill., at $1.35 per keg, allowing rebate of 15c per keg, the equity of the L. & R. Company; such to be considered as *quid pro quo* for a part of the Peoria business."

Q. Now, do you know what that was? A. Not except as read by you.

Q. You were president of the Laflin & Rand Company at that time, were you not? A. Yes.

Q. The "L. & R." Company meant the Laflin & Rand? A. Yes.

Q. Can you not tell us something about what that related to? A. I presume the Laflin & Rand Company had sold customers then being handled by the Peoria Agency whose business aggregated the amount that was allotted them in this contract you speak of.

5243 Q. And this was given as a *quid pro quo* for what the Phoenix Powder Company had given up in that trade; is that right? A. I should think for what the Laflin & Rand had given up.

Q. It says this: "The Phoenix Powder Manufacturing Company may renew its contract with the Germantown Company, Germantown, Illinois, at $1.35 per keg, allowing a rebate of 15 cents per keg, with Equity to the L. & R. Company, such to be considered a *quid pro quo* for a part of the Peoria business." You stated that was a *quid pro quo* to the L. & R. Company; is that right? A. Yes.

5244 Q. The Laflin & Rand Powder Company at that time was owned by the du Pont Powder Company, was it not? A. What was that date?

Q. This was August 6th, 1903. A. Yes.

Q. Who were the principal stockholders of the Laflin & Rand Powder Company during the time that you were president of that company? (Objection overruled.) A. The principal stockholders at the time I became president, until they sold their stock, were John L. Riker of New York, Mr. Solomon Turck, the estate of William Barclay Parsons, Schuyler L. Parsons, William Barclay Parson, Jr.; and I had a small amount of stock.

Q. John L. Riker and W. B. Parsons, H. B. Parsons and Schuyler L. Parsons at one time sold their

stock to the Delaware Securities Company, did they not? Well, I will ask you if they did not sell it October 2d, 1902? A. That is my recollection, yes.

Q. Do you remember whether they made an agreement with the Securities Company at the time when they sold their stock as a part of the consideration for turning over their stock? (Objection overruled.) A. Some of them made agreements——

Q. I am speaking of these particular men, Mr. Riker, Mr. H. B. Parsons, Mr. Schuyler L. Parsons—— A. Yes, they made contracts never to 5246
enter into the powder business in competition with the purchaser.

Q. They sold their stock to the Delaware Securities Company and agreed to keep out of the powder business for a period of 25 years, did they not? A. I don't recollect the terms, but that is my impression.

Q. The other day I asked you some questions about a man by the name of Brewster, who was in your employ at one time. I want to ask you some further questions in connection with the same mat- 5247
ter. Do you remember a meeting of the sales board which was held along about the month of May or April of the year 1905, at which Mr. Brewster was present? A. No.

Q. Do you know who the members of the sales board were at that time? Can you recall? A. I cannot.

Q. I will ask you whether these were the members who were present? Mr. Haskell, Mr. Patterson, Mr. John Mathews, Mr. Eugene du Pont, Mr. Dale Bumstead, Mr. Oliver and Mr. Martinus? A. I should suppose they may have been members at that time. I don't recollect the personnel of the sales department at that date.

Q. I believe you stated you had no recollection of a statement which had been prepared by Mr. Brew-

ster and submitted to the sales board under your orders about that time? A. My recollection of my testimony is that I had not recollection of any particular statement.

Q. Have you any recollection of any statement at all that was furnished by him? A. No. I presume statements must have been furnished by him. I have no recollection of any particular one.

Q. I am asking you if you have any recollection
5249 of that, Mr. Haskell. Now, do you know whether that statement showed that the Buckeye Powder Company was getting more for its powder at that time than the du Pont Powder Company (Objection).

Q. Well, do you remember whether information was received by you then, or by that sales board, to the effect that the Buckeye Powder Company was then receiving $1.17 for its powder as against $1.15 which the du Pont Company was receiving in the same territory? A. Such a statement may have been received; I don't know.

5250 Q. Was it not at that time that you decided to issue your 95 cent rate and that you reduced your price from $1.15 to 95 cents? A. I should say not. I don't recollect the date the first 95 cent price was authorized, although it was about that time. There was no general reduction in price to 95 cents then, or at any other time.

Q. When this price was made was it not made with the specific statement that it was made for the very purpose of getting the customers of the Buckeye Powder Company? A. Not according to my recollection.

Q. Will you swear it was not made at that time? A. I have no recollection regarding the statement or anything about it.

Q. I understand. I will ask you whether or not at that time Mr. Bumstead and Mr. Eugene du

Pont made a protest that they did not favor that cut at that time? A. I don't know anything about the price being made, but think it extremely unlikely they would do it.

Q. Did Mr. Bumstead or Mr. du Pont make any protest at that time with regard to the establishment of the 95 cent price?

A. As they were two assistant directors of sales in charge of that territory I should say if they made a protest, it would not have been made.

Q. It would not have been made. Do you say 5252
that simply upon your recollection or probabilities? A. Because I testified before I remembered nothing about this particular price.

Q. Therefore you regard it as a matter of probability, that it would not have been made? A. That is the only way I can consider it.

Q. Did you not at that time send out a telegram to all the principal branch offices in the Central Division announcing that cut price of 95 cents? A. I have no recollection of the matter. I should say not.

Q. Did you not send out telegrams at that time 5253
to Mr. Rice in charge of the office at Chicago, Mr. Coleman, the agent in charge at Cincinnati, and Mr. Vehmeyer, in charge at Chicago, who represented the L. & R. Company? A. I should say not.

Q. Did you not send to any of these people? A. I think not.

Q. Did you not receive a protest from Mr. Vehmeyer in very emphatic, and not very polite language, to know why you made such a cut at that time? A. I have no recollection of receiving such a communication.

Q. In 1895, after the Ohio Powder Company had come into the association—just previous to that time, however, powder went down in Ohio to 78

5254 cents a keg, did it not? A. My recollection is the Ohio Powder Company had been in the association since before 1890.

Q. Very well then. Powder went down in 1895 in Ohio to 78 cents, did it not? A. There was one sale made at 78 cents. That was by The King Powder Company, as I recollect it. That was one carload. I don't recollect any other customer being sold below 80.

5255 Q. On page 1061 of your testimony in the Government Case you are reported to have stated as follows: "Q. Did prices get very low in 1895? A. The price got as low, as near as I can recollect, as 78 cents per keg in Ohio. Q. Was there any money in the business for anybody? A. There was no profit at that price. There was a loss." Do you remember that testimony in the Government case? A. Yes.

Q. In your judgment, then, there was a loss, would be a loss, at 78 cents, would there? A. Yes, if you charge off depreciation and a reasonable

5256 overhead charge and freight and so forth.

Q. In the winter of 1902 and 1903 there was a readjustment of prices, was there not, in the Central Division, and they were materially increased? A. I don't recall it. There may have been.

Q. Was not the price east of the Mississippi River fixed at $1.25 and west of the Mississippi River at $1.35 at that time? A. That is my recollection.

Q. In your opinion was that a reasonable price for black blasting powder in that district? A. That is the carload price. That is the price of a single carload. It was not the price at which large buyers purchased.

Q. Oh, it was not. I am asking you now whether that was a reasonable price for the powder at that time? A. It was a reasonable price for a single

purchaser of carloads, although it was advanved I believe because the price that it resulted in in the cases of larger customers made a lower price than was wise at that time.

Q. Did the price of $1.25 east of the Mississippi River and the price of $1.35 west of the Mississippi River yield any more than a reasonable amount of profit on the money invested in the business?

Mr. McCarter: I think that is an immaterial question. 5258

The Court: I think it is permissible.

Mr. Katzenbach: That question ought to be referred to a particular time.

The Court: It has relation to this particular time, 1902 and 1903, as I understand it.

The Witness: I understood the counsel before to refer to the beginning of the Association.

The Court: No, this was 1902 and 1903.

The Witness: May I hear the question before that? (Question repeated.) I understood counsel to ask whether the $1.25 yielded a reasonable profit at the commencement of the 1896 agreement? 5259

The Court (To the witness): This relates to 1902 or 1903.

Q. Do you understand the question? A. I would like to hear it again. (Question repeated.) When?

Q. In 1902 and 1903. A. That price was only a price in single carload lots——

Mr. Abbott: Now, Mr. Haskell——

The Court: (To the witness) That is not an answer; it is not responsive.

Q. You can say yes or no to that.

A. That yielded an average fair return when sold in single carload lots.

Q. Is that the way you testified in the Government case? A. I don't recolect whether I testified that way or not.

Q. I will ask you to state whether you testified in the Government case that you limited——

The Court: Ask him whether he limits it
5261 now.

Q. Then do you limit that price to carload lots only? A. I limited it, yes, because that was not the average price.

Q. Will you say at this time whether or not the price of $1.25 east of the Mississippi River and $1.35 west of the Mississippi River was in your opinion a reasonable price for black blasting powder in 1902 or 1903 in those district? (Objection overruled.) A. Yes, when sold in single carload lots.

5262 Q. And in no other case? A. It might have been in certain cases.

Q. Tell me some other case in which it was a reasonable price. A. Where the powder had to be transported from the mills in the East to the Mississippi River.

Q. It would not be a reasonable price if sold from the Mooar, Iowa, mills or Phoenix Mills? A. Not in large quantities.

Q. I read this from the Government record: "Q. What did the Association do in reference to prices? A. It advanced its prices twenty-five cents per keg, and later an additional ten cents per keg. This brought the price to how much, east of the Mississippi River? A. That brought the price, at that time, to one dollar and twenty-five cents in the States of Indiana, Ohio, and Illinois. Q. And how

much west of the Mississippi River? A. The states immediately west of the Mississippi were ten cents higher, and south of the Ohio were ten cents higher. As you got further west and further south the price advanced still more. Q. Were those prices ever increased any further? A. A readjustment of prices, which was made in the winter of 1902 or 1903, resulted in some advances, but was not a material change from what was in effect at the time the price schedule was adopted, or when the Association was first formed. 5264 Q. Were these prices of one dollar and twenty-five cents east of the Mississippi River, and one dollar and thirty-five cents west of the Mississippi River, in your opinion, reasonable prices for black powder? A. They were. Q. Did they yield any more than a reasonable amount of profit on the money invested in the business? A. They did not."

Q. Do you remember so testifying? A. I understood that testimony to apply to the period when the prices were made.

Q. But you so testified? A. Yes. 5265

Q. And the statement was true as you made it at that time? A. I intended it o be. I was a matter of opinion.

Q. One question or two with regard to the contracts. As I understood you to say the other day, you did receive some suggestions from time to time from various people with reference to the form of the contract which you adopted in 1897. Is that correct? A. You refer to me personally?

Q. I mean the association of which you were a part and which I am assuming you represented in your negotiations with reference to these contracts —preparing contracts? A. My recollection is that at the time the contracts were resumed several of the members of the advisory committee were re-

5266 *Jonathan Haskell—Cross*

quested to and did bring in suggstions regarding the form of contract we employed.

Q. It was not all one form of uniform contract that was submitted at that time, was i? A. There were a number of suggestions to the——

Q. And afterwards the form of contract was sometimes changed, was it not? Some new provisions were inserted from time to time? A. Each concern made its own contract providing they put such and such provisions in, is my recollection.

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Q. And those provisions that they must put in there were sometimes changed by authority of the association, were they not? A. I don't recollect whether they were on not. They may have been.

Mr. Abbott: That is all.

Cross examination by Mr. Katzenbach:

Q. I believe you testified several days ago to the effect that you entered the high explosives business in the year 1892, did you not? A. Yes.

5268

Q. At that time what concerns were you connected with? A. The Rapauno Chemical Company and the Hercules Powder Company.

Q. And the Rapauno Chemical Company was a concern having its plant here in the State of New Jersey? A. Yes.

Q. At what point in the State of New Jersey? A. At Thompson's Point.

Q. Is that known as Gibbsboro? A. It is near Gibbstown.

Q. Near Gibbstown, rather. You were also president of the Hercules Powder Company? A. Yes.

Q. Where was that plant located? A. That was located in Cleveland, Ohio.

Q. What were the stockholding interests in the Rapauno Chemical Company at that time, in 1892,

when you became connected with it; who were the principal stockholders? A. The stockholders in each concern were identical in proportion, the Laflin & Rand Powder Company, the Hazard Powder Company and E. I. du Pont de Nemours & Company, William du Pont and Henry Belin, Jr., of Scranton, who represented the estate of the late Lamot du Pont.

Q. Then Lamont du Pont had been the original investor in these companies, together with the other interests you have spoken of? A. My recollection 5270
is that Mr. Lamot du Pont acquired his interests before his death from the du Ponts and the Laflin & Rand Companies.

Q. Then, with the Rapauno Chemical Company, the du Pont interests and the Laflin & Rand interests and the Hazard interests, together with the members of the du Pont family, had been connected with that company from its very inception, had they not? A. Yes.

Q. And that was practically the pioneer in the high explosives business of the east, was it not, the 5271
first to engage in the manufacture of high explosives in the eastern part of this country? A. I think that the plant of the Atlantic Dynamite Company was established first.

Q. That was established first? A. Yes.

Q. Where was the plant of the Atlantic Dynamite Company? A. At Kenvil, New Jersey.

Q. Did the interests you have mentioned as being connected with the Rapauno and Hercules Companies have any interest in the Atlantic Dynamite Company at the inception of that enterprise? A. I think on the formation of the Atlantic Dynamite Company they took a certain proportion of the stock.

Q. And they owned that proportion of the stock

at the time you became connected with the business in 1892; is not that so? A. All except that portion which was owned by Mr. Lamont du Pont. It had been sold.

Q. Then the facts were that in this enterprise the Laflin & Rand Company, the Hazard Company and the du Pont Company were practically partners, were they not? A. Yes.

Q. You were asked on your direct examination with reference to the formation of the Eastern Dy-
5273 namite Company. That company was formed in 1895, was it not? A. Yes, sir.

Q. And that company took over this Rapauno Chemical Company and the Hercules Powder Company and the Atlantic Dynamite Company; that was your testimony, was it not? A. Took over the plant of the Atlantic Dynamite Company?

Q. Yes. Took over the plant of the Atlantic Dynamite Company. Now, will you give fully the reasons why that Eastern Dynamite Company was formed and the Atlantic Dynamite Company's plant
5274 was taken over by the Rapauno and Hercules Powder Company interests in this Eastern Dynamite Company? A. The Atlantic Dynamite Company, a California corporation, had as its practical managers in the east Mr. George S. Moore and John C. Schrader, the former acting as general agent. He attended to the New York office business particularly, and more largely to the sales department of the business. Mr. Schrader, who was also a general agent, attended to the management of the works primarily, and at times also was called upon to attend the matters of detail pertaining to sales. He was the field man both for manufacture and selling. These two gentlemen were of equal importance and had gotten into a position where they could not agree with each other. They differed as to matters

of policy. Each was writing to the home office in California finding fault with the way in which the other conducted the business of the company, and an almost impossible condition had been created. The board of directors of the Atlantic Dynamite Company was situated in California. The only representative of the eastern interests on that board was Mr. Bernard Peyton, superintendent of the Santa Cruz works, of the California Powder Works, which, however, had no connection with the Atlantic Dynamite Company. Finding that it was 5276
impossible to reconcile the differences between these two managers and being so far from the scene of action of the business of the Atlantic Dynamite Company, the directors finally determined it would be best to turn over the management of the business to the eastern stockholders of the Atlantic Dynamite Company, who were also owners of the Rapauno Chemical Company and the Hercules Powder Company. (After interrupting.)

A. I knew this ill-feeling existed between these two men. I knew personally that the directors on the West Coast were disquieted as to conditions 5277
that were in the Atlantic Dynamite Company. I know that because Mr. Bernard Peyton came to me after having been to Mr. Eugene du Pont, and I know that they wanted to turn it over to the du Ponts.

Mr. Abbott: That is apparently hearsay.

The Court: No——

Q. They wanted to turn it over. Go on. A. The only practical way to conserve the interests of all the interested stockholders seemed to be to form one concern in which all should own in proportion so as to carry on the business of the three companies, and for that purpose the Eastern Dynamite Company was formed, $1,400,000 of its stock being

given to the former stockholders of the Rapauno Chemical Company and the Hercules Powder Company. $600,000 of the stock was given to the Atlantic Dynamite Company of California in exchange for all of its assets excepting $5,000, which was reserved by them to wind up the company as long as its only assets should be the stock in the Eastern Dynamite Company.

Q. The Atlantic Dynamite Company, you have said, was a California corporation? A. Yes.

5279 Q. Were the stockholders of the Atlantic Dynamite Company in any way connected with the California Powder Works, the California stockholders? A. I think not; but they were all small stockholders. They may have had some stock in it. But I know no such cases.

Q. The interests owning the California Powder Works were not the same as those owning the Atlantic Dynamite Company? A. That is correct.

Q. Then in the acquisition of this Atlantic Dynamite Company, it was acquired by overtures made

5280 from the stockholders of the Atlantic Dynamite Company themselves rather than by any initiative taken by you in behalf of the Rapauno Company or Hercules Company or any of the stockholders of the Rapauno or Hercules Companies, was it not? A. The overtures were made by Mr. Bernard Peyton as representing the directors of the Atlantic Dynamite Company of California.

Q. So that the overtures came from the Atlantic Dynamite Company's board of directors itself? A. Yes, sir.

Q. Now, then, there has been some reference to a company that was acquired by the Eastern Dynamite Company known as the Brooklyn Glycerine Company or the Brooklyn Glycerine and Refining Company. Have you any recollection of the assets of that company being purchased or the plant of

that company being purchased by the Eastern Dynamite Company? A. Yes.

Q. Will you state whether or not glycerine is a product that is required for use in the manufacture of dynamite? A. It has always formed one of the most important ingredients in the manufacture of dynamite.

Q. And from what is glycerine itself made? A. From the waste soap lyes or from candle crude, the crude fats that come from the making of candles.

5282

Q. There has always been somewhat of a scarcity of glycerine, has there not? A. For the last twenty years the demand has practically absorbed all that could be made.

Q. What was the business of this Brooklyn Glycerine and Refining Company? A. It was a small plant organized to take over a plant for the refining of glycerine in Brooklyn, New York.

Q. Then the purpose of the Brooklyn Glycerine and Refining Company was for the production of glycerine and not for the production of dynamite? A. Yes.

5283

Q. And that was merely purchased by the Eastern Dynamite Company in order to have better facilities for the making of glycerine which it used in its dynamite manufacture, was it not? A. Yes.

Q. And it had no dynamite trade or anything of that nature? A. No.

Q. You stated on your direct examination that when you became president of the Rapauno Chemical Company and the Hercules Powder Company you thereby came in contact with the conditions existing with reference to the trade of gunpowder or blasting powder. Is that so? A. Yes.

Q. In that connection you said that you knew the prices that prevailed for black blasting powder between the years 1892 and 1895, and prior to your

connection with the Laflin and Rand Powder Company, by reason of the fact that in the sale of the higher explosives of the companies with which you were connected, you sometimes had to furnish under these contracts for higher explosives, black blasting powder. Is that so? A. Yes.

Q. In that way did you become acquainted with the prices that prevailed for black blasting powder between the years 1892 and 1893? A. Only to the extent that they were sold by my company in
5285 connection with dynamite.

Q. As a matter of fact you knew that black blasting powder companies made contracts for black blasting powder at that time, did you not? A. Yes. They made a contract with the Rapauno Chemical Company for the drainage canal.

Q. And you referred to one contract which extended over a period of years, which was a contract for the furnishing of explosives for the building of the Chicago Drainage Canal, did you not? A. Yes.

5286 Q. Did you make such a contract with any black blasting powder company that was a member of the association at that time for such supplies of black blasting powder as you would need to comply with your contract for the Rapauno Chemical Company in the furnishing of explosives for this work? A. Yes.

Q. So that as a matter of fact the black blasting powder companies did make contracts for black blasting powder as early as the years 1892, 1893 and 1894, to your knowledge? A. Yes.

Q. Will you state what the reasons were, if you know, why customers desired to make contracts for black blasting powder during this period? A. During this period?

Q. Yes; from 1892 to 1895, from the standpoint

of the customers of black blasting powder,, the consumer of black blasting powder; why did they desire to make contracts? A. It was customary on the part of contractors when figuring on a contract to be made to take into consideration the cost of the supplies and then, as now, they usually made a contract for the supply of the high explosives, the black blasting powder or any other kind of explosives they might require during the continuance of the work, in order that any change in the markets might not affect the price that they had counted upon in making their contract for the work. 5288

Q. You were familiar in a general way with the price of black blasting powder prevailing between 1892 and 1895 and prior to your connection with the Laflin and Rand Company, were you not? A. I knew from heresay that it was going down steadily.

Q. What was the date you became president of the Laflin and Rand Company? A. In February, 1895. 5289

Q. When you became president of the company did you familiarize yourself with the conditions prevailing in the black blasting powder business at that time? A. Yes.

Q. There has been an association referred to as existing in more or less form during the years 1892 to 1896. Did you become familiar with the existence of an association of black blasting powder manufacturers? A. Yes.

Q. What condition did you find in the black blasting powder business? Describe it fully, if you please, as it existed in the year 1895 with reference to the price of black blasting powder. What condition did you find with reference to the prices of black blasting powder which you discov-

5290 ered after you became president of the Laflin & Rand Powder Company in 1895? A. The whole market was thoroughly demoralized.

Q. By demoralization of a market what, exactly, do you mean? A. The price had gone down from where I first became cognizant of it, $1.50 a keg, in 1892, to as low as 80 cents or 85 cents a keg, in the Middle West.

Q. You have mentioned one instance you knew of 78 cents a keg? A. That was afterwards.

5291 Q. Yes, that was afterwards, was it; and at the time you assumed the presidency of the Laflin & Rand Powder Company, or shortly afterwards, powder was selling at 80 cents to 85 cents a keg? A. Yes.

Q. And that was a condition that was prevailing, you said, in the Middle West? A. That was in the central district, as far west as the Mississippi River, and north of the Ohio River.

Q. And the central district comprises what territory? The states of Illinois, Ohio and Indiana.

5292 Q. State what factors had produced this low price of powder? Was it due to competitors entering business? A. Yes; the productive capacity far exceeded the business to be done.

Q. Well, was there competition between the companies that composed this association at that time, between them for trade? A. There always had been competition between them, but just as soon as each of the so-called associated companies received instructions to protect its own trade the prices fell of themselves, and they fought each other, if anything, harder than they fought the outsiders.

Q. So that during this period of 1892 to 1896 you had a condition in which the companies that formed this association were competing very hard

among themselves for trade, were they not? A. Undoubtedly.

Q. And you also had those companies competing with other companies which were not members of the Association for trade, did you not? A. Yes.

Q. What companies were there that were actively competing for trade that were not connected with the association between the years 1892 and 1896? A. There was the Equitable Powder Company, the Phoenix Powder Company, the Chattanooga Powder Company, the Globe Powder Company and the Belmont Powder Works, owned by John D. Griswold. 5294

Q. In the Middle West what companies that were outside of the association were very actively competing in this district that you have referred to as the Central District, with the companies in the association? A. Both the Phoenix and the Equitable had plants in southwestern Illinois. Their competition was very keen. The King Company almost immediately after I went into the black powder business withdrew from the association entirely and became an outside competitor, not making any report or having any connection with the old line companies. Those three concerns were the largest factors of outside competition. 5295

Q. During this period the Laflin and Rand Company merely met the reduced prices of black blasting powder, did they not? A. As far as I can recollect.

Q. To your knowledge was there any effort upon the part of the old line companies to cut the prices that were made by the Phoenix, the Chattanooga, the Equitable, the Belmont or the Globe Companies during this period? A. I cannot speak as to what the policy was of the other companies. I only know what my instructions were to my own men and what the results were in my companies.

5296 *Jonathan Haskell—Cross*

Q. What were those instructions and what were the results? A. My instructions were that the trade was to be striven for and gotten at equal prices, because if we took the trade at cut prices we would simply hold it until someone else made a greater cut.

Q. So your instructions were merely to meet the prices of others competing for that trade? A. In most instances; yes.

5297 Q. As a result of this demoralization of prices in the period which you have just referred to, between the years 1892 and 1896, what happened in the year 1896 in reference to getting together all the former associates and of the introduction of any new associates into an association? A. A meeting was held of all the various powder companies that joined the 1896 agreement, and an allotment of a number of kegs, which simply indicated the percentage that each concern was to have in the adjustment for over-sales and undersales, was agreed upon under a committee, a governing committee

5298 called the advisory committee, which was formed for the purpose of representing the associates between general meetings.

Q. The real purpose of this association was, was it not, to prevent any of the weak companies from going under by reason of the lowering price of powder, and an effort upon the part of the older companies to strengthen the weaker companies by bringing them together into an association? (Objection overruled.) A. I should think that was the result rather than the purpose.

Q. Is not the result of any association of that kind to aid the weaker companies that enter into it? A. I would hardly say that we were as philanthropic as your question would indicate. We wanted to continue to do business at a fair degree of profit.

Q. Yes. The purpose of the association then was to enable those who engaged in business to do business at a fair degree of profit, was it not? A. Undoubtedly.

Q. And the result of it was to aid the weaker companies, was it not? A. Unquestionably.

Q. Because if the prices kept lowering and the demoralization and the demoralized market continued, it would mean that some weaker companies would have to go out of business, would it not? A. There is no question about that. 5300

Q. After the agreement of 1896 was formed, I understand that the prices were raised as the result of the formation of that agreement. That is your testimony, is it not? A. Yes.

Q. Just as soon as one of these associations was formed, or revivified and the price of black blasting powder was increased, so that there was a fair degree of profit in the sale of it, did not that always bring into the field new or other new companies that desired to avail themselves of these increased prices of black blasting powder? A. That was my understanding. 5301

Q. Has not that occurred in every single instance that you can recall, where the parties have gotten together—that as soon as they have gotten together other parties have come out and engaged in the business, with the result that the same process to some extent, more or less, of a lowering of price, has prevailed? A. I was personally cognizant with what happened in regard to the 1896 agreement, and also looked up the result of the 1889 agreement, where the prices were advanced, and found that soon after the agreement was made, then or about then, it brought in a very large or a very much larger measure of new competitors.

Q. During the period between 1892 and 1896 do

you know of any concerted effort that was ever made by these associates or in this association against any one of those companies, as, for instance, the Equitable, Phoenix or Chattanooga, that was outside of the association? A. I do not.

Q. After the formation of the 1896 association, shortly after that, did any new concerns come into the powder business that you know of? A. Almost immediately the Indiana Powder Company was formed.

5303 Q. And the Indiana Powder Company was formed by the activities of a Mr. Rood? A. Yes.

Q. (Continuing) Who had been an associate with Mr. Waddell in the Cincinnati office of the Hazard and du Pont Companies? A. Yes.

Q. And that Mr. Rood, who was associated with Mr. Waddell, is the same Mr. Rood that formed this Indiana Powder Company or was instrumental in forming it? A. Yes.

Q. And what year was the Indiana Powder Company formed? A. It was in 1896, I think, because they started operations in 1897.

5304 Q. Do you recall that they did start operations in the year 1897? A. Yes.

Q. Where were the works of the Indiana Powder Company located? A. At Fontanet, Indiana.

Q. Will you state in what part of the State of Indiana Fontanet is located? A. In the central portion, a little north of the actual center, I think.

Q. In the territory at that time what black blasting powder companies were actively engaged in the business, with plants located near the plant of the Indiana Powder Company? A. There was no plant at that time that was built in Indiana. The powder had to be brought from the East or from plants on the Mississippi River.

Q. What were the nearest plants to the Indiana Powder Company in the year 1897? A. The Pleasant Prairie plant of the Laflin & Rand Powder Company, the Mooar plant of the du Pont Powder Company, the Belleville plant, of the Phoenix; and also the East Alton plant of the Equitable. They were very near equi-distant from the Indiana powder concern.

Q. What about the Youngstown plant of the Ohio? A. I don't know whether I could say that was nearer or further away, but that was one of 5306
the competing plants in that territory.

Q. One of the competing plants? A. Yes.

Q. So that this Indiana Powder Company was located by its promoters in a territory where there was a considerable supply of black blasting powder coming from these other companies you have named? A. It was located in a field we should have occupied and intended to occupy.

Q. The agreement of 1896 that has been referred to here continued on down to what date? A. June 30, 1904.

5307

Q. Was it possible after a company had become a member of the association for it to withdraw at any time it desired? A. Yes.

Q. And in the history of the associations that had been done frequently by different companies, had it not? A. The only other case I know of was the withdrawal of the King Company in 1895.

Q. Do you know whether any of the companies prior to June 30, 1904, withdrew from the 1896 association? A. The King Powder Company at the time it made a contract for the sale of its goods ceased to be a member of the association.

Q. Did not the Equitable Powder Company withdraw prior to June 30, 1904? A. My recollection is that it served notice June 30, 1903, of its intention to withdraw a year from that time.

5308 *Jonathan Haskell—Cross*

Q. So it did take effect June 30, 1904, and the association then dissolved as of that date, did it? A. Yes.

Q. After the dissolution of the association in 1904 to your knowledge has there been any body or any association which is a perpetuation of the association of 1896, which was dissolved on June 30, 1904? A. Absolutely not——

Mr. Abbott: That is a legal conclusion.

5309 The Court: Yes; it involves a legal conclusion. If you can do so, separate your question so as to deal only with facts. You should do that.

Q. What companies formed the association prior to June 30, 1904? A. The du Pont, Laflin & Rand, Hazard Company, Chattanooga, Phoenix, Ohio, Oriental and Birmingham. There may have been others, but I don't recollect them at the moment.

Q. The King? A. The King had withdrawn prior

5310 to that date. I understood the question to be just before the dissolution.

The Court: The question was who were the associates in 1896.

Q. Yes, up to June 30, 1904; but the witness said the King had withdrawn prior to that time? A. Prior to the termination of the association——

Q. Prior to the termination of the association. And the termination of the association was at the same time as the date fixed for the withdrawal of the Equitable? A. Yes.

Q. After June 30, 1904, you have spoken of an agreement called the Sullivan agreement. Did that agreement have anything to do with the associa-

tion as it had existed prior to that time? A. Nothing whatever.

Q. Did this agreement which you have called the Sullivan agreement attempt in any way to fix prices? A. In no way whatever.

Q. I understand that agreement was an agreement between a man by the name of Sullivan on the one hand and the du Pont Company on the other, of the companies known as the Fay Companies, the Aetna Powder Company, the Miami and the American, to fix the quota of trade between the two companies. Was not that so? A. Correct. 5312

Q. At that time you were an officer of the du Pont Company? A. Yes.

Q. And you were active in the affairs of the du Pont Company? A. Yes; head of the sales department.

Q. Was there any consolidation whatever between these interests called the Fay interests and Sullivan and the du Pont Company as to the fixing of any prices to be charged for the products of either the du Pont Company or the Fay Companies? A. Not that I can recollect. 5313

Q. The purpose of the association, or one of the objects of the association, was I think to endeavor to fix prices, was it not? A. Yes.

Q. They had not been particularly successful in it, had they? A. They had failed very often.

Q. There was not anything in the Sullivan agreement with reference to prices, was there? A. Nothing whatever, as near as I can recollect.

Q. In the agreement of 1896 was there any provision which limited production? (Objection overruled) A. Nothing whatever.

Q. Now, then, this agreement of 1896 did not fix any allotment by kegs of blasting powder to different companies, did it? A. The proportions were indicated by kegs; but that was merely that

5314 the allotment to each concern might indicate that percentage which that allotment bore to the total number of kegs of all the allotments.

Q. So really the percentage was the allotment and not the number of kegs? A. Yes.

Q. Mr. Haskell, you testified with reference to an agreement for the sale of the product of the King Powder Company, I believe, did you not? A. Yes.

5315 Q. And that agreement was terminated at what period of time? A. About the end of 1906.

Q. And that was an agreement between what parties?

Mr. Abbott: The agreement is in evidence —a written agreement.

A. The agreement was made, as I recollect it, between the King Powder Company on the one hand and the du Pont and Laflin and Rand Companies on the other hand.

5316 Q. This agreement, generally speaking then, was for the sale of the powder of the King Powder Company to the du Pont-Laflin & Rand interests? A. Yes.

Q. And that agreement had been made some years prior to 1906, had it? A. Yes.

Q. And those sales had been conducted by the Laflin and Rand and the du Pont Companies? A. Through the King Mercantile Company.

Q. Through the King Mercantile Company and then, as I understand, you had been advised by your counsel that there was some question of the legality of that agreement? A. That is correct.

Q. And I suppose by that time the King Powder Company had some legal advisers, too? A. Yes; and they took the opposite view.

Q. That is, your advisers said that there was

some question as to the legality of this contract, and the advisers of the King Powder Company said that the contract was a perfectly legal contract. That was the question, was it? A. That was the position that they took.

Q. Now, then, after the King Powder Company ascertained your desire to cancel this agreement, were they willing to rescind this agreement without the payment of a consideration? A. They declined to cancel it under any ricumstances.

Q. Did you afterwards find any consideration 5318
that did move them to a cancellation of that contract? A. We were forced to tell them—served notice upon them that if they did not agree to a cancellation upon some terms, that we would break it.

Q. If you could; is that it? A. We felt we could cease to sell their powder——

Q. Well, you were relying upon your counsel and they were relying upon theirs? A. Yes.

Q. So then it would result in the issues as to which counsel knew the most law; is that the idea? A.That was it. 5319

Q. So then what amount, if any, was finally paid by your company for the purpose of the cancellation of this agreement? A. I have refreshed my memory since I was on the stand before and I have found that the consideration was $100,000.

Q. And that was paid to the King Powder Company in order to be released from this agreement that your counsel had advised you that there was some question as to the legality of; is that right? A. Yes.

Q. For that purpose you paid out $100,000? A. Yes.

Q. That was the year 1906? A. Yes.

Q. State whether or not there was any founda-

5320 tion for the payment of this consideration from the attitude or standpoint of the King Powder Company, what it was to compensate them for? A. This contract had been made some years previous, and at the time the King turned over the sale of its goods to us they discontinued all their storage facilities and selling agents that they had to maintain, and when it came to the breaking off of the agreement they naturally objected, because having deprived themselves, on account of the contract, of all the
5321 ordinary facilities for carrying on business required by a company selling sporting and blasting powders, it would cost them a considerable sum of money to replace the facilities to put themselves back in the business; so that we very reluctantly consented to pay them $100,000 as a fair consideration to restore them to be active participants in the powder business.

Q. Then in 1906 you paid the King Powder Company $100,000 in order to restore them to become a competitor in the business, did you? A. That is
5322 correct.

Q. You said the Indiana Powder Company commenced business in the year 1897, was it? A. Yes.

Q. How long was it after the Indiana Powder Company had been engaged in business that there were any negotiations made for a purchase or a sale of this property of the Indiana Powder Company? A. I do not recollect the exact date, but I think it was about three years.

Q. Who made the overtures in these negotiations? A. The first two overtures to purchase their plant or their company were made by Mr. Sternberger, one of the largest stockholders in the Indiana Powder Company. The last one I am not clear in regard to, whether he was the mover in it, or Mr. Tally, another stockholder and president of a company.

Q. Mr. Tally was president of the company? A. Yes.

Q. What office did Mr. Rood hold in the company? A. He was secretary and treasurer, according to my recollection.

Q. Were you ever approached by Mr. Rood or Mr. Tally together with a view of buying the Indiana Powder Company? A. I think Mr. Rood only came into the consultation after Mr. Tally had paved the way. Mr. Tally was from Delaware, from the Brandywine Hundred, and I think he opened 5324
the negotiations with Mr. Eugene du Pont.

Q. During the period the Indiana Powder Company was in the business did the members of the association to your knowledge ever take any action to drive the Indiana Powder Company out of business? A. No.

Q. When the Indiana Powder Company became engaged in business did they sell powder to various customers that had formerly been the customers of the Laflin & Rand Company? A. They started out with large contracts, with their five year
contracts, according to my recollection. 5325

Q. Those stockholders prior to that had been customers of what companies, to your knowledge? A. Of several of the older powder companies, the Hazard Company particularly—the Hazard and du Pont Companies.

Q. Had they been customers of the Laflin & Rand Company? A. Yes; there were one or two of them who were customers of the Laflin & Rand. Our interest in their trade was not as large as some of the others.

Q. During this period did the Laflin & Rand Company, with which you were connected, ever seek to make a lower price for powder from that which you knew that the Indiana Company had offered? A. Not as far as I know.

Q. Did you ever cut prices as against the Indiana Powder Company? A. We never cut prices to the Indiana Powder Company's customers, as far as I am aware.

Q. As a result of these negotiations that were had with reference to the plant of the Indiana Powder Company, what happened with the ownership of that plant? A. We bought the stock of the company.

Q. You bought the stock of the company? A.
5327 The du Pont, the Hazard and the Laflin & Rand, and all of the other associated powder companies excepting the King, is my recollection. I——

Q. What year was that? A. I don't recall the exact year. It was 1900 or 1901 or somewhere thereabouts.

Q. Was it not in the early part of the year 1902 that the Indiana was purchased? A. I am under the impression that it was the last of 1901 and that the transaction was actually carried out early in 1902.

Q. After the purchase of the Indiana Powder
5328 Company was made did you become an officer of that company? A. I don't recollect, but I think I was made its president.

Q. Did that company continue to engage in business and its factory operate down to the year 1907? A. Yes.

Q. What caused the interruption of its business in 1907? A. An explosion destroyed practically the entire plant in 1907.

Q. Mr. Haskell, you were examined with reference to an agreement that has been referred to as the foreign agreement. You recall that, do you not? A. Yes, sir.

Q. During the course of your examination you were handed a printed document and you were asked to refresh your memory from that printed

document. You recall that, do you not? A. Yes.

Q. I think that during your testimony you stated that you could recall as a part of the agreement something to the effect that was not referred to in the printed sheets that you were asked to refer to to refresh your memory; is not that so? A. Yes.

Q. Then, as a matter of fact the printed sheets you had produced before you did not contain something that you remembered to be contained in the original agreement; is not that so? A. It contained something that I knew the original agreement must 5330 have contained and was not there.

Q. So that the printed sheets you had before you could not have been, then, a copy of that printed agreement in its entirety, could it? A. It could not have been a complete copy; no.

Q. You said that this foreign agreement, or one of the stipulations, was that this European concern, the Rottweil-Koln Veringte-Pulverfabricken Co. of Cologne—you recall that company, I think you said? A. Yes.

Q. Was not to build any plants in the United States; is that correct? A. Correct. 5331

Q. In your opinion, would a plant or plants built in the United States, for instance in the vicinity of Peoria, have been an aid to the Buckeye Powder Company if they had been built by this foreign concern? A. They would have added further competition where more than enough already existed.

Q. Do you recall the year in which the Buckeye Powder Company began business? A. The fall of 1903.

Q. Do you know the locality in which its plant was erected? A. I have never been there, but I believe it was erected near Peoria, Illinois.

Q. What other companies were there in the years 1903, other than the plants of the du Pont Powder Company, built in this territory comprising the

States of Indiana, Ohio, Illinois, Missouri, Iowa and Wisconsin? (Objection overruled.) A. I don't recollect. Comparatively soon after the Buckeye Powder Company commenced business the Senior Powder Company built a plant in southeastern Ohio; the Egyptian Powder Company built a plant in southern Illinois; the United States Powder Company built a plant near Terre Haute, Indiana; and there was another plant built near Kansas City called the Eureka or Excelsior.

5333 Q. Then along with the Buckeye Powder Company and the establishment of that plant there came into that very field the new companies in the form of the United States, the Egyptian, the Excelsior and the Senior. Is that correct? A. Yes.

Q. Did any of the older plants at that time, or near that time, erect any new mills to your knowledge; for instance, did the Miami Powder Company—— A. Yes; the Miami erected a plant near Thebes, Illinois.

Q. What part of Illinois is that? A. In the extreme southern part. And several of the older
5334 companies increased their capacity because their business from the West had grown very much larger and it was necessary to either build or increase their Western plants so as to avoid the very considerable freight rates from the East to the West.

Q. Those plants that you refer to were in Kansas, in Iowa, and in—— A. The Mooar plant was increased, the Pleasant Prairie was increased, the Indiana plant was largely increased, and the Kansas plants were increased. A plant was built in Oklahoma Territory, and the Equitable built a new plant at Fort Smith, Arkansas.

Q. Those were all engaged in business between the years 1903 and 1908 except that the plant of the Indiana Powder Company and Fontanet was

destroyed by an explosion in 1907? A. That is my understanding.

Q. You have spoken of contracts. Do you know whether the associated companies made contracts prior to the year 1897 with customers for powder? A. I understand that they did; and I know of some of them that were made by those companies that I was connected with prior to my going to Laflin & Rand. In other words, we made some contracts.

Q. So powder companies had made contracts for a period of considerable time prior to 1897? A. 5336
Unquestionably.

Q. And those contracts were reported in the making of them to the association, were they not? A. In many instances, yes.

Q. You have a recollection of that, have you not? A. I have a recollection of reports being called for of contracts existing at certain times.

Q. I am speaking of the time prior to June, 1897. A. Yes.

Q. You spoke the other day of a resumption of contracts in the year 1897. There had been a period 5337
of time when contracts prior to June 10, 1897, had not been freely made; is not that so? A. Yes.

Q. I think you gave the reasons at the time why there had been a hiatus in the making of contracts between different members of the association, and customers, did you not? A. Yes.

Q. That was at some time during the year 1896, in the early part of it, and prior to the Presidential Election in the year 1896 the Powder Companies were fearful that powder contracts being made according to the value of the dollar in the United States, if Mr. Bryan was successful in his Presidential canvass and silver was coined at a ratio of 16 to 1, I believe it was, that the value of the dollar in which the Powder Companies would be paid for powder furnished under their contracts

would be lessened? Is not that so? A. That is correct.

Q. As a matter of fact, the chief ingredient of black blasting powder is nitrate of soda, is it not? A. It is.

Q. And that comes largely from Chile and is imported into this country, is it not? A. Entirely.

Q. Entirely so. There is no other place in the world, then, from which you can get nitrate of soda other than that country, Chile? A. That is
5339 correct.

Q. In what form did the powder companies engaged in the manufacture of black blasting powder in the year 1896 have to pay for the nitrate of soda which they got from Chile? A. In gold.

Q. The reason, then, of the hiatus in the making of contracts between the members of the association was due solely to this agitation in reference to the silver, and that you had to pay for the chief ingredient of powder, nitrate of soda, in gold? A. Yes. And under the advice of some of the members
5340 of the committee, that it was best not to make contracts for a long period of time——

Q. And that was due to what? A. They had an idea that it was to their interests not to make contracts. I didn't agree with them in it at all.

Q. This matter of silver and gold was the principal reason, as I understand it— A. That formed a comparatively impassable bar at the moment. We did not see how we could get around that question and make contracts payable in the currency of the United States and protect ourselves on raw material advances.

Q. You recall this resolution being shown to you by Mr. Abbott, in some of the minutes of the association in the month of June, 1897, do you not? (indicating) A. I recall a paper being shown to me, among others——

Q. Among others, yes, which had some reference to this matter of the associates making contracts? A. I gathered that as I glanced over it.

Q. Yes. The matter of making contracts had existed, as I understand it, long anterior to this among the associates, had it not? A. Yes.

Q. And those contracts were reported to the associates just as any contract, following this meeting in 1897, were reported? A. I don't think they were reported in exactly the same way, because when each company could make any price it chose 5342
it did not report contracts unless the advisory committee asked for a list of contracts.

Q. They did so call, did they not? A. They did at the time prices advanced.

Q. Do you recall or not, Mr. Haskell, whether there was any definite action taken at a meeting of the board of the association on or about the 8th of July, 1896, with reference to the stopping of the making of contracts? A. My recollection is that the resolution stopping the making of contracts was adopted about that time. 5343

Q. I show you a document which I believe has been admitted in evidence and marked 117-G (page 1026 of record) and ask you whether that refreshes your recollection as to the action that was taken at that time? A. (After examination): I recall such a resolution being passed.

Q. I will read that section, as this document has been offered in evidence. It is a report of the meeting held on the 8th of July, 1896:

"On motion of Mr. Fay, seconded by Mr. Haskell, that no orders shall be accepted for future delivery of blasting powder except for specifically stated quantities and at specified dates of shipment; that no agreement shall be made for any delivery after December 31, 1896, that all orders not filled at that date be cancelled and customers notified of such

5344 *Jonathan Haskell—Cross*

intended cancellation in every instance. The secretary shall advise all of the concerns now associated of this resolution. Carried."

A. My recollection is that that was passed.

Q. Do you recall whether or not on July 8, 1896, the nominees of the various political parties had been nominated for president? A. I do not recall the date, no.

Q. Do you recall whether or not there was any action taken by the board on the 22nd of July, 1896,
5345 with reference to the restriction of contracts? I show you Exhibit 117-F, page 1023? A. (After examination): I recollect the action as being taken.

Q. I read at the page indicated:

"On motion of Mr. Haskell, seconded by Mr. Colvin, it was:

"Resolved, that as the impression seems to prevail that the restriction of contracts for blasting powder to December 31st, 1896, is because of the possibility of further and material modification in price, it is deemed advisable to request the parties
5346 here represented to instruct their salesmen and employes that the action is taken not because there is any present intention of further changing prices, but because it would seem unwise to obligate ourselves to deliver powder at present prices in view of the peculiar condition of financial affairs in the country, and more particularly because nearly all the material used in our manufacture is imported and must be paid for in gold, regardless of the monetary standard of this country."

That is what you had reference to in your testimony, is it not? A. Yes.

Q. The portion which I have just read? A. Yes.

Q. Mr. Haskell, you stated that you had, I believe, when you were president of the Eastern Dynamite Company, established a system known as the

trade report system, did you not? A. It was established before the organization of the Eastern Dynamite Association.

Q. When you were president? A. When I was president of the Rapauno Chemical Company and the Hercules Powder Company.

Q. That system was introduced into the Laflin and Rand Company when you became president of that company? A. Yes, that is correct.

Q. And subsequently it was introduced into the du Pont Company, was it not? A. Yes. 5348

Q. And is now used and has been for a number of years past by the du Pont Powder Company? A. Yes.

Q. That system is merely a system by which the general conditions of trade in the country are reported to the principal office, together with information secured from customers, is it not? A. It is done for that purpose and for the purpose of checking the salesman in the field.

Q. Well, then, it has the purpose of eliciting information from customers with reference to whether they are in the market for goods, and of 5349 whom they buy, and at what price they buy? Is that it? A. It was originated for the purpose of knowing from the salesmen's reports what they were doing each day, and in connection with each customer visited.

Q. And another purpose of the system of trade reports was to see the activity or inactivity of your own salesmen? A. Yes.

Q. And from time to time the correctness of the information reported by your salesmen, through trade reports, would be checked up to find out whether it was accurate or not? So far as we could, but it would be very difficult.

Q. Did any of the salesmen of the Laflin & Rand

Powder Company, while you were connected with that company or the du Pont Company, have any instructions to report on these trade reports gossip and rumor? A. No, unless they believed it to be true.

Q. Now then, what they were asked to secure and what they did secure was information as to whether the user of explosives or of black blasting powder was in the market, was it not, for the purchase of goods? A. The prime information de-
5351 sired was to know whether he was then in the market, or if not, the day at which he would be in the market.

Q. So he could be called upon again about that date? A. Yes.

Q. And then if your salesman found out by conversation with a customer of whom he was purchasing his explosive supplies—he would find that out? A. He would endeavor to do so.

Q. And also endeavor to discover the price that he was paying, by asking the customer? A. Yes.

5352 Q. These trade reports would be sent in then to the office of the company, would they not? A. Yes.

Q. And they would furnish guides as to the action of the company with reference to prices or with reference to when it was necessary to send out other salesmen to interview this trade? A. They would be used for the information of the sales directors or assistant directors in governing the affairs of the sales department.

Q. In the year 1903 you have testified that there was a board of the du Pont Powder Company known as the sales board, have you not? A. Yes.

Q. Did that board have any members of any other company than the du Pont Company sitting with the board and acting on these matters? A. It was made up entirely of the members of E. I. du

Pont de Nemours & Company at that time and its owned or controlled companies.

Q. Now, then, Mr. Haskell, that was an organization that was entirely within the du Pont Company itself? A. Yes.

Q. And made up solely of its employees? A. Yes.

Q. What connection did you have with that sales board during the years 1903 and 1904? A. I created it, presided at its meetings when I was present. 5354

Q. And how long did you have connection with that board? A. Until 1907.

Q. Was it one of the duties of that board to consider the conditions of the trade in various parts of the country? A. Yes.

Q. And did you at meetings of that board endeavor to fix a price to meet the conditions of the trade? A. That was the reason for which it was constituted.

Q. There has been reference made here upon your examination to what is termed a general 95 cent price per keg for powder in the year 1905, made in the early part of 1905 as alleged. You were the head of the sales board at that time, were you not? A. Yes. 5355

Q. Was there any action of the sales board during that time, during the year 1905, which made a general price of 95 cents to all users or consumers of powder in the district comprising the State of Illinois and the surrounding States, known as the Central District? A. No.

Q. You recall what did occur, do you not, in reference to the making of a 95 cent price? A. I recall that we reluctantly authorized the branch office in specific instances to go to the 95 cent price where it was rendered necessary by the offering of other companies.

Q. And that was simply in specific instances and those instances were discussed before that board before the board took any action on them, were they not? A. That is my recollection.

Q. And you acted upon information which you believed to be correct at the time that any 95 cent price was made to any customer? A. Every branch office manager was required to show most excellent reasons why it was necessary to make such a price to meet the price of others.

5357 Q. Was there any general price at any time between 1903 and 1908 made by the du Pont Company at 95 cents in this district? A. No.

Q. And in each case the matter was acted upon specifically and distinctly from every other case, was it not? A. That is my recollection.

Q. During that period did the sales board ever make a price of 95 cents or any other price that would be lower than the price which they were informed the customer to whom that price was being made by the du Pont Company had been offered

5358 powder by other concerns? (Objection overruled.) A. My recollection is that no prices were made unless information was previously obtained that such a price was likely to be made or had already been made to the customer or if, as in some instances, branch offices were advised that a 95 cent price could be made, they were required to show that they had not made it unnecessarily or excepting in cases where others were making it.

Q. Then the du Pont Company never did anything except to meet a price; they never cut a price, that is knowingly? A. That was our invariable practice.

Q. Did you ever have any knowledge of a price being cut? A. I have no recollection of any such case.

Q. A 95 cent price made to any customer was arrived at in no different way than if that customer had been quoted $1.14 or $1.15 at a prior period or a subsequent period, was it? A. That is correct.

Q. You have been interrogated about a speech made by Mr. A. J. Moxham along in the latter part of the year 1902. I think you said that Mr. Moxham was in the habit of making speeches at the meetings of the association during that period? A. Counsel for the plaintiff asked a question which made it necessary for me to answer in that way; 5360
but as a matter of fact Mr. Moxham was always an active participant in all the meetings at which he was present and usually spoke more or less at length regarding anything he was interested in.

Q. Have you had definitely fixed in your mind the incident which counsel for the plaintiff had in his mind when he asked you with reference to this address of Mr. Moxham? A. Yes.

Q. Now, then, that address which the counsel for the plaintiff had in mind was an address made by Mr. Moxham before the association in the latter part of the year 1902, was it not? A. Yes. 5361

Q. That was information that had been gathered for him by Mr. Waddell for the purpose of making his address? A. I so understood, yes.

Q. It was shortly after the speech that Mr. Moxham so made that there was an attempted advance in the price of blasting powder, was it not? A. Yes.

Q. And then within two or three weeks after that advance had been made by the association Mr. Waddell tendered his resignation, did he not, to the du Pont Powder Company? A. That is my recollection.

Q. And engaged in this enterprise of the Buckeye Powder Company; is not that so? A. Yes, sir.

5362 Q. Just as when the advance was made in 1896 Mr. Rood resigned and started out with the Indiana Powder Company, was it not? A. Yes.

Q. History repeating itself? A. Yes.

Q. You were, if you will recall, being interrogated just before the noon recess with reference to a statement of prices of $1.25 east of the Mississippi River and of $1.35 west of the Mississippi River? A. Yes.

5363 Q. As being applicable to the condition of 1902 and 1903. Do you recall it? A. That is my understanding of it.

Q. I will ask you to read your testimony on pages 1063 and 1064 of volume 2 and ask you after reading those whether those prices referred to 1896 or 1902 and 1903? A. (After examination.) The first advances spoken of refer to just after the 1896 agreement.

Q. In the middle of page 1064 you will see this question: "Does that answer refer to the 1896 or the 1902 and 1903 prices?"——

5364 A. The readjustment spoken of as occurring later refers, of course, to the winter of 1902 and 1903.

Q. That is your understanding of that? A. Yes.

Q. Now referring to the 1896 agreement this was your testimony: "Q. What was the purpose of that agreement? A. The purpose of that agreement was to establish reasonably remunerative prices and to prevent a continuance or a reoccurrence of the ruinous trade warfare that had existed between the older companies and the newer ones too. Q. Was that open to any company to come in if they desired? A. I don't know that the question was raised. Q. Was there ever any operation under that agreement conducted for the purpose of regulating competition against outside companies? A. I don't think that I understand your question.

(Question withdrawn.) Q. Was there any purpose in making that agreement, to use the association or pool of these companies as a means of conducting competition against companies that did not belong to the agreement? A. There was not. Q. Did the agreement itself fix any price? A. It did not. Q. That was to be regulated by the Advisory Committee? A. A provision was made for the Advisory Committee to fix prices in the various territories. Q. In the absence of that agreement, would these results have presently been accomplished that you 5366
have spoken of in your opinion—that a disastrous to the weaker companies? A. It seems to me there could have been no other outcome. Q. In your opinion was that agreement essential for the protection of the weaker ones of these companies? A. It was essential to their interests and was more important that such an agreement should be made for the benefit of the weaker ones than for the stronger concerns. Q. What did the association do in reference to prices? A. It advanced its prices twenty-five cents per keg, and, later, an additional
ten cents per keg. Q. This brought the price to 5367
how much, east of the Mississippi River? A. That brought the price at that time to $1.25 in the States of Indiana, Ohio and Illinois. Q. And how much west of the Mississippi River? A. The states immediately west of the Mississippi were ten cents higher and south of the Ohio were ten cents higher. As you got further west and further south the price advanced still more. Q. Were those prices ever increased any further? A. A readjustment of prices, which was made in the winter of 1902 or 1903 resulted in some advances, but was not a material change from what was in effect at the time the price schedule was adopted or when the association was first formed. Q. Were these prices of $1.25 each of the Mississippi River and $1.35

5368 west of the Mississippi River in your opinion, reasonable prices for black powder? A. They were."

Q. I will ask you, Mr. Haskell, what period you referred to when you said the prices of $1.25 east of the Mississippi River and $1.35 west of the Mississippi River were reasonable prices?

A. My answer referred to the former part, I think—the question as to the fairness of the price referred to the advance immediately after the 1896 agreement. The price was not $1.25 after the prices
5369 had been advanced in the winter of 1902 and 1903.

Q. So the prices referred to were the prices of the advance in 1896? A. Yes.

Q. That is what I wanted to bring out.

The Court: Did you not give the prices of $1.25 and $1.35 in 1902 and 1903?

The Witness: That was only the single carload prices. As I say, at that time the rebate brought the great bulk of the prices below the price of 1902 and 1903.

5370 Mr. Katzenbach: I did not hear your Honor's question.

The Court: I asked whether he did not give the prices of $1.25 and $1.35 for 1902 and 1903.

Q. Were the prices of $1.25 and $1.35 the prices following the rise in 1902 and 1903? A. No, because at that time there were reductions for various sizes of trade which brought the price down and the general average was not what it was in 1896 when there were low prices.

Q. Then the price was for single carload lots? A. Yes; in 1902 and 1903.

Q. And when there were more than single carload lots taken by a customer the prices were very

much less than $1.25 and $1.35? A. From five to twenty cents a keg.

Q. Do you not remember that the advance advocated by Mr. Moxham was for $1.25 and $1.35? A. Yes.

Q. For single carload lots? A. Yes.

Q. This advance of 1902 and 1903, though, met the same fate as the advance of 1896, did it not? A. It was not carried out. We failed to hold it.

Q. And that was due to the competition, was it not? A. Yes, before the advanced prices really 5372
became effective through the maturing of many contracts the competition came in to such an extent that it practically never was advanced to that price.

Q. It never took effect, is that true? A. It practically never took effect.

Q. To your knowledge that is what always has happened, is it not, when an advance of that kind had been made, since you have been connected with the powder business? A. That is the case for the last seventeen years.

Q. And that is the entire time you have been connected with the business? A. Yes. 5373

Q. Mr. Haskell, you referred to a letter that was written by Mr. Moxham in which the words "inside" and "outside" competition were referred to. There was never any action by the Association dividing any competition into inside competition and outside competition, so far as you know, was there? A. I don't recollect exactly what was done. Nothing was ever effected.

Q. You do not recollect anything of that kind? This was in 1902 that Mr. Moxham's letter referred to that. You do not know of anything that was done in the association after that relating to inside and outside competition, do you? A. All that that letter was intended to do, or to organiza-

tion which was created at that time, was to use such effort as we might to furnish an intending investor in the powder business with actual information as to the profits and prices prevailing in the powder business, because nearly every one before he went into the powder business had the impression that powder could be manufactured for about 50 to 55 cents a keg, and that there was an immense sum of money in it, and the effort that was intended, and the only effort that was ever pro-
5375 ceeded in by that committee was to go to the various proposed investors in powder companies and give them actual facts as to the profits that they could expect if they went into the enterprise.

Q. That is the finance committee that you are speaking of, to which reference was made? A. That is my understanding.

Q. Your attention was directed by counsel for the plaintiff to a letter that you had written to J. G. Miller under date of August 26, 1895, and your attention was directed to the following sen-
5376 tence in that letter: "The gist of the whole matter is that if trade has been taken from us we want it back, but we do not think it wise to divert trade from the du Pont, Hazard or Oriental companies by cutting, as that would merely lead to retailiation and do no one any good." The inquiry stopped there. The following sentence is as follows: "In cases where we could divert trade from our so-called associates we should prefer part rather than all and with no more fuss than necessary." Now, then, as a matter of fact, you were, for the Laflin & Rand Company, seeking to get trade for your company, were you not? A. Yes.

Q. Either by the qualities of your powder or by the activity and proper representations as to its worth by your agents and salesmen, were you not? A. Yes.

Q. This letter, which has been referred to merely, contains as I understand it, a general circular letter which you circulated broadcast among the agents and salesmen of the Laflin & Rand Powder Company about this date of August 26, 1895, giving them general instructions as to business. Is that correct? A. Yes, and indicating the general policy to a new employe, Mr. Miller.

Q. Yes. And you at that time had not severed wholly your connection with the Rapauno Chemical Company or the Hercules Powder Company, 5378
had you? A. I was still president——

Q. President of both those companies as well as president of the Laflin & Rand Company? A. Yes.

Q. There were no explosives that were made by the Repauno Chemical Company and Hercules Powder Company similar to those made by the Laflin & Rand Powder Company, were there? A. No.

Q. And would Mr. Miller also be acting for the higher explosives companies? A. No, he was only for the Laflin and Rand Company.

Q. He sold only for the Laflin and Rand Powder 5379
Company? A. Yes.

Q. You were asked with reference to the stockholders of the Laflin and Rand Company and you gave them. You gave their names, I believe, upon direct examination, did you not? A. Yes.

Q. You were personally acquainted with all these stockholders of the Laflin and Rand Powder Company, were you not? A. I named the estate of William Barclay Parsons; but I knew all the others.

Q. But you knew all the others? A. Yes.

Q. You knew them personally, did you not? A. Yes.

Q. Were not most of the stockholders of the Laflin and Rand Powder Company in 1902 men that

were very far advanced in years and desirous of retiring from active business? A. Mr. Turck, whom I referred to as being a stockholder at an earlier date, disposed of his holdings and was not then a stockholder; and Mr. Riker was an old man; but the Parsons were not more than middle-aged.

Q. Was Mr. Riker desirous, on account of his advanced age, of selling his interest in the Laflin and Rand Powder Company? A. He told me at the
5381 time that if he had the expectation of ten years of years of life he would not consider it under any consideration.

Q. And he was really the chief factor in the Laflin and Rand Company? A. He was the largest stockholder, yes.

Q. And the other stockholders acquiesced to a very large extent in his wishes in selling out in 1902 the property of the Laflin and Rand Powder Company, did they not? A. I don't think there was much dissension. I think they were willing to
5382 sell.

Q. All of them willing to sell? A. Yes.

Q. And that was largely, as you say, brought about by the advanced age of Mr. Riker, who was the largest stockholder? A. Yes.

Q. At that time one of the Mr. Parsons had died. Which one was that? A. William Barclay Parsons, Sr. His estate owned some of the stock, but his two sons were large stockholders.

Q. Was Mr. Turck living at that time ? A. Yes.

Q. But he had sold his interests prior to 1902? A. Yes; he was no longer a stockholder.

Re-direct examination by Mr. Abbott:

Q. If the sole purpose of these stockholders in selling out at that time was on account of their

age and they knew they were not going to live very long, why did you make them agree to keep out of the powder business for 25 years? A. I have said that only referred to John L. Riker.

Q. Did that refer only to him; was not that agreement made as to all of them? A. The statement I made as to age only referred to Mr. Riker.

Q. Oh; and the statement as to the age did not apply to the others. A moment ago you were shown two sets of minutes, 117-F and 117-G, and you said that those two minutes refreshed your memory. How did it happen that those two minutes were so familiar to you, Mr. Haskell, and you were not able to remember any of the other minutes I showed you from time to time? 5384

(Objection overruled.)

A. The transactions covered more than ordinary importance; they were more than ordinarily important episodes in the conduct of the business; and it was clearly impressed upon my memory.

Q. And you remembered those minutes for that reason, or did you simply recall independently of the minutes— A. I remember the action, not the minutes. 5385

Q. You did not remember the minutes at all? A. No.

Q. Then when you said you remembered those minutes that was not what you meant? A. I think I said I remembered that action being taken.

Q. I would like to know whether the Indiana Powder Company was one of the companies with which you made this arrangement—to buy out and take into your association because you wanted to help the Indiana Powder Company, because it was a weaker company and you wanted to help them?

A. I don't think I made that statement with regard to any company.

Q. What did you mean, then, when you said that it was for the interest of the association to take in these weaker companies—that it was for the benefit of the weak ones your association was organized and not for the benefit of the stronger members of the association? A. I don't remember making such a statement.

Q. What did you say on the subject? A. I said that the result of that kind of an agreement was more to the benefit of the weaker ones than to the
5387 stronger.

Q. Very well. What did you mean, then, by that? For instance, the Indiana Powder Company—how did it help them? A. They were not taken in.

Mr. Katzenbach: They were not in.

A. (Continuing): They were not participants in the 1896 agreement.

Q. Then all finally came into the association when you bought them? A. When they were bought they were given an allotment, yes.

Q. And it was for their benefit, was it, you bought them out or took them in? A. No; for ours.
5388 Q. That is right, and does not that same answer apply to all the companies which you took over from time to time into the association—it was for your benefit and not for theirs? A. I think I have clearly denied any philanthropic intentions.

Q. I did not understand that you had. You also stated awhile ago something in connection with Mr. Waddell's resignation in 1905, which took place after the Moxham speech in 1902, that that was "history repeating itself." What did you have in mind when you said that?

A. I would not think I said or intended to say that Mr. Waddell's resignation resulted in the organization of new companies. What I did say was that when the price was advanced new com-

panies always came in, and counsel asked me whether shortly after that Mr. Waddel did not resign, and I said yes.

Q. And that is what you mean by history repeating itself? A. Whenever prices advanced it brought in new competition.

Q. Oh yes. Do you know as a matter of fact that Mr. Waddell resigned before the speech by Mr. Moxham was made? A. I do not.

Q. If that is a fact then what connection would there be between the speech of Mr. Moxham and the resignation of Mr. Waddell? A. I have attached none. 5390

Q. You have not attached any? As a matter of fact, Mr. Waddell's resignation was made November 25, 1902, was it not? A. I know nothing about it.

Q. And the speech of Mr. Moxham was in the month of December—December 19, 1902—was it not? A. I don't know the date at all.

Q. In regard to these contracts which you say were made by some of the members of the association previous to 1897, did you ever see any one of those contracts yourself? A. My recollection is I signed some of them for Laflin & Rand. 5391

Q. And you saw them if you signed them for the Laflin and Rand Powder Company. Do you know whether any of those contracts had any provisions in them with reference to rebates? A. At that time?

Q. Yes. A. I don't think so.

Q. That was one of the things that came into the new system of contracts which had not prevailed in any contract known before that, was it not? (Objection overruled). A. Yes.

Q. You referred to the Egyptian Powder Company and the United States Powder Company, which were competitors. What years did you have

in mind that those companies were competitors? A. I don't recollect the exact years, but they came on soon after the Buckeye started.

Q. As a matter of fact, was not the Egyptian Company largely owned by Olin of the Equitable Powder Company? A. Not at that time.

Q. When was it that the company came to be owned by him? A. He purchased it later; I don't remember the date.

Q. How much later? A. I don't recall.

5393 Q. As a matter of fact was not the United States Powder Company largely owned by him? A. No.

Q. Not at any time? A. Not at that time.

Q. Well, was it at any time after that? A. I understand he owns some of the stock now.

Q. Was it not acquired during this period you have testified to? A. What period do you refer to?

Q. During the period you speak of the Buckeye being in business? A. I spoke of the Buckeye being organized, and soon thereafter these companies being started up.

5394 Q. Between 1903 and 1908 then, so as to be specific? A. Whether or not Mr. Olin purchased his stock before 1908 in the Egyptian or the United States I do not know, but if he did it was the latter part of that time.

Q. You were a director of the Equitable Powder Company, were you not, during this period? A. Yes.

Q. And you ought to have known something of what Mr. Olin was doing? A. I knew at the time, but I don't recall the date.

Q. I see. You have testified in regard to the terms of this Sullivan agreement, and you have mentioned some of the terms as relating to the quota of trade only. How do you happen to recall so definitely that that was all that was mentioned

in that agreement? Do you know of the agreement, where it is, have you seen it lately? A. No.

Q. You have not looked it up to refresh your memory in any way? A. No.

Q. You do not know anything about the terms of the agreement except as you recall them; is that correct? A. That is all.

Q. There might have been some provision in that with reference to prices? A. I know there was not.

Q. You know there was not. How does it happen you know that so emphatically when you don't 5396
know whether the agreement is in existence? A. The agreement was made by my direction; I authorized the terms.

Q. Tell us what the terms were? A. The only thing it was to cover was an agreement as to allotment of trade, certain percentages which might be sold by the du Pont interests for dynamite and black powder, and if no further sales were made no payment was to be made either way; but in case the du Pont Company exceeded its quota it was to pay a certain rate, the amount of which I do not now 5397
recall, for such oversales; and vice versa.

Q. You remember my showing you a document on your direct examination and asking you whether that was the Sullivan agreement, do you not? A. I recollect your showing me several detached sheets of paper.

Q. Very well. I show you now the same thing, P-201, in what is known as the Fay deposition. A. I am unable to state about it.

Q. But you said that you directed that that agreement be prepared and that you knew all about its terms. Can you not look at that and state? A. I can look at this and see whether it embodies the terms that I authorized. My recollection is that that is what it embodied when I looked at it the other day.

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Q. You think that that embodied the terms? A. As I recollect it, it covers the salient points. There seems to be nothing in that outside the terms I have described already.

Q. Then this is a true and correct statement, you think, of what was in the Sullivan agreement? A. I don't know whether it is or not.

Q. Can you not say what your belief is on that subject? A. I cannot tell. I did not recollect and I do not recollect that that was the form of memo-
5399 randa, if any memoranda was exchanged.

Q. You do not know whether any memoranda was exchanged at all? A. I do not.

Q. I want to ask you now a little in regard to the Indiana Powder Company, as that has been referred to quite extensively. You stated, Mr. Haskell, that all of the activities on the part of the Indiana Powder Company or, rather, all of the activities for the purpose of bringing about a settlement of the differences between the Indiana Powder Company and the associated companies, was taken by the owners
5400 of that company, Mr. Rood and others. I want to call your attention to the following minutes, contained in 122-G, at page 1164. "Meeting of July 22d, 1898. The Secretary presented a report of the Committee dated April 22d, 1898, to treat with the Indiana Powder Company, reading a letter from Mr. Eugene du Pont, under date of the 21st instant, the same being in effect a report of said Committee, which consisted of Mr. du Pont and Mr. Olin, and also read a number of letters upon the same subject which had passed between two members of the committee and letters to and from the president of the Indiana Powder Company. On motion: That the report of the Committee be accepted, and that those gentlemen be asked to confer with the Indiana Powder Company with a view to ascertain, if

practicable, whether or not they would be likely to arrange for a limitation of their products in volume, such as might be acceptable to the companies represented by this Committee, and the Advisory Committee suggests that it may possibly be desirable to make a contract with the Indiana Powder Company which might limit its product from year to year, rather than that they should become parties to our present understanding. Suggesting also that such a contract in limitation should be on lines similar to those of the contract with Arthur Kirke & Sons, 5402 and the same was carried unanimously." Do you remember that action was taken by your board? A. I do not understand what the question refers to—a contract being made or an effort was being made to carry out the wishes of the Advisory Committee?

Q. My question was directed to this point: I want to know whether all of the steps taken to bring about a settlement of the differences, whatever these might have been, between the Associates, and the Indiana Powder Company, were taken by Mr. Rood and his associates or by the representa- 5403 tives of the associated companies, and I am reading you this particular minute for the purpose of finding out whether you can recall that that was one of the actions taken by the associated companies? A. I have no recollection of this action other than as brought up here, but I think very likely it is correct. The statement I made before was in answer to a question of counsel as to what steps we took towards getting them to sell out, and I replied that we took up one of the occasions, of which there were several, when the Indiana Company approached us, or a stockholder of the Indiana approached us with a view of asking us to buy them out.

Q. Then you do not want it inferred that all of the action was taken by the Indiana Powder Com-

pany representatives? A. In regard to the selling out of their business or the acquisition by us of their business, I do.

Q. Very well. On page 1234 I call attention to the following portion of the minutes of the general meeting of March 8, 1904: "Mr. Eugene du Pont was made chairman of this meeting. * * * The meeting considered the matter of negotiating for the purchase of a certain piece of property, which had been offered for sale, and which some of the
5405 parties present believed it to be for the general interest to purchase if the terms of sale should appear to make it desirable. For the purpose of such negotiations: On motion of Mr. Lent, seconded by Mr. J. B. Coleman: That a committee be appointed to consist of Mr. Haskell, Mr. Eugene du Pont and Mr. Connable, with power to act in this matter." What was that certain piece of property? A. I don't recall.

Q. Was it not the Indiana Powder Company? A. It may have been.

5406 Q. Was not that about the time? A. It was about the time it was bought, yes.

Q. That was in 1900, and you state that this Indiana Powder Company began its activities in 1897. Now, immediately after the purchase of the Indiana Powder Company you increased your prices, did you not? A. Such is not my recollection.

Q. Did you withdraw the prices then prevailing in that district? A. I don't think the prices were changed at all.

Q. I call your attention to meeting of the advisory committee of February 21, 1902. This was a meeting that first announced the death of Mr. Eugene du Pont, and then it proceeded as follows: "On motion duly made and seconded that all prices below $1.10, except on existing contracts in Illinois, Ohio and Indiana be withdrawn," and so forth? Do

you recollect that? A. I don't recall that except as you have read it.

Q. I show you Government's Exhibit 391 in volume 5 of the exhibits of Petitioners, and I ask you to look at the list of names set forth there and ask you to state whether or not that is a correct list of the companies engaged in the manufacture of high explosives which were acquired by the Eastern Dynamite Company from time to time? A. (After examination) I cannot state whether it is or not.

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Q. Have you looked at it in detail or do you just say that without examination? A. I could not know without referring to the record to see whether the list is correct.

Q. Do you not know any of those companies? A. I know the names, surely.

Q. Do you not know whether you acquired those companies from time to time? (Objection overruled.) A. Some of them we did and some of them we did not (referring to list). The Acme Powder Company was acquired; The Anthony Powder Company not acquired; American Forcite Powder Manufacturing Company was acquired; Blue Ridge Powder Company was acquired; Bradford Glycerine Company was acquired; Brooklyn Glycerine Manufacturing & Refining Company was acquired; Climax Powder Company was acquired; Columbian Powder Company was acquired; Clinton Dynamite Company was acquired; Dittmar Powder & Chemical Company was acquired; Explosive Supply Company not acquired; Gogebic Powder Company was acquired; Hecla Powder Company was acquired; Hudson River Powder Company was acquired; Hercules Powder Company was not acquired; Independent Powder Company was acquired; A. Kirk & Son Company was acquired; Missouri Supply Company was not acquired; Mt.

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Wolf Dynamite Company was acquired; New York Powder Company of New York was not acquired; Nitro Powder Company was acquired; Pennsylvania Torpedo Company was acquired; Repauno Chemical Company was not acquired; Rock Glycerine Company was acquired; Robina Fuse Company was acquired; Standard Explosives Company was not acquired; Sterling Dynamite Company was acquired; H. Julius Smith Electric Fuse Company was acquired; A. S. Speece Powder Manufacturing
5411 Company was acquired; Thompson Torpedo Company was acquired; United States Dynamite Company was acquired; Weldy Dynamite Company was acquired.

Q. Then out of the whole number that you have read there were only seven that were not acquired? A. I cannot recall the number.

Q. You stated that this 95 cent price was not made in any case where you had information that it was a less price than a competitor was making. Now, I will ask you to state whether or not in the
5412 case of the Dering Coal Company you did not make a price on the 15th day of May of 95 cents and at that time the Buckeye Powder Company was selling to the same company at $1. Do you remember that is a fact? A. I don't recall it.

Q. If that is a fact then the information you received was erroneous. Is that correct? A. I think I have made the statement that if a competitor was either making it or ready to make it.

Q. Oh, yes. Do you not know as a matter of fact that the Buckeye Powder Company continued to sell at $1 until October 10, 1905? This price was made in May, 1905, made with customers of the Buckeye? A. I have no knowledge as to sales of the Buckeye Powder Company.

Q. You stated a while ago that you did not make any of these prices any lower than any other com-

pany and that was based on information given to you. If that is a fact then your information was erroneous, was it not? A. The Buckeye may not have been the only competitor in that case, and my understanding is that they were not the entire possessors of the Dering trade.

Q. And then as to the Donk Brothers, would that also be your conclusion? A. I don't know anything about Donk Brothers. They may not have been our customers.

Q. If that is a fact your information may have 5414
been entirely erroneous? A. There is no question we made the most earnest efforts we could to get the exact facts.

Q. But you do not know whether you always got them? A. It would be pretty hard to know whether we did.

Q. You do know about the Dering Coal Company being an important consumer of black blasting powder? A. I know it became such.

Q. And don't you know that the Donk Brothers were exceedingly large consumers? A. They were not in the same class with the Dering Brothers, I 5415
think.

Q. But was not the Donk mine one of the most important producers of coal in Illinois, and is it not yet one of the largest purchasers there? A. I don't think they were as large as the Derings.

Q. Very large, though? A. I don't know how large.

Q. If you had kept in close touch with the business of the sales board you would have known regarding those matters, would you not? A. I have stated before that I think the Donk Brothers were not our customers. They were Miami customers, as I recollect, although I am not sure of that.

Q. That is all very true, but were you not from time to time making the 95 cent price to them? A. I don't think so. We may have been doing so.

5416 *Armand Bruneau—Direct*

Q. If the statement presented here known as No. 1248 says so, it is probable true, is it not? A. If the statement was made by Mr. Coyne it is true.

Mr. Abbott: That is all.

Thereafter certain documents contained in plaintiff's identification P-3 were received in evidence as plaintiff's exhibits, said documents being
5417 marked Government's exhibits 129-A, 129-B, 129-C, 129-D, 129-E, 129-F, 129-G, 129-H, 129-I, 129-J, 129-K, 129-L, 129-M, 129-N, 129-O, 129-P, 129-Q, and 131, 131-A, 131-B, 131-C, 131-D, 131-E, 131-F.

ARMAND BRUNEAU was called as a witness on behalf of the plaintiff, and being duly sworn, testified as follows:

Direct examination by Mr. Abbott:

5418 Q. Mr. Bruneau, where do you reside? A. I live at 571 9th Street, Brooklyn, N. Y.

Q. What is your business? A. Certified public accountant.

Q. How long have you been a certified public accountant? A. I have had my degree for nearly two years. That is my full degree, and I passed my examination nearly three years ago.

Q. From what institution did you obtain your degree? A. That is from the University of the State of New York, which is a regular degree authorized by the laws of the State of New York.

Q. Where are you employed at the present time? A. I am employed with Arthur W. Smith & Company, 25 Broad Street, New York.

Mr. McCarter: What concern?

The Witness: Arthur W. Smith & Company.

Q. Did you have any experience in accounting matters before you obtained your degree? A. A great deal.

Q. State what that was? A. Well, suppose I start with the beginning of my experience.

Q. Very well. A. I started to work for a living when I was about twelve and a half years old, in 5420
Montreal, and worked there for——

The Court: Just tell what experience you have had in the way of accounting.

The Witness: In the way of accounting?

The Court: Yes.

A. I have had over five years' experience with the Connecticut Railway & Lighting Company, of Bridgeport, Conn., in their general accounting offices. I went through most every position in their offices, and for two years I was assistant to their 5421
auditor, preparing their financial statements, balance sheets, profit and loss, and all kinds of statements in connection with their business, which covered street railway, electric lighting and gas accounting.

By Mr. Abbott:

Q. How old a man are you, Mr. Bruneau? A. I am 27. I will be 28 next April. I have not finished with my experience, Mr. Abbott.

Q. Very well. A. From Bridgeport I went to Waterbury, Conn., with the Noera Manufacturing Company, and I did work, kept their books, and did all kinds of work for them, and accounting

5422 *Armand Bruneau—Direct*

work in connection with the calculation of costs and general work, and I also spent a little time with the Waterbury Button Company, keeping their books; and from there I went to New York with the John Matthews Soda Water Company, 333 East 26th Street, New York. With that concern I was two years, I kept their books, and was assistant to the treasurer; and from there I went with Arthur W. Smith & Company, by whom I am employed very nearly three years.

5423 Q. What position do you hold with that company? A. Why, at the present time, Mr. Smith, who is the principal man, Arthur W. Smith, in the firm, in the corporation of A. W. Smith & Company, he is in Europe, and at the present time I am running the entire business of the concern.

Q. Do you know the rule which is used by accountants generally in estimating the value of good will of a manufacturing plant? (Objection overruled.) A. Yes, sir.

Q. What is that rule? A. The rule is to deter-
5424 mine the average earnings of a concern for a period of time—we take the average earnings of the concern and we multiply those earnings by from three to five, and we arrive at a certain total, and from that total we deduct a reasonable amount for depreciation, whatever it may call for; we deduct interest on the capital invested; and we deduct sufficient provision for reserve funds and so forth, according to the particular case.

Q. Take a concrete example: Suppose the earnings of a expert testimony of the damage of something that does not exist. A. $75,000 annual earnings a year, you say. I would deduct from that a reasonable amount for depreciation, based of course on the amount of the investment in plant and machinery and tools.

By the Court:

Q. What is that reasonable amount? A. In the case of a manufacturing concern of this nature I believe 5 per cent would be a reasonable amount. It is one that is used a great deal, an average of 5 per cent. Some will depreciate more and some less.

Q. Well, what would be the range that you would take for depreciation? A. From 2½ per cent to 7½ per cent. 5426

By Mr. Abbott:

Q. Then, why in this case do you take 5 per cent when 2½ per cent would be a fair range?

Mr. Katzenbach: I object to that.

The Court: He can state the rule, and he must give the range.

A. It depends on the nature of the assets. Some assets depreciate more than others. 5427

The Court: Certainly, but give the range.

A. 2½ to 7½ per cent in my opinion.

Q. Is that the rule used by accountants? A. Of course they have to consider the nature of the assets. You cannot make an absolute rule, but in the case of a manufacturing concern, it is what is used.

Q. I wish you would confine yourself to the rule used by accountants now. Please state what you would do next with that $75,000 income? A. Having determined the depreciation, I would determine the interest on the capital invested in the plant and machinery. Take a fair interest on the capital, which would be about 6 per cent——

The Court: (To the Witness.) That would be on capital paid in, you mean?

A. (Continuing) Yes, and capital invested. If it had capital, $100,000, at 6 per cent, that would be $6,000 against their earnings that year. In other words——

Q. Now what is the next? A. And the next would be an amount for reserve funds, depending on the character of the business.

5429 Q. What is that as a general rule? How much is that as a general rule? A. That would vary according to the nature of the business.

By the Court:

Q. Give the range. A. I should say usually they set aside an amount equal to the dividend paid; that is, an amount for reserve funds. That is to be conservative and to run your business properly, if your total earnings were $20,000 a year, you would pay $10,000 of that in dividends and set
5430 aside $10,000 for reserve, to accumulate a surplus, and that may be set aside for any special purpose.

Q. That would be 50 per cent on earnings? A. Yes.

Q. Does it usually range as high as fifty per cent on earnings? A. Yes; it ranges more than fifty per cent; I believe, in some cases, it would range much more, and sometimes they pay out all their earnings in dividends.

By Mr. Abbott:

Q. What would be the reason for a higher range? A. They might have some of their earnings tied up in plant. They may follow the policy of rein-

vesting in plant, and then it is not in a condition to pay out to stockholders.

Q. Would the character of the business so far as the hazards are concerned, have anything to do with it? A. What is that?

Q. I say would the character of the business so far as the hazards run have anything to do with that amount? A. Certainly; you would have to consider that, in case there might be contingencies, or the plant might blow up, I suppose, in this case, 5432 you would have to consider that.

Q. Is there anything else you would deduct? A. Give them depreciation, interest on capital and reserve fund for contingencies.

Q. Then there is nothing else that is deducted from the total amount of the earnings? A. Not that I think of now.

Q. So that the balance that would be left then would be the amount of the net profits? A. Would be absolutely net profits. In fact it would be somewhat less than the net profit.

Q. Is that the amount, then, the balance that 5433 would be left then in ascertaining the good will? A. There is one point I have not made quite clear in reference to those reserve funds. The idea I want to get before you is that first we take the amount of depreciation; second, the interest on the capital invested, and, third, an amount to provide for contingencies and reserves according to the nature of the business. For instance, in the case of a street railway company, they set aside a certain percentage of their earnings to provide for accidents. They have accidents to passengers, and eventually those passengers get damages, and they set aside a sum to cover that.

Mr. Katzenbach: That is not the uniform rule, though——

5434 *Armand Bruneau—Direct*
INTERLOCUTORY DECREE.

A. (Continuing.) The net result of their making those deductions is earnings, and I have said that they should be multiplied to determine the good will, which is the rule followed by accountants generally speaking.

Q. Taking the example of a plant earning $75,000 a year, after you had made your deductions such as you have indicated, what would you think
5435 would be a fair proportion of that $75,000 that would be used in calculating the good will?

Mr. Katzenbach: Objected to.

The Court: I suppose he means the difference.

Mr. Abbott: Yes, he means the difference.

By the Court:

Q. Is that it? A. Yes.

Q. For what period? A. For a year. That is, taking a year—you should take two or three years and get the average annual——

5436 Q. I mean to fix the value of the good-will. How many years do you take? A. Three years. I did take three years in this case. It runs from three to five years.

And thereafter plaintiff's counsel offered an interlocutory decree entered by the United States District Court for the District of Delaware, entered on the 21st day of June, 1911.

In the case of The United States of America, petitioner, against E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours Powder Company (of New Jersey), du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, The Hazard Powder Company, Laflin &

Rand Powder Company, Eastern Dynamite Company, E. I. du Pont de Nemours Powder Company (of Delaware), E. I. du Pont de Nemours and Company of Pennsylvania, The King Powder Company, Austin Powder Company of Cleveland, California Powder Works, Conemaugh Powder Company, Fairmont Powder Company, International Smokeless Powder and Chemical Company, Judson Dynamite and Powder Company of Californit Metropolitan Powder Company, Peyton Chemical Company, The Aetna Powder Company, The American E. C. & 5438
Schultze Gunpowder Company, Limited, The American E. C. & Schultze Gunpowder Company, Limited, The American Powder Mills, The Anthony Powder Company, Limited, The Equitable Powder Manufacturing Company, The Miami Powder Company, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry A. du Pont, Harry F. du Pont, Irene du Pont, Francis I. du Pont, Pierre S. du Pont, Thomas Coleman du Pont, Victor du Pont, Jr., Jonathan A. Haskell, Arthur J. Moxham, Hamilton M. Barksdale, Henry F. 5439
Baldwin, Edmond G. Buckner, and Frank L. Connable, Defendants. And also the final decree entered by the same Court in the same cause on the 13th day of June, 1913.

Said offer was objected to.

The Court (after argument) : I assumed from the beginning of this trial that this offer would be made, and I confess it has given me a great deal of trouble. The rule invoked by counsel is so well grounded that I would not be justified in attempting to distinguish this particular kind of a case so as to take it out of the rule. The rule of course had its origin long before corporations were in existence. My own judgment is that that new state of facts has laid a foundation for excepting such cases as this from that rule; but here we have had

5440 *Interlocutory Decree*

thirteen weeks taken up in presenting the plaintiff's case—and how much more will be taken up I do not know—and I do not think this Court would be justified in taking a doubtful ground upon such an important question. Expediency alone forces the Court to deny the offer and give the plaintiff the benefit of the exception. As I say, I think the reason is all the other way, but I am only the Trial Court, the Court of first instance, and I am not going to take any chances with it.
5441 Therefore it is overruled.

To which ruling plaintiff's counsel then and there excepted and said exception was allowed.

(The following is the interlocutory decree so offered and refused.)

INTERLOCUTORY DECREE.

5442 This cause coming on to be heard before the three Circuit Judges of the Third judicial circuit in the Circuit Court of the United States for the District of Delaware, under the provisions of the expediting act of February 11, 1903, in the presence of George W. Wickersham, Attorney General of the United States, William S. Kenyon, assistant to said Attorney General, and James Scarlet and William A. Glasgow, Jr., special assistants to said Attorney General, and Frederic Ullmann for the defendants the American Powder Mills, the Miami Powder Company, and the Aetna Powder Company, M. B. & H. H. Johnson, for the defendant the Austin Powder Company, Frederick Seymour, for the defendant the Equitable Powder Manufacturing Company, David T. Marvel and David T. Wat-

son, for the defendant Henry A. du Pont, Burton B. Tuttle, for the defendant the King Powder Company, and John C. Spooner, James M. Townsend, George S. Graham, William S. Hilles, and William H. Button, for the remaining defendants, and the court having read the pleadings and proofs and heard the argument of counsel, and duly considered the same; and it appearing to the court that the petitioner, the United States of America, is entitled to the relief hereinafter mentioned:

It is thereupon, on the 21st day of June, A. D. 5444
1911, ordered, adjudged, and decreed, and this court, by virtue of the power and authority duly conferred on it by law, does hereby order, adjudge, and decree as follows, to wit:

1. That the petition be dismissed as to the following defendants, namely: Aetna Powder Company, Miami Powder Company, American Powder Mills, Equitable Powder Manufacturing Company, Austin Powder Company, King Powder Company, Anthony Powder Company, Limited, American E. C. & Schultze Gunpowder Company, Peyton Chem- 5445
ical Company, Henry A. du Pont, Henry F. Baldwin, California Powder Works, Conemaugh Powder Company, Metropolitan Powder Company, and E. I. du Pont Company of August 1, 1903.

2. That the remaining 28 defendants, namely, Hazard Powder Company, Laflin & Rand Powder Company, Eastern Dynamite Company, Fairmont Powder Company, International Smokeless Powder & Chemical Company, Judson Dynamite & Powder Company, Delaware Securities Company, Delaware Investment Company, California Investment Company, E. I. du Pont de Nemours & Co. of Pennsylvania, du Pont International Powder Company, E. I. du Pont de Nemours Powder Company, E. I. du Pont de Nemours & Co., Thomas Coleman du

Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenne du Pont, Francis I. du Pont, Victor du Pont, Jr., Jonathan A. Haskell, Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, and Frank L. Connable, are maintaining a combination in restraint of interstate commerce in powder and other explosives in violation of section 1 of the act entitled "An act to protect trade and commerce against unlaful re-
5447 straints and monopolies," approved July 2, 1890, that they have attempted to monopolize and have monopolized a part of such commerce in violation of section 2 of that act, that they shall be enjoined from continuing said combination, and that the combination shall be dissolved.

3. That this court, in order to obtain such further information as shall enable it to frame a final decree which shall give effective force to its adjudication, will hear the petitioner and the defendants on the 16th day of October next as to the nature
5448 of the injunction which shall be granted herein and as to any plan for dissolving said combination which shall be submitted by the petitioner and the defendants, or any of them, to the end that this court may ascertain and determine upon a plan or method for such dissolution which will not deprive the defendants of the opportunity to re-create, out of the elements now composing said combination, a new condition which shall be honestly in harmony with and not repugnant to the law.

4. That both parties have leave to take such additional proofs as they may deem proper to be used at the hearing aforesaid.

5. That, until the entry of final decree herein, said 28 defendants hereinabove last named are, and each of them is, and the agents and servants of them are jointly and severally hereby enjoined from

doing any acts or act which shall in any wise further extend or enlarge the field of operations or the power of the aforesaid combination.

(Signed) GEO. GRAY,
JOS. BUFFINGTON,
W. M. LANNING,

Circuit Judges of the Third Judicial Circuit.

(Certificate of Clerk affixed.) 5450

(The following is the final decree so offered and refused):

FINAL DECREE.

This cause coming on to be heard for final decree in accordance with the interlocutory decree entered herein on the 21st day of June, A. D. 1911, before the three Circuit Judges of the Third Judicial Circuit in the District Court of the United States for the District of Delaware, in the presence of George W. Dickersham, Attorney-General of the 5451
United States, and James Scarlet, William A. Glasgow, Jr., and Victor N. Roadstrum, special assistants to said Attorney-General, and Ullmann & Hoag, for the defendants, the American Powder Mills, the Miami Powder Company and the Aetna Powder Company; M. B. & H. H. Johnson, for the defendant, the Austin Powder Company; Frederick Seymour, for the defendant, the Equitable Powder Manufacturing Company; David T. Marvel and David T. Watson, for the defendant, Henry A. du Pont; Burton B. Tuttle, for the defendant, the King Powder Company, and John C. Spooner, James M. Townsend, George S. Graham, William S. Hilles, Frank S. Katzenbach, Jr., and William H. Button, for the remaining defendants, and this Court by said interlocutory decree having con-

sented to hear the petitioner and the defendants herein as to the nature of the injunction which shall be granted herein and as to a plan for dissolving the combination found herein by said Court to exist, to the end that this Court may ascertain and determine upon a plan or method for such dissolution which will not deprive the defendants of the opportunity to recreate out of the elements now composing said combination a new condition which shall be honestly in harmony with and not
5453 repugnant to the law, and the Court having heard argument of counsel herein and having duly considered the matter, and it appearing to the Court that the petitioner, the United States of America, is entitled to the relief hereinafter mentioned:

It is thereupon, on this 13th day of June, A. D. 1912, ORDERED, ADJUDGED AND DECREED, as follows, to wit:

1. That the petition be dismissed as to the following defendants, namely: Aetna Powder Com-
5454 pany, Miami Powder Company, American Powder Mills, Equitable Powder Manufacturing Company, Austin Powder Company, King Powder Company, Anthony Powder Company, Limited; American E. C. & Schultze Gunpowder Company, Peyton Chemical Company, Henry A. du Pont, Henry F. Baldwin, California Powder Works, Conemaugh Powder Company, Metropolitan Powder Company, E. I. du Pont Company of August 1, 1903, and International Smokeless Powder and Chemical Company.

2. That the remaining twenty-seven defendants, namely: Hazard Powder Company, Laflin & Rand Powder Company, Eastern Dynamite Company, Fairmont Powder Company, Judson Dynamite &

Powder Company, Delaware Securities Company, Delaware Investment Company, California Investment Company, E. I. du Pont de Nemours & Company of Pennsylvania, du Pont International Powder Company, E. I. du Pont de Nemours Powder Company, E. I. du Pont de Nemours & Company, Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Jonathan A. Haskell, Arthur J. Moxham, 5456
Hamilton M. Barksdale, Edmund G. Buckner, and Frank L. Connable, are maintaining a combination in restraint of interstate commerce in powder and other explosives in violation of Section 1 of an act entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," approved July 2, 1890, and have attempted to monopolize and have monopolized a part of such commerce in violation of Section 2 of said Act.

WHEREFORE, IT IS FURTHER ORDERED, ADJUDGED 5457
AND DECREED that the twenty-seven (27) defendants aobve mentioned, and each of them be enjoined from continuing said combination and monopoly, and that said combination and monopoly be dissolved.

3. That the petitioner having availed itself of the permission granted in said interlocutory decree and having presented a certain plan for the dissolution of said combination and the dissolution of said monopoly, so far as the present situation of the parties and the properties involved will permit, to which said plan the said twenty-seven (27) defendants do not object, which said plan is as follows:

5458 *Final Decree*

FIRST. Dissolve the defendant corporation E. I. du Pont de Nemours & Company (1902 Delaware corporation) and distribute its property among its stockholders.

SECOND. Dissolve the defendant corporation Hazard Powder Company and distribute its property among its stockholders.

THIRD. Dissolve the defendant corporation Del-
5459 aware Securities Company and distribute its property among its stockholders.

FOURTH. Dissolve the defendant corporation Delaware Investment Company and distribute its property among its stockholders.

FIFTH. Dissolve the defendant corporation Eastern Dynamite Company and distribute its property among its stockholders.

SIXTH. Dissolve the defendant corporations
5460 California Investment Company and Judson Dynamite and Powder Company, and distribute their property among their stockholders.

SEVENTH. Organize two corporations in addition to E. I. du Pont de Nemours Powder Company (1903, New Jersey Corporation), which shall be capitalized as hereinafter provided, or reorganize the Laflin & Rand Powder Company and the Eastern Dynamite Company, or either of them, to be used instead of one or both of said two corporations, and in case the said Eastern Dynamite Company is so selected, then it need not be dissolved as hereinbefore provided. In case the Laflin and Rand Powder Company is not used under this paragraph, dissolve said Company and distribute its property among its stockholders.

To the first of said corporations transfer the following plants:

For the Manufacture of Dynamite:

Plant at Kenville, New,Jersey,
Plant at Marquette, Michigan,
Plant at Pinole, California.

For the Manufacture of Black Blasting Powder:

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Plant at Rosendale, New York,
Two (2) plants at Ringtown, Pennsylvania,
Plant at Youngstown, Ohio,
Plant at Pleasant Prairie, Wisconsin,
Plant at Turck, Kansas,
Plant at Santa Cruz, California.

For the Manufacture of Black Sporting Powder:

Plant at Hazardville, Connecticut,
Plant at Schaghticoke, New York.

To the second of said corporations transfer the following plants: 5463

For the Manufacture of Dynamite:

Plant at Hopatcong, New Jersey,
Plant at Senter, Michigan,
Plant at Atlas, Missouri,
Plant at Vigorit, California.

For the Manufacture of Black Blasting Powder:

Plant at Riker, Pennsylvania,
Plant at Shenandoah, Pennsylvania,
Plant at Ooltewah, Tennessee.
Plant at Belleville, Illinois,
Plant at Pittsburg, Kansas.

And permit the said defendant E. I. du Pont

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de Nemours Powder Company to retain the following plants:

For the Manufacture of Dynamite:

Plant at Ashburn, Missouri,
Plant at Barkdale, Wisconsin,
Plant at du Pont, Washington,
Plant at Emporium, Pennsylvania,
Plant at Hartford City, Indiana,
5465 Plant at Louviers, Colorado,
Plant at Gibbstown, New Jersey,
Plant at Lewisburg, Albama.

For the Manufacture of Black Blasting Powder:

Plant at Augusta, Colorado,
Plant at Connable, Alabama,
Plant at Oliphant Furnace, Pennsylvania
Plant at Mooar, Iowa,
Plant at Nemours, West Virginia,
Plant at Patterson, Oklahoma,
5466 Plant at Wilpen, Minnesota.

For the Manufacture of Black Sporting Powder:

Plant at Brandywine, Delaware,
Plant at Wayne, New Jersey.

For the Manufacture of Smokeless Sporting Powder:

Plant at Carney's Point, New Jersey,
Plant at Haskell, New Jersey.

For the Manufacture of Government Smokeless Powder:

Plant at Carney's Point, New Jersey,
Plant at Haskell, New Jersey.

EIGHTH. Transfer to or furnish the first of said two corporations with a plant for the manufacture of smokeless sporting powder and the brands now or heretofore owned by the Laflin and Rand Powder Company. Such plant to be located at Kenville, New Jersey, or some other suitable eastern point, and to be of a capacity sufficient to manufacture 950,000 pounds per annum of smokeless sporting powder of the brands to be assigned to the first of said corporations.

5468

NINTH. Furnish said two corporations respectively with sufficient working capital and the necessary cash and facilities to enable them to efficiently carry on the business which will attend the properties so to be transferred to them.

TENTH. Transfer said properties to said two corporations respectively upon a valuation thereof based on the last inventory of said properties, to include a fair valuation for brands and good-will, and issue to said E. I. du Pont de Nemours Powder Company in payment therefor securities of said 5469
two corporations respectively at par value as follows: Fifty per cent (50%) of said purchase price in bonds not secured by mortgage, which shall bear interest at the rate of six per cent (6%) per annum, payable if earned by the company during said year, or to the extent thereof earned, but not otherwise not cumulative, payable not less than ten years from date; the form of said bonds to be approved by the Attorney-General or the Court, which bonds shall be subject to call at one hundred and two (102), and the other fifty per cent (50%) of said purchase price in the stock of said two corporations respectively, which for the time being shall be their entire stock issues. Upon the receipt of said stock and bonds by E. I. du Pont de Nemours

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Powder Company, distribute the said stock and one-half of said bonds or the proceeds of the sale of said bonds among the stockholders of E. I. du Pont de Nemours Powder Company. In the organization or reorganization of said two corporations to which said properties are to be transferred, provide two issues of stock in said two corporations respectively, one of which shall have voting power and the other of which shall have no voting power. So distribute said stocks among the stockholders
5471 of E. I. du Pont de Nemours Powder Company that any amounts thereof which upon said distribution shall go to any one of the twenty-seven defendants hereinbefore mentioned shall consist one-half of said stock with voting power and one-half of said stock without voting power, and provide that upon the transfer through death or by will from any one of said twenty-seven defendants of any stock which has no voting power, to some person or persons other than one of said twenty-seven defendants herein, or upon the sale by any one
5472 of said twenty-seven defendants of any stock which has no voting power, to some person or persons other than one of said twenty-seven defendants herein, or their respective wives or children, said stock so sold or transferred may be exchanged for stock with voting power.

ELEVENTH. Transfer to said two corporations, respectively, so far as practicable, a fair proportion of the business in explosives now controlled by E. I. du Pont de Nemours Powder Company under time contracts.

TWELFTH. During a period of at least five years furnish each of said two corporations respectively, under such arrangements as may be reasonable, such information from the records of the Trade

Bureau maintained by E. I. du Pont de Nemours Powder Company as may be desired.

THIRTEENTH. During a period of at least five years furnish to each of said two corporations such facilities, information, and use of organization, as E. I. du Pont de Nemours Powder Company may operate or possess in reference to purchase of materials, experimentation, development of the art and scientific research, as said two corporations may desire from time to time, in the interests of 5474
their business, and upon some reasonable terms as to the cost thereof to said two corporations.

AND SAID PLAN having been duly considered by the Court it is ORDERED, ADJUDGED AND DECREED that the said defendants are respectively directed to proceed forthwith to carry said plan into effect, and it is further

ORDERED, ADJUDGED AND DECREED, that if said defendants shall not have carried said plant into operation and effect the same on or before the 15th 5475
day of December, 1912, then and in that event an injunction shall issue out of this Court restraining the said defendants in paragraph two of this decree mentioned and each of them, and their agents and servants from thereafter in any manner whatsoever placing the products of any of the factories owned by said defendants or said combination into the channels of interstate commerce, or such other relief shall be granted by the appointment of a receiver or otherwise as this Court may determine.

4. That should the defendants find it impossible to perfect the details of said plan on or before the said 1st day of December, 1912, they may have leave to apply to the Court for further time to carry out said plan.

5. That until said plan is carried into operation and effect, the said twenty-seven defendants hereinbefore named in paragraph two of this decree, are, and each of them is, and the agents and servants of them are jointly and severally hereby enjoined from doing any acts or act which shall in any wise further extend or enlarge the field of operations, or the power of the aforesaid combination.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED,
5477 that the said twenty-seven (27) defendants, their officers, directors, servants, agents and employees be and they are hereby severally enjoined and restrained as follows:

From continuing or carrying into further effect after said 1st day of December, 1912, the combination adjudged illegal in this suit, and from entering into or forming among themselves or with others any like combination or conspiracy by any method or device whatsoever, the effect of which is or will be to restrain interstate commerce in
5478 explosives or to renew the unlawful monopoly of such commerce obtained and possessed by the defendants as adjudged herein, in violation of an "Act to protect trade and commerce against unlawful Restraints and Monopolies," Approved July 2, 1890; and especially:

1. By causing the conveyance of the factories, plants, brands or business of either of said two new corporations to the other corporation or to E. I. du Pont de Nemours Powder Company or *vice versa* after the segregation of the properties among said corporations shall have taken place as herein provided; by placing the stocks of either of said corporations in the hands of voting trustees or controlling the voting power of such stocks by any device;

2. By making any express or implied agreement or arrangement with one another or with others relative to the control or management of either of said corporations, or the price or terms of purchase, or of sale of explosives or relative to the purchase, sale, manufacture, or transportation of explosives which will have the effect of restraining interstate commerce; or by making any agreement or arrangement of any kind between said corporations under which trade or business is apportioned between said corporations in respect 5480
either to customers or localities.

3. By offering or causing to be offered or making or causing to be made more favorable prices or terms of sale for the products manufactured by them or either of them to the customers of any rival manufacturer or manufacturers than they at the same time offer to make to their established trade, where the purpose is to unfairly cripple or drive out of business such rival manufacturer or manufacturers or otherwise unlawfully to restrain 5481
the trade and commerce of the United States in any of said products; provided, that no defendant is enjoined or restrained from making any price or prices in the sale of said products, or any thereof, to meet or to compete with prices made by any other defendant, or by any rival manufacturer; and provided further, that nothing in this decree shall be taken in any respect to enjoin or restrain fair, free and open competition.

4. By either of said corporations retaining or employing the same clerical force or organization, or keeping the same office or offices as any other of said corporations.

5. By either of said corporations doing business

5482 directly or indirectly under any other than its own corporate name or the name of a subsidiary corporation controlled by it, provided, however, that in case of a subsidiary corporation, the controlling corporation shall cause the products of such subsidiary corporation which are sold in the United States and bear the name of the manufacturer to bear also a statement indicating the fact of such control.

5483 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said defendants cancel and annul:

a. Agreement of October 2, 1902, between William Barclay Parsons, of the City of New York, and the Delaware Securities Company. Petitioner's Record, Exhibits, Volume 4, page 1984.

b. Agreement of October 6, 1902, between H. deB. Parsons, of the City of New York, and Delaware Securities Company. Petitioner's Record, Exhibits, Volume 4, page 1986.

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c. Agreement of the second day of October, 1902, between Schuyler L. Parsons, of the City of New York, and Delaware Securities Company. Petitioner's Record, Exhibits, Volume 4, page 1988.

d. A like and identical agreement made about the same date between J. A. Haskell and the Delaware Securities Company, described in Petitioner's Testimony, Volume 2, page 1012.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that during a period of five years from the date hereof each of said corporations, the E. I. du Pont de Nemours Powder Company and said other two corporations, their officers, directors, agents, serv-

ants and employes, be hereby enjoined and restrained as follows:

1. None of said corporations shall have any officer or director who is also an officer or director in any other of said corporations.

2. None of said corporations shall employ the same agent or agents for the sale in interstate commerce of explosives which might be sold in competition with each other; provided that any one 5486
of said corporations may sell its products on commission through a merchant or dealer who is similarly employed by either or both of said other corporations.

3. None of said corporations shall directly or indirectly acquire any stock in another of said corporations or purchase or acquire any of the factories, plants, brands or business of such other corporation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED 5487
that each and all of the individual defendants by this decree adjudged to be engaged in said combination while holding stock in said two corporations and E. I. du Pont de Nemours Powder Company or any two thereof, be enjoined and restrained from at an ytime within three years from the date hereof acquiring, owning or holding, directly or indirectly, any stock or any legal or equitable interest in any stock in either of said two corporations to which said properties shall be transferred in excess of the amount to which he may be entitled under the provisions of the plan herein mentioned when the same shall have been carried out as proposed; provided, however, that any of said individual defendants may notwithstanding this

prohibition acquire from any other or others of said defendants, or in case of death, from their estates, any of the stock held by such other defendant or defendants in said corporations and may acquire their proportions of any increase of stock.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any new company or companies organized for the purpose of taking property under the provisions of this decree or otherwise, necessary to the
5489 carrying out of this plan, shall, after their formation and by appropriate proceedings, be made parties to this cause, and subject to the provisions of this decree and bound by the injunctions herein granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any party hereto may make application to this court for such orders and directions as may be necessary or proper in relation to the carrying out of such plant and the provisions of this decree.

5490 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the twenty-seven (27) defendants hereinabove mentioner, do pay to the United States Government its costs in this cause.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that jurisdiction of this cause is retained by this court, for the purpose of making such other and further orders and decrees, if any, as may become necessary for carrying out the plan herein set forth.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that after the plan hereinabove mentioned shall have been carried into effect a report shall be made to this court for its approval, setting out the man-

ner in which said plan shall have been carried out.

(Signed) GEORGE GRAY,
JOSEPH BUFFINGTON,
JOHN B. McPHERSON,

(Certificate of Clerk affixed.)

Thompson, Plaintiff, rested.

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Thereupon the Defendants moved for a non-suit, which motion was overruled.

Thereupon the Defendants offered evidence as follows.

ELLIOTT S. RICE, called as a witness in behalf of the defendant, testified as follows:

Direct examination by Mr. Button:

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Q. Mr. Rice, you have heretofore testified for the plaintiff in this case? A. Yes, sir.

Q. You were in charge for the du Pont Company of its Chicago office from what date—1883, was it? A. 1883.

Q. Down to what date? A. September 1st, 1905.

Q. And that office embraced in a general way what territory? A. During that time, Illinois, Iowa, the northern part of Missouri, Nebraska, portions of Colorado, Wyoming.

Q. Some time in 1903 were you aware of the establishment of the Buckeye Powder Company and its plant at Edwards, Illinois? A. Yes.

Q. Upon the establishment of that plant did you make any change in your methods of selling pow-

der under contract or otherwise? A. No, sir.

Q. Did you conduct your business any differently after that than you had theretofore? A. No, sir.

Q. Had you had contracts for the sale of powder for periods before that time? A. Yes, sir.

Q. What change did you make in 1903 upon the establishment of that plant in reference to prices for powder sold in your district, if any? A. There were no unusual changes made.

Q. Did you during that year at any time estab-
5495 lish a flat price of $1.10 to all customers, regardless of quantity? A. We did not. No such price was established that I know of.

Q. Upon your examination in this case you presented two lists of contracts, being a certain list showing the powder that had been sold under contract at certain periods, and another list showing renewals of those contracts, which I believe are in evidence as exhibits for the plaintiff. Those lists represent the prices that were actually received by the du Pont Company for the powder sold under
5496 these contracts during the period you were in charge of that office? A. They do.

Q. Were there any other rebates made outside of those indicated on those lists? A. There were not.

Q. What was the general basis of rebates; that is, what reason led to giving rebates under these contracts? (Objected to and objection overruled.) A. Rebates were quantity rebates; the rebate depended upon the quantity consumed by the operator.

Q. That is, if the operator bought a large amount of powder he got a larger rebate? A. Yes; a corresponding increase in rebate.

Q. Was there anything secret about that among the trade in your district? A. Not that I know of.

Q. And it was generally understood by the operators? A. There was no secret about it.

Q. During the time that you were in charge of that office were there various new companies that came into existence and built plants, from which powder was sold in parts of your territory? A. Yes, sir.

Q. First, was Mr. Waddell's plant the first one of these new plants to be built after, we will say, 1900, so far as you recollect? A. Well, there were a number building about that time. I don't know just 5498
which one was finished first.

Q. We will take from 1903 to 1905. What other plants were built there besides the Buckeye plant? A. There was the United States, the Egyptian, the Miami, the Burton and the Buckeye and some others.

Q. Senior? A. Yes, sir; Senior.

Q. Can you give the locations of those plants? Take the Egyptian. Where was that located? A. In Southern Illinois. I don't remember just where it was located, but it was in southern Illinois.

Q. And the Senior? A. The Senior was down 5499
in Ohio.

Q. And the United States? A.The United States was in the southern part of Illinois.

Q. And the Burton? A. The Burton I think was in Pennsylvania.

Q. Where was the new plant, the Miami? A. On the Mississippi River, the southern part of Illinois.

Q. During the period you were there were these companies actively bidding for trade in your district? A. Yes, sir; when they got to running.

Q. What effect did it have upon prices? A. Well, as the output of the mills increased, there was a dearth of trade and more or less of a struggle and some lowering of prices.

Q. During the time that you had charge of that

5500 office, after Mr. Waddell's appearance in the trade, were you familiar with all trade conditions in the powder business in that territory? A. I think I understood them pretty well. I tried to.

Q. Did you know of your own knowledge of the policy that was pursued by the du Pont Company in the sale of its powder during that period? A. I think so.

Q. Were you competing with these various companies during that time, Mr. Rice? A. So far as I
5501 found it necessary, yes, sir.

Q. Now will you state whether any different method of competition prevailed in that district in reference to the Buckeye Powder Company than prevailed with reference to the Egyptian, the United States, the Senior, the Burton and these other companies while you were there? (Objected to and objection overruled.)

Q. My question is not in reference to the difference in the period previous to Mr. Waddell's advent and subsequent but after Mr. Waddell came in
5502 and these other new companies came in whether there was any difference in the competitive treatment between Mr. Waddell's Company and the Senior and the Egyptian and the rest of them there in your district? A. There was not.

Q. Was any team or any system of competition indulged in your territory by you or anybody else directed principally against Mr. Waddell and his company? A. No.

Q. Were you in such a position that you necessarily would have known it if there had been? A. I certainly would have known it.

Q. And there was none such. Did you see any letters written by Mr. Waddell during this period, in reference to prices? A. Yes, sir.

Q. You testified in the Government proceedings,

did you, Mr. Rice? Do you recollect furnishing to the Commissioner as an exhibit in that case a letter which was signed by the Buckeye Powder Company? A. I do.

Q. Addressed to the Woodside Coal Company? Do you recollect who signed that letter? A. R. S. Waddell.

Q. In his handwriting? A. Yes, sir.

Q. Where did you get it? A. It was sent to me from my Springfield office.

Q. With a letter from the Springfield agent? 5504
A. Yes.

(Letter received in evidence and marked Defendant's Exhibit A-511.)

Mr. Button: This is on the letterhead of the Buckeye Powder Company:

"Peoria, Illinois, October 14, 1904.

Woodside Coal Company,
Springfield, Illinois.

Dear Sirs: 5505

In the run of our mills we make a proportion of CCC and CC grains which is subject to variation in quantity at will. We would be glad if you could arrange to absorb a few carloads of Buckeye powder which, under the circumstances, we offer to you at $1.05 per keg in carloads of 800 kegs delivered at your mines. Terms sixty days or 2% off for cash ten days. We feel at liberty to make this quotation as the people who supply you, are selling a carload contract of ours who uses about 3,000 kegs per year, at this price and on the same terms. We, therefore, make the same tenders to

their contract trade. Powder contracts seem to be on a par with coal contracts, subject to suspension during more favorable conditions. The quality of our powder is unexcelled and fully guaranteed. The capacity of our mills is 1,400 kegs per day.

Truly yours,

Buckeye Powder Company,
R. S. Waddell, President."

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Q. That was in October, 1904? Where was this Woodside Coal Company located? A. Near Springfield, Illinois.

Q. Can you tell in a general way how long the du Pont Company had been selling it powder? A. For a number of years; I don't know how long; I think from the time it opened.

Q. At this date was it under contract? A. It was.

Q. One of the contracts on this list you have produced? A. Yes.

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Q. What was the price, if you recollect without referring to the list? A. I think the net was $1.15, but I cannot testify——

Q. The list will show? A. The list, the contract, will show.

Q. Did you see other letters of that general nature? A. Yes, sir.

Q. Have you any of them? A. I have not.

Q. Now, that letter states that the price was made because a similar price had been made to some large customer of the Buckeye Company. Had you made any such similar price to any such customer? A. No. I don't know, of course, what was referred to. I don't know of making any price of that kind to any customer of the Buckeye Company.

Q. Did you attend a meeting of this great American Handicap some time in Kansas City? A. Yes, sir.

Q. What was the date of that meeting? A. The first week in April, 1902.

Q. At that time, Mr. Rice, do you know whether the Indiana Powder Company had been sold out by Mr. Rood and his associates? A. I think it had, yes.

Q. Did you go to that meeting with a party of riflemen shooters? A. Shotgun shooters. 5510

Q. Was Mr. Waddell there? A. Yes, sir.

Q. You had known him for how long? (After a pause): Oh, give it approximately. A. Oh, 20 or 25 years. 20 years, I guess.

Q. Will you speak a little louder? A. I think about twenty years.

Q. Did he have a party of shooters there also at this handicap? A. Yes.

Q. Did you stay at the same hotel? A. Yes.

Q. Was that some distance from the ground at which the shooting was held? A. Yes; several 5511 miles.

Q. Did you have any conversation with Mr. Waddell on that occasion? A. Yes.

Q. When was it and where? A. It was on the car between the grounds and the hotel.

Q. How did you happen to be with him on the car? A. Well, I left the grounds early in the day and as I was going towards the car, or towards the place where we took a car, Mr. Waddell called me and I waited for him and he put up his gun and went with me on the car; we sat together on the same seat.

Q. Will you now tell us what was said by him to you on that occasion in reference to going into the powder business, if anything? A. Mr. Waddell

told me that he had recently been to Wilmington and met the then new president, whom I had not seen, Mr. T. C. du Pont. He complained of the situation as he found it there. He complained that he could not get instructions to meet prices and do other things that he ought to do in his territory, and he proposed to quit the employ of the company and invited me to quit with him and join him and get Mr. William McBlair of St. Louis to join
5513 us and build powder mills. There was a talk of building a mill in Indiana, one in Illinois and one in Indian Territory, or in that district. I objected to the powder mill business or going into the powder business, further than I already was interested in it, and declined to go into the manufacture of powder. He said we would not of necessity make very much powder. The plan was to make prices. I declined to go into it. During the conversation the Indiana Mill enterprise was spoken of and its sale, its advantageous sale, the advantages of the sale, Mr. Rood was spoken of as a former employee
5514 of his and as the man who organized the Indiana Company and was supposed to have made considerable money as the result of the enterprise——

Q. Was anything said as to the result of this enterprise if you did go into it? A. Oh well, it was to make money, of course.

Q. Was anything said as to the manner in which that was to be accomplished? A. Nothing other than I have said, that I remember. I don't remember further.

Q. Who was Mr. McBlair? A. William McBlair was the agent of the du Pont Company at St. Louis. He had formerly been the agent of the Hazard Company and I guess represented both at that time.

Q. How long had he been agent in St. Louis,

approximately? A. I don't know, but a number of years—ten or fifteen years, I think. I could not state exactly, Mr. Button.

Q. Was that the end of it, when you refused to entertain the proposition? A. Yes.

Q. Was it never mentioned again to you at any time? A. I never saw him afterwards to talk to him, to any extent anyhow.

Cross examination by Mr. Abbott:

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Q. You state you have known Mr. Waddell, or had known him, for some twenty years before this conversation occurred? A. I think so.

Q. When did you first make his acquaintance, under what circumstances? A. I think it was in Cincinnati in 1884 or 1885, while he was the agent of the Hazard Powder Company.

Q. Were you interested in that district at that time? A. I was sent there by my employer.

Q. Your territory took in Cincinnati, did it? A. No, it did not.

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Q. Did you have any representative selling powder in Cincinnati at that time? A. I think not at that time.

Q. Well, how soon after that did you have some one representing you? A. I could not say as to that. I had no representative there; the company had one there.

Q. Well, what company do you mean? A. The du Pont Company.

Q. Who was that representative? A. George W. Schwartz.

Q. How long did he represent you there? A. I cannot state the time; I don't remember.

Q. Do you recall any circumstances which occurred at that time whereby you tried to make an

5518 arrangement with Mr. Schwartz for the purpose of getting Mr. Waddell to take certain steps which were contrary to the rules and regulations of the association for the purpose of getting him discharged?

A. No.

Q. Do you remember whether there was an association at that time under whose direction the du Pont and Hazard Companies were acting? (Objection overruled.) A. I do not. I didn't know

5519 of any such association.

Q. Did you not write a letter to Mr. Schwartz about that time in which you specified a plan which he was to follow in order to entrap Mr. Waddell into taking steps which were contrary to the rules of the association? A. I did not.

Q. Shortly after that time did you not make a protest to the du Pont Powder Company against Mr. Waddell having anything to do with certain trade of yours in Indiana? A. I think I did object to his meddling at Fontanet, Indiana, where we had an office.

5520 Q. What particular trade was that? A. J. Smith Talley.

Q. Who was the other member of the firm? A. I think Mr. Tennant was at one time a partner.

Q. At that time was not Mr. Talley a customer of yours, purchasing du Pont powder, and was not Mr. Tennant a customer of Mr. Waddell's purchasing Hazard powder? Is not that correct? A. I don't think it is.

Q. Well, what were the facts, then, about that? A. I think the only one using powder at the mines of Talley was Talley himself, J. Smith Talley. They had a store there as an agency and a magazine which belonged to the company.

Q. What was done, then, with respect to the

request you made in regard to that customer? A. I don't remember what was done.

Q. Did not that affair of yours and Mr. Waddell's at that time lead to an unfriendly relation between you and him? A. I don't think so; no.

Q. Have your relations always been perfectly friendly? A. No.

Q. When did they become unfriendly? A. About the time I met Mr. Waddell first.

Q. And they have continued unfriendly, have they not, down to the present day? A. At times 5522
we have been friendly enough, but my first reason for disliking Mr. Waddell occurred at the time of our first meeting.

Q. And there has been an unfriendly relation between you from that time on down to the present time, has there not? A. I cannot say that we have not been friendly enough and worked together at times.

Q. Have you always worked together? A. Oh, no.

Q. Do you remember when he was general sales agent at Wilmington? A. Yes, sir.

Q. Do you remember when you refused to recog- 5523
nize him as general sales agent? A. Yes; I do.

Q. And you would not have any business through his office? A. No.

Q. What was the reason for that? A. I had no confidence in him whatever. I did not think he was there for the——

Q. State your reason, now——

Mr. Button: He is answering the question.
The Court: Yes; go ahead.

Q. All right; I am perfectly willing. A. In the first place, I called on Mr. Waddell in Cincinnati out of friendliness, to make his acquaintance and pay my respects, and during my visit and during

our conversation the Indiana trade matter came up and was discussed.

Q. What year was this? A. I think it was in 1885, but I cannot state positively as to the year or the time. He said that it would not make any difference, particularly, which man had the business or which office had the business, that he supposed I knew as a matter of fact that du Pont & Company owned the Hazard Powder Company and we were therefore representing practically the same
5525 interest. I told him if such was the case I didn't know it or had not known it, that I was in Chicago representing du Pont & Company, that I was competing in Chicago with the Hazard Powder Company, and if du Pont & Company owned the stock, as he stated, of the two companies, I didn't see why I was there with one interest. Being called to Wilmington a week or two later, I was taken to task by Mr. Henry du Pont for having made a statement to the effect that the du Pont Companw owned or the E. I. du Pont de Nemours & Company owned every share of the Hazard Powder Com-
5526 pany's stock. I told him very frankly that I had never made any such statement and had never heard it except at the Cincinnati office of the Hazard Powder Company. I concluded from what was said to me or told me about the matter at the time that that story was fabricated and sent to the office of the Hazard Powder Company and in turn sent to the du Pont Company for the purpose of injuring me, and therefore I had very little use for Mr. Waddell after that. I was in business with him as the business of the company required, but did not warm up to him to any extent.

Q. Is that the only reason for your unfriendliness to Mr. Waddell? A. I think that is all. That in my opinion was sufficient.

Q. That is the only ground you had for your unfriendly relations to Mr. Waddell. I want you to tell you know about that? A. I think you have got it all now.

Q. When was it you first related this conversation you say you had with Mr. Waddell at Kansas City in 1902? A. I first related that conversation on my return to Chicago.

Q. To whom did you relate it? A. My brother in the office there.

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Q. Where is your brother? A. In Chicago.

Q. Now? A. Yes.

Q. Did you relate it to anybody else? A. I don't think so; I don't remember.

Q. Did you relate it to your superiors? A. I did not.

Q. In Wilmington? A. I did not.

Q. When did you first tell that conversation to anybody else but your brother? A. I think at the Government hearing in New York.

Q. That was in 1909, when you gave that testimony in that case, was it not? A. Yes, I think 5529 it was.

Q. And all that time you kept this information to yourself and did not give it to anybody except your brother? A. Yes.

Q. You knew, did you not, that Mr. Waddell about that time entered the employ of the du Pont Company at Wilmington, did you not? A. Yes, I recall that.

Q. If you had known that this particular fact was of such vital importance would you not have related it to your superiors at Wilmington? A. I did not and would not under the circumstances.

Q. So you let them go on and employ him knowing full well that he had made a statement that was very injurious to them? A. I did not repeat the statement to them.

Q. How many times did you see Mr. Waddell at this time where you were stopping together at Kansas City? A. I could not say as to that. Possibly half a dozen times.

Q. Did you have any talk with him during the time you were at the hotel? A. I don't know.

Q. What kind of a car was it you say this conversation occurred it? A. A passenger car.

Q. Was it a steam car or a street car? A. My recollection is it was a trolley car.

5531 Q. What kind of seats were they, were they cross seats or longside seats? A. Cross-wise in the car.

Q. Did he sit in the same seat with you? A. He did.

Q. Was the car a crowded one? A. I don't think it was.

Q. There was just an ordinary crowd of people coming and going and passing; is that right? A. At that time.

Q. Can you give any reason why Mr. Waddell would have called you and asked you to wait for

5532 him in order to have a conversation with you about a matter of this character when you had met him at the hotel on a number of occasions and had had a very much better opportunity to see him than at that particular time; can you give any reason for that? A. You are assuming that we had a better opportunity.

Q. Very well. You saw him at the hotel from time to time? A. I saw him and knew he was there.

Q. And you say you had some conversation with him? A. Very little except passing the time of day.

Q. Was this first conversation you had with him of a friendly character? A. I know we had met from time to time.

Q. Then once in a while you did discuss matters in a friendly way? A. Yes, sir.

Q. Your enmity was not of such a character as to prevent your having conversations with each other? A. I did not let it interfere with my business.

Q. Did he ever before ask you to join in any kind of a business enterprise? A. Not that I recollect.

Q. Do you know a man by the name of Irby Bennett? A. Yes.

Q. Did you ever meet Irby Bennett in March, 1903? A. I cannot say as to that.

Q. Did you ever have a conversation with him? 5534
A. A good many.

Q. Was he in the powder business? A. No, sir.

Q. What was his business? A. He was connected with the Winchester Repeating Arms Company. He was in the ammunition business, the gun business.

Q. Do you know whether Mr. Bennett was one of the original subscribers to the stock of the Buckeye Powder Company? A. He told me he was not.

Q. You asked him about that, did you? A. Yes; I asked him when he was in my office one time.

Q. And you had a conversation with him in 5535
March, 1903, did you not? A. I don't know the date.

Q. I will ask you to state whether or not you had a conversation with Mr. Bennett in March, 1903, March 14, 1903, in Chicago? A. I cannot state what time that conversation was—any time he was in the office.

Q. I will ask you to state whether or not at that time you did not say to Mr. Bennett that you advised him not to go into the Buckeye Powder Company? A. No.

Q. Did you not? A. No.

Q. Did you not say to Mr. Bennett at that time that the du Pont Powder Company would spend $500,000 to put Mr. Waddell and the Buckeye Powder Company out of business? A. I have no recol-

lection of ever making any such statement to Irby Bennett or anyone else.

Q. You say you did not make any such statement as that, to Mr. Bennett? A. Yes.

Q. Do you know Mr. Robert Bruce? I will identify him a little further. I mean Mr. Robert Bruce of Bruce and Burdick, Joliet, Illinois. A. I do not know Mr. Bruce personally. I knew about the concern.

Q. Did you ever meet Mr. Bruce in any manner?
5537 A. I do not think I did, and yet I may have done so.

Q. What was Mr. Bruce's business? A. My recollection is that they were in the stone quarry business.

Q. At what point? A. Any point near Joliet; I don't remember the names.

Q. Mr. Bruce, as a matter of fact, had to use black blasting powder and dynamite, did he not? A. I suppose he did.

Q. He had a contract, did he not, on the Chicago
5538 Drainage Canal? A. I cannot say as to that.

Q. Do you not know that your office sold him a good deal at a time? A. I know they sold him some powder.

Q. And some dynamite, did they not? A. If you will state the time I will tell you.

Q. Well, I am asking you whether you ever sold him any powder or dynamite during the years from 1903 to 1908. A. I sold him powder and possibly dynamite, but I do not remember.

Q. Do you know as a matter of fact whether Bruce & Burdick became customers of the Buckeye Company at any time during that period? A. I don't know that.

Q. You do not know that at all? A. I don't remember. I don't remember whether they did or not.

Q. Do you recall having gone or having seen Mr. Bruce of Bruce & Burdick either at your office or at his office, and of informing him that unless he quit buying black blasting powder of the Buckeye Powder Company you would quit supplying him with dynamite?

Mr. Button: When was this?

Q. Any time between 1903 and 1908, did you make that statement? A. I did not. 5540

Q. Do you know whether or not he did afterwards begin buying dynamite and black blasting powder of you? A. I cannot say when he did or what he bought. He was a customer of the office as were many others during that time.

Q. Do you remember a conversation you had with Mr. Bruce early in 1904 in which you told Mr. Bruce that the du Pont Powder Company would spend hundreds of thousands of dollars, if necessary, to put Mr. Waddell and the Buckeye Powder Company out of business? A. I never made such a statement in my life. 5541

Q. You did not make such a statement? A. Neither to him or to anybody else.

Q. You swear to that positively? Do you know a man named Joe Woods? A. Yes.

Q. What, if any, relation did Mr. Woods sustain to your company or your office? A. He was in my office as a book-keeper and in charge of the traffic department.

Q. How long did he remain with you? A. He remained with me up to the time I gave up the office.

Q. And when was that? A. September 1st, 1905.

Q. Did he remain there after that to your knowledge? A. I think he is still there.

Q. I will ask you whether or not at any time during 1903 to 1908 Mr. Woods with your knowledge made a contract or made an arrangement with a clerk in the office of the Chicago, Burlington & Quincy Railroad Company at Chicago whereby that clerk was to extract a triplicate copy of each bill of lading that was made out by the agent at the Edwards office at Edwards, Illinois, of the C., B. & Q., showing consignments of Buckeye powder to its various customers; do you remember any such
5543 thing and do you remember whether any such triplicate copy or any information of that character was brought to you by Mr. Woods? A. No.

Q. You say it never was. Did you ever get any information of that kind from any source whatever that you know of? A. I can scarcely answer that except by hearsay. I did hear of shipments.

Q. How did you get information of those shipments? A. I cannot say that I got information of the shipments. I heard of shipments being made from time to time.

5544 Q. How did you get information concerning them? A. I don't know, except by hearsay.

Q. Just hearsay? A. Customers speak of it——

Q. You did not know anything about how that information came to you? A. I was not interested in it.

Q. Do you not know as a matter of fact that you made reports from time to time to your Wilmington office giving information of that character? A. Such information as came to me I sent to the Wilmington office.

Q. Do you not know as a matter of fact that complaint was made to your office of the action of Mr. Woods, and that that matter was taken up by Mr. Puffer, who was in charge of the C., B. & Q. freight traffic department, and that this clerk was

discharged by reason of that complaint, when the facts were ascertained? A. I do not know of any such thing.

Q. Referring to Mr. McBlair, to whom you have referred, are you and he on friendly terms? A. Mr. McBlair is dead. We were on friendly terms.

Q. Were you always on friendly terms during his lifetime? A. Yes; so far as I know.

Q. In regard to the methods you had of making contracts in this district during the period that the Buckeye Powder Company was in business, 5546
you say that no change was made in your methods. You have already testified to a large number of contracts that you made during that period and those contracts are now in evidence here through your testimony. I will ask you to state now whether or not all of the contracts of which you gave a list at the time of giving your other testimony were not made in the years 1903 and 1904; is that true or not, according to your best recollection? A. I think the contracts, a list of which I gave you, were many of them renewals, they having been renewed from time to time. 5547

Q. You say they were renewals. How many of them were renewals? A. I cannot tell you.

Q. Do you not know that only thirteen or fourteen of them were renewals according to the contracts which have been produced here? A. I don't know.

Q. You don't know as to that? A. No.

Q. Do you not know that 57 out of 100 of those contracts which you made a list of at this time were made in 1903, and that the balance of the 100 were made in 1904? A. I don't know as to the date of them.

Q. You don't know as to that? A. No.

Q. Now, then, what was the smallest amount of

powder that a customer could use and have the benefit of a contract? A. I think 1,200 kegs.

Q. How many consumers of black blasting powder in the State of Illinois in the year 1903 were there who used more than 1,200 kegs? A. I cannot state.

Q. Do you know how many coal operators there were in the State of Illinois at that time? A. I do not.

Q. Do you know whether every coal operator in
5549 the State of Illinois used 1,200 kegs or not? A. I do not.

Q. Do you not know as a matter of fact that there were a great many that did not use 1,200 kegs? A. I don't think they did, but I don't know.

Q. Do you know what proportion of them would use 1,200 kegs? A. No.

Q. As a matter of fact do you not know that almost every coal operator in the State of Illinois who used 1,200 kegs was under contract during that time and that you made contracts with them in 1903 and
5550 1904? A. I had contracts with a good many.

Q. Yes. A. And had had for years.

Q. And you know, as a matter of fact, that almost every man in the State of Illinois, who was entitled to have a contract, was under contract with you at that time, do you not? A. With me or some one else.

Q. And by some one else whom do you mean? A. Other companies, competing companies.

Q. Who were the competing companies they were under contract with at that time? A. Laflin & Rand Powder Company, the American and the Miami Companies. There were many active companies in the field all seeking contracts.

Q. You had the most of them, did you not? A. I don't know as to that. The Laflin & Rand Company was owned by the du Pont Powder Company

at that time, was it not? A. I don't know what they owned. It was not my business to know.

Q. You say that the new plants which were built about this time were the United States—you gave the United States as one of them. What year was the United States built? A. I don't know.

Q. And the Egyptian. What year was that built? A. I cannot state the year. I only know that there —that they were in general competition about the same time.

Q. When was the Miami built? A. About that 5552
time. I think the Miami was built in 1903.

Q. When was the Burton built? A. I cannot state.

Q. The Senior Powder Company; when was that built? A. I do not know.

Q. The fact of the matter is you do not know very much about it, except a general guess? A. I did not say it was a guess.

Q. You said you did not make any difference in the method which you used in endeavoring to get business from Mr. Waddell or the Buckeye Powder 5553
Company and the method you used in regard to other competing companies. Is that right? A. Yes, sir.

Q. The same thing you did with him you did with the others? A. What we did is what we believed to be according to business methods, against the Buckeye powder the same as against the Egyptian or any other.

Q. One of the methods was to cut their price? A. No.

Q. Well, a lower price. You said you lowered prices. You said that on your direct examination. A. I said prices were lowered by the increase of the rebate as the parties were entitled to an increased rebate. We did not lower prices only as competition compelled it or overstock——

Q. But you did lower prices from time to time, did you not? A. You mean a general lowering of prices?

Q. I am asking you if you lowered prices from time to time? A. No.

Q. You did not lower prices at all, you kept at one price right along; is that right? A. There was no general reduction of prices.

Q. I am asking you if you lowered prices; I am not asking you about a general reduction of prices.
5555 Did you lower the price in any case? A. Possibly, yes.

Q. In how many cases did you lower prices? Did you not lower the price in every case where you came in competition with somebody? A. No.

Q. You did not at all? A. No.

Q. If you did not, was it because the customer was under contract to you? A. No, sir.

Q. You did not have to lower prices in his case, did you? A. We did not have to lower prices in any case or beyond the meaning of what became fixed prices.

5556 Q. And how did they become fixed, who fixed them? A. They were fixed by the various companies. They were not fixed; they simply came about as accidents of trade, if you please. When the supply of powder was more than the requirements, people piled up stocks and prices were lowered somewhat.

Q. Then there was no difference in the method which you used to get business when these competing companies were in the field and the method you used to get business when there were no competing companies in the field; is that right? A. I have been in the powder business since 1878 and I do not know that I ever knew a year when there was not competition between mills.

Q. Then why did you say on your direct examination, in answer to Mr. Button, his question being, "What was the effect of competition on prices?", that prices were lower as the result of competition; why did you say that? A. I don't think Mr. Button's question was put in that way. I don't think your questions are——

Q. Very well. Will you state it just as you recollect it? Then the record will prove it? A. I understood him to ask, so far as I recollect, he asked 5558
if my methods were changed any to meet the conditions when the Buckeye Mill came into existence.

Q. He did ask you that. I am not asking you now about that, but I am asking you what he asked you about what was the effect of the competition? A. The effect of competition generally is to lower prices somewhat.

Q. Somewhat? A. Yes.

Q. So now you think you must have lowered prices because competition must have lowered them; is that right? A. I say that there may have been a lowering of prices, but I cannot remember to what 5559
extent it was.

Q. Do you not know, as a matter of fact, that whenever your men went out for the purpose of selling black blasting powder and you found that somebody else, as you thought, had made a price which was calculated to attract that trade away from you, that you would make a better price to attract that trade? A. No; I have no authority to do such a thing. The conditions were reported to Wilmington and instructions given as to how to handle that trade.

Q. Very well. Then did they give you any instructions to make prices to get the trade in individual cases? A. Possibly.

Q. In what cases? A. I don't know.

Q. You don't know any at all? A. No, sir.

Q. Did they not, as a matter of fact, make prices to you in every case where you thought it was necessary to get the business, or did they not authorize you to make prices? A. I cannot say what instructions were given or what their policy was. I know my instructions were to go to the company to get instructions.

Q. Yes; you got the instructions? A. I probably did.

5561 Q. You said awhile ago, in answer to Mr. Button's examination, that you were familiar with the trade conditions at that time and familiar with the competitive conditions. A. I think I was.

Q. Then why is it you do not remember something about these matters of whether you had to lower prices in order to get business? A. Because the principal reason is it has been eight years since I have had any connection whatever with the sales of powder or the company's business. I don't know what is going on, and I have had no interest in the

5562 business and have received no information in regard to it for a long time.

Q. Therefore, when you said you were familiar with conditions at that time you were simply guessing at it. Is that it? A. No.

Q. Then state to us now what it was you were familiar with at that time. A. I was familiar with the prices ruling in the district at the time, the general trade conditions, and my own affairs.

Q. You said you were also familiar with the policy of the du Ponts with regard to competitive matters at that time. You did not state what that policy was. I would like to have you now state what it was. A. I don't know that I made that statement.

Q. Very well; we do not seem to be able to agree

on what you have said. Will you state now whether you were familiar with the policy of the du Pont Powder Company with reference to competition conditions in the time you represented them in Chicago, from 1903 on? A. In my district?

Q. Yes. A. In my district I think I was.

Q. State what that policy was. A. The policy was to hold the business we had.

Q. Yes. A. Hold it as we would any other business, to get the best prices we could.

Q. To get the business at any price? A. No. I 5564
never knew of any such policy.

Q. But it was to get the business? A. It was to retain the business we had.

Q. If it was necessary to make a price you were to report that price to Wilmington, to the Wilmington office; is not that the fact? If a lower price was made you would report that to the Wilmington office, and you would get instructions? A. Possibly, if any instructions seemed necessary.

Q. Did you at any time ever make any trade reports yourself to Wilmington? A. No, I think not.

Q. Do you remember distinctly whether you did 5565
or did not? A. No, I cannot say as to that. I may have made some trade reports, where I knew of the conditions, as well as I could, in cases where I knew of the conditions.

Q. Do you remember Applegate & Lewis, who were in business near Peoria? A. I knew there was such a concern there.

Q. Did you ever have any business with them? A. I think only through the Peoria agent.

Q. Who was your Peoria agent? A. We had three agency arrangements there—that is my office had. One was with Charles J. Off & Company, one with Oakford & Fahnnestock, and with Dooley Brothers.

5566 *Elliott S. Rice—Cross*

Q. How long did they remain your agents? A. They were selling powder there at the time I left.

Q. Are Oakford and Fahnnestock still selling? A. They were on September 1st, 1905, yes.

Q. You left there September 1st, 1905? A. Yes.

Q. Did you make any reports at any time concerning the business of Applegate & Lewis? A. I could not say.

Q. I will show you a certain trade report here (referring to Plaintiff's Exhibit No. 76), and ask
5567 you to state whether or not you made that trade report? A. (After examination:) There is nothing by which I can identify it. It is a typewritten report.

Q. The fact that your name is there does not enable you to identify it? Is that any authority to you? A. There is nothing about this that would enable me to say that I ever saw that before.

Q. It would not. Well, who has the right to send out a report under your name? A. I don't know who may have sent that. Possibly I did. I don't
5568 know. There is nothing about it that enables me to identify it.

Q. I show you Plaintiff's Exhibit No. 77 and ask you to look at it and state whether or not you know anything about that report. A. (After examination:) There is nothing about it that enables me to identify it.

Q. That is from your office, is it not? A. I think it evidently was, but as to who made it I don't know.

Q. I show you Plaintiff's Exhibit No. 147 and ask you to state whether or not you know anything about that report. A. (After examination:) You understand that I do not claim that I never saw them before, but I did not dictate them. There is nothing on there that enables me to identify them.

Q. I just wanted to know whether you knew anything about these. A. I presume those reports went from the sales department, but I don't know anything about them.

(Mr. Abbott read aloud to the Court and jury the exhibits referred to, Nos. 77 and 147.)

Q. So you know nothing about those reports, Mr. Rice? A. I don't remember anything about them. 5570
I may have known of them at the time but I have no recollection of them.

Q. Do you remember in the Government case, Mr. Rice, that you gave testimony in which you said that practically all the trade in your district was tied up by contracts? A. No, I don't remember making such a statement.

Q. I will ask you, then, Mr. Rice, whether or not it is true that the trade of the du Pont Powder Company, so far as you know, was largely contracted for throughout the entire district which you had in your care? A. The trade we had was cov- 5571
ered by contracts—

Q. And it is not true that the larger part of the trade in black blasting powder in the districts under your control was under contract? A. I think that is right.

Redirect examination by Mr. Button:

Q. In referring to the trade under contract, were you referring to the trade of your company? A. I did not refer to anything else.

Q. You did not refer to the entire trade of the state? A. I know nothing about the entire trade of the State.

Q. Mr. McBlair died about when? A. I cannot give the date, I don't remember. It was some time after—

5572 *Elliott S. Rice—Redirect*

Q. You have been asked whether your relations with Mr. McBlair were friendly. Do you remember his giving you a banquet or dinner some time before his death? A. He invited me to a club dinner at his club.

Q. About when was that? A. It was some little time before I heard of his death; I don't know the time.

Q. Did you ever know of any one in your office in Chicago paying any money to this C. B. & Q. Rail-
5573 road or his agents, or any other railroad or its agents for information; did you ever do it? A. No.

Q. Mr. Woods has been referred to. Is he still in Chicago, in that office? A. Yes.

Q. Subject to subpoena every day? A. I suppose so. He is an employe of the company.

Q. You were asked whether you disclosed to the du Pont officials when Mr. Waddell was taken to Wilmington as a general sales agent this conversation you had with Mr. Waddell in reference to building a mill or building various mils. I will ask
5574 you whether or not at the time you learned Mr. Waddell was to be transferred to Wilmington you took up the matter in some way with Mr. T. C. du Pont or some of the other officials? A. I was there two or three days going over the business of the company, but I did not understand at the time I left there that Mr. Waddell was coming to Wilmington at all. I would say, Mr. Button, I should not have repeated that to the officers of the company if I had known Mr. Waddell was coming.

Q. Did you say anything to them about the propriety or otherwise of giving Mr. Waddell that position? A. I objected to it, yes.

Q. To them? A. Yes, to Mr. T. C. du Pont.

Mr. Button: I think that is all.

Recross examination by Mr. Abbott:

Q. Will you state whether or not that is your signature (handing witness paper)? A. Yes, sir.

(The paper referred to was marked Plaintiff's Exhibit 1423 and read to the jury as follows):

Office of the
Austin Powder Co.,
34 South Water Street 5576

Cleveland, O., Feb. 6th, 1892.

Geo. W. Schwartz, Esq.,
Cincinnati, Ohio.

Dear Sir:—

Happening in Cleveland to-day and visiting our friends, the Austin, I am advised in a measure as to what occurred at recent meeting in New York, and in confidence I wish to give you a pointer or two and shall hope to hear from you from time to time should you learn anything that would assist me or 5577 others in fastening responsibility for future demoralization in powder prices at Cncinnati upon the parties actually at fault. The past troubles at Cincinnati were quite fully discussed at the meeting referred to, the responsibility for which was by one interest placed upon another, and by the interest so charged denied. Finally a motion offered by Mr. Eugene du Pont and seconded by Mr. Colvin, restoring prices absolutely, was carried. Under this resolution a Committee will be appointed by the Board of Trade. This Committee may be composed of parties not members of the Board of Trade. Its duties will be the investigation of all charges of infraction made hereafter. The Committee will report to the Board of Trade and that report being

adverse to persons charged with infraction or violation of established rules, relating to the same, the Board shall take action pursuant to the provisions of certain sections in an agreement entered into under date of December 19th, 1889, which as I understand it will compel the withdrawal of agency charged with infraction, or the removal of the agent responsible for the trouble.

Now, then—First, you woll have been advised to restore prices. You will have been ordered to main-
5579 tain such prices, and your competitors having received like instructions there can be no question but that you will regain and can retain a trade heretofore favorable to yourself and du Pont Powder.

Second, You will retain that trade until inducements are offered that will take it from you. Watch carefully those in the wrong heretofore and it seems to me that we should soon be able to capture the guilty man.

I shall hope to see you at Chicago one week from to-day, when I will tell you further with reference
5580 to matters in which we are mutually interested.

Kindly regard the facts I give you in confidence; and believe me as ever,

Yours truly,

E. S. RICE.

Q. Now, Mr Rice, what was this meeting that you have referred to in this letter? A. I don't know; I don't remember; I don't remember any of the particulars of the letter.

Q. What was this board of trade that you had in mind in this letter? A. The subject matter of the letter was probably brought up at that meeting; and reported to me, and on the report to me I made the report to Mr. Schwartz.

Q. What was that board of trade? A. I don't know.

Q. What committee was that that was to be appointed by the board of trade? A. I don't remember anything about it.

Q. What was this agreement that is referred to here as being the agreement dated December 18, 1889? A. I don't know. I never saw the agreement.

Q. Was that the fundamental agreement? A. I don't know. I don't know anything about the fundamental agreement.

Q. You wrote this letter. Where did you get the information? A. Probably in the office of the Austin 5582
Powder Company.

Q. Then you did know something about an agreement or an association there? A. I was told in the office there.

Q. Have you not as a matter of fact all the time known that there was an agreement in existence, you representing the du Pont Powder Company? A. Only from hearsay.

Q. But you did know it from hearsay, somebody told you, all the time? A. I don't know whether they told me all the time or not, but they evidently 5583
told me that.

Q. Who was this other party that you referred to, in Cincinnati, as being at fault in these matters? A. I don't know.

Q. Was there any other person representing any company in Cincinnati except Mr. Waddell? A. Oh, yes; I think the King was represented and the Oriental.

Q. Which did you have in mind at that time? A. I don't know.

Q. You cannot tell? A. No.

Q. Do you know where this information about prices having been restored and orders having been given to maintain prices came from; can you tell that? A. From the Austin Powder Company, some of the officers of the Austin Powder Company.

5584 *Elliott S. Rice—Redirect*

Q. Who was it you had in mind when you said, "Watch carefully those in the wrong heretofore, and it seems to me we shall soon be able to capture the guilty man"? A. I don't know.

Q. As a matter of fact, was it not Mr. Waddell? A. I don't know.

Q. Was not the man you had in mind at that time Mr. Waddell? A. I cannot tell who I had in mind; I don't remember the letter even.

5585 Q. You were the general sales agent at that time of the du Pont Powder Company in that district, or in charge of that—— A. (Interposing): At Chicago.

Q. And you were supposed to know all about what was going on, were you not? A. Only as I was instructed from my own office.

Redirect examination by Mr. Button:

Q. Who was Mr. Schwartz? A. A man I employed in Chicago as a traveling salesman and recommended him to be employed at Cincinnati.

5586 Q. Where did he have his office? Did he have an office? A. He had an office in Cincinnati.

Q. And this letter in 1892, some twenty years ago, was sent by you to him in Cincinnati? A. I presume so.

Q. Was his office with Mr. Waddell at that time? A. No; he had a separate office.

Q. Have you any idea where Mr. Waddell got this letter? A. I suppose he got it from Mr. Schwartz's files. He afterwards took the agency——

Mr. Abbott: We object to what he supposes. If he knows anything about it, all right.

The Court: Yes; let him state the facts.

Q. Do you know whether Mr. Schwartz's files

were turned over to Mr. Waddell's office? A. I only assume that they were.

Q. You do not know? A. No.

ALEC THRUSH, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Button:

Q. Where do you reside? A. Hanna City, Peoria County, Illinois. 5588

Q. How far is Hanna City from the City of Peoria? A. About twelve miles.

Q. How long have you lived in Hanna City? A. About 28 years.

Q. What is your business there, Mr. Thrush? A. Coal miner.

Q. Is that a coal mining community? A. Yes, sir.

Q. And has been during all the time that you have lived there? A. Yes, sir.

Q. Are you a miner yourself? A. Yes, sir.

Q. Have you been such during these entire 28 years? A. I have. 5589

Q. For what coal company are you now at work Mr. Thrush? A. At present, the Clark Coal Company.

Q. What company were you working for in 1907? A. The Lewis & Applegate Company.

Q. The Applegate & Lewis Coal Company? A. Yes.

Q. Whose home address is Cuba, Illinois, if you recollect? A. Their home address I think is in Peoria.

Q. Is it the same concern—have you heard these trade reports just read here? A. It is the same company but operated in a different place.

Q. How long did you work for the Applegate &

Lewis Company? A. I worked for them probably four or five years.

Q. Beginning about when? A. I think about 1902. I think that was about the time that they took charge of this place. I am not positive of the dates.

Q. Did they take over a mine at that time which had previously been operated by some other people? A. Yes, sir.

Q. Had you previously worked in that mine? A.
5591 Yes, sir.

Q. How long had that mine been operated before they took it over, if you know? A. I suspect that mine had been operated for thirty years, probably more.

Q. And when Applegate & Lewis took it over you went to work for them? A. Yes.

Q. And continued down through 1907? A. Yes, sir.

Q. When you first started in there what powder were they using? A. They were using du Pont pow-
5592 der.

Q. Did they use that for some years? A. They used it pretty near ever since the mine was sunk, I believe.

Q. Years previous to that time? A. Yes, sir.

Q. Was it well known in that community among the miners? A. Yes, sir.

Q. At some time did you get some Buckeye powder down there? A. Yes.

Q. Do you know when that first appeared in that mine? A. I am not positive as to the date when it first appeared.

Q. Who was Mr. Morton? A. Mr. Morton was a mine foreman.

Q. Robert Morton? A. Yes.

Q. And called Bob Morton generally? A. Bob Morton generally.

Q. Did he get the Buckeye powder down there? A. I don't know whether he got it there or who got it there, but there was some Buckeye powder came in there.

Q. What was he, Morton, doing with it, if anything? A. It looked as though he was trying to introduce the powder in the mine.

Q. Was he advocating its use there? A. Yes, sir.

Q. Did he talk to you and others about it? A. Yes, sir.

Q. And at that time you were still using the 5594
du Pont, were you? A. Yes, sir.

Q. On some occasion did you meet Mr. R. S. Waddell? A. Yes, sir.

Q. Can you remember when it was that you met him? A. Not exactly on the dates, but some time in 1907.

Q. Where did you meet him? A. I met him in the coal office at the mine.

Q. How did you happen to meet him there? A. I was called out of the mine on that occasion to meet somebody there, and when I came out Mr. Waddell was there. 5595

Q. Who called you out? A. Mr. Morton.

Q. You had been in the mine at that time? A. Yes, sir.

Q. At the time were you a member of the pit committee of that mine? A. Yes.

Q. A committee or three? A. Yes.

Q. Were you introduced to Mr. Waddell by Mr. Morton on that occasion? A. Yes.

Q. In the coal office? A. In the coal office.

Q. Did Mr. Morton stay there during your conversation? A. No, sir.

Q. He left you alone with Mr. Waddell? A. Yes.

Q. What did Mr. Waddel say to you? A. Well, he had some samples of powder along with him showing them there and wanted to introduce them

and get his powder established in the mines is possible, and wanted somebody to kind of look after the matter in a way, so he would have a fair show with the other powders.

Q. Did he propose any method of doing it, and if so, what? A. He wanted me to take the powder and use it in a practical way to see if we could not produce more good lump coal with his powder than what we could with the du Pont powder.

5597 Q. Did he make any proposal to you in that regard? A. Yes.

Q. What was it? A. He proposed to recompensate me for my trouble.

Q. How much was he going to pay you? A. He was going to pay me a dollar a day for looking after the business and furnish what powder I used free of charge.

Q. And was anything said as to what was to happen in case you got the powder established in the mine? A. Not at that conversation, there was not. There was later.

5598 Q. Where was the later conversation? A. It was in his office in Peoria.

Q. What was said in that regard at that time? A. That if we got the powder established there I was to get a commission on all powder that came in there.

Q. After it was established? A. Yes.

Q. How much commission were you to get then? A. I believe it was ten cents a keg.

Q. Going back to this first conversation that you had at the mine, in the office, did you agree to do this for Mr. Waddell? A. Yes.

Q. After that did you advocate the introduction of that powder in the mine? A. Yes; I did.

Q. Was there anything said at that conversation as to whether you should say anything about the

arrangement you had made with him? A. That was supposed to be a private conversation.

Q. Did you as a matter of fact disclose the fact that you had such an arrangement? A. No, sir.

Q. And you advocated the powder after that? A. Yes.

Q. Did Mr. Waddell pay you a dollar a day? A. Yes.

Q. For how long? A. I don't just recollect.

Q. Well, approximately. A. For two months, probably. 5600

Q. Where did you get your money? A. I got my money in his office.

Q. And was it on one of those occasions when you had the subsequent conversation as to the 10 per cent commission? A. Yes.

Q. Did you also get your powder free, according to the arrangement? A. Yes.

Q. Just how do the miners get powder? Do they come up and ask somebody for it? A. No, sir. There is what we call a powder check, and a man's name, and a number that his tonnage goes on is on this powder check. Also his place, his room or his 5601 entry, or the different entry that he may be at work on in the mine is on this powder check, and it is all signed up in the office; as if I worked on the north entry of the tenth room and my check number, to show my tonnage of coal each day, would be No. 8, why, my name would be signed to the same card, and then the powder is delivered that night when the electricity is all out of the mine or when the power is out, to these different places, to avoid accidents.

Q. How does the miner pay for his powder? When he comes to get his wages is it deducted according to these checks, from his wages? A. Yes, sir. He gets a statement with all the expenses about the mine deducted from his wages.

5602 Q. When you came to settle was there anything deducted for the Buckeye powder you had used during this period? A. No.

Q. Did Mr. Morton know about your not paying for your powder? A. He must have known about it; he had charge of the business there.

Q. Did he have charge of checking up these slips? A. Yes, sir.

Q. And these powder checks? A. Yes, sir.

5603 Q. Now, then, did you succeed in getting some of these miners to use Buckeye powder? A. Yes, sir.

Q. So far as they went, what results did they get as compared with the former use of the du Pont powder?

Mr. Abbott: Wait a minute——

Mr. Button: If you know.

Mr. Abbott: Yes.

By Mr. Button:

5604 Q. That is, from your personal knowledge; did you see the results they got? A. Yes.

Q. Now, I want you to state what result they got as compared with the use of the du Pont powder.

Mr. Abbott: One minute. Let me interrogate the witness.

By Mr. Abbott:

Q. Did you check up these results yourself? A. No, sir; I did not check them up.

Q. How did you personally know of the results? A. From the powder I handled myself.

Q. But I am speaking now of these other men that the counsel is inquiring about. A. From statements at the end of each day; they would show the

results and how much powder they used to get the coal they got.

Q. Did you know anything about those statements? A. I inquired about it.

Q. Did you see them yourself? A. I saw them myself from various mines, the ones I had particular charge over, to try to get the powder introduced into the mines. (Objection and argument.)

By Mr. Button: I will develop it a little further. 5606

By Mr. Button:

Q. You were there, then, to introduce the Buckeye powder? A. Yes, sir.

Q. And went around and got some of these other miners to make a trial? A. Yes, sir.

Q. After they had taken the powder and tried it in their shots, did you take the pains to find out what the results were? A. Yes, sir.

Q. What were they? A. Most of them were not very good results. 5607

Q. How did you find out the results; did you go into the rooms? A. I went into the rooms where the powder was used.

Q. Did you examine the slips and checks sent up from the results of their blasting? A. Yes, sir.

Q. What results did those miners get as compared with the former du Pont powder? A. They did not get as good results from the Buckeye powder as they did from the du Pont powder. For instance, on the solid shooting in that mine we used to get, well we would average from 12 probably to 16 or 18 or 20 tons a hole with a keg of powder, and they reduced the tonnage, the miners did—it reduced their tonnage there to about 9 to

12 tons. Therefore they objected to using the powder.

Q. Did that finally result in a month or two in some official test being made in the mines? A. Yes, sir.

Q. Was Mr. Robert Morton connected with that test? A. Yes, sir.

Q. What did he have to do with it? A. Well, he seemed to be managing the Buckeye powder at that test at that time, and at those tests we had a special
5609 committee that attends to those special tests, and we have what we call a powder commission, that is connected with the coal operators' association and with the United Mine Workers' Association, and this powder commission is the one that decides and settles the question of the test after it has been tried. They take the evidence and the figures and show up which grade of powder produces the most tonnage with the least slack.

Q. In this case, as this test progressed, do you remember that Mr. Morton made some objection to
5610 the way the du Pont powder was used there? A. I understood he did. I was not there.

Q. Who had charge of the immediate test there in the mine, what committee? A. I don't know which committee; I don't know who the committee was that was put on that test.

Q. You have spoken of this powder commission. Is that a commission that is connected with the particular mine? A. No, sir; it is connected with the State.

Q. That is, connected with the State organization? A. Appointed by the coal operators' organization on the one hand, and the miners' organization on the other? A. Yes, sir.

Q. Do they always go around to the miners where there has been a test? A. They are always called in when it comes to a decision of a test of that kind.

Q. Of what kind? A. Where it comes to a decision or a test of powder, whether it is the quality of powder that should be used in that particular coal or not.

Q. In that case, did this commission come down there to pass on this test? A. They passed on the test; they did not come down——

Q. Who were the members of the commission at that time? A. I believe John H. Walker for the United Mine Workers' organization, and Mr. Jestie, for the operators. 5612

Q. Where did they have their hearing, if you know? A. They had their hearing in Peoria.

Q. Do you know what decision they promulgated there as to what should be done in the mine? A. The decision that we got back there——

Mr. Abbott: Wait a minute. Do you know yourself what decision was they promulgated? You can say yes or no to that.

The Witness: I cannot say yes or no——

By the Court: 5613

Q. The point is whether you got it from the commission or it was brought to you from somebody else. Which was it? A. Well, as a rule a committeeman or a member of either organization, unless he is right with the test, that is, with the commission, connected with them in the decision, always gets it handed down to him some way——

Q. You do not seem to understand the point. How did the word get to you of the result of the decision? A. It came officially through the organization.

Q. Which organization? A. The United Mine Workers.

5614 *Alec Thrush—Direct*

By Mr. Button:

Q. Was there a decision? A. There was a decision, yes.

Q. After that decision what powder was used in that mine? A. Du Pont powder.

Cross examination by Mr. Abbott:

Q. You are acquainted with a man by the name
5615 of David Thrush, are you? A. Yes.

Q. What relation did he sustain to you? A. There is one David Thrush who is a brother of mine.

Q. Do you know the David Thrush that works in the Hanna City mine and lives in Hanna City? A. Yes, sir.

Q. Is he a brother of yours? A. No, he is my son.

Q. There is another David Thrush in Hanna City, is there? A. No, he is not at Hanna City.
5616 You did not ask me if he was located there in the first place.

Q. Have you a brother named David Thrush? A. Yes, sir.

Q. Where is he? A. At Farmington.

Q. Does he work for the Applegate & Lewis Company? A. No, sir.

Q. Did he ever work there? A. Not for that company.

Q. When was it he worked in those mines? A. He worked in those mines probably fifteen years ago.

Q. This David Thrush that lives in Hanna City, do you know whether he ever had any relations with the du Pont Company at any time? A. I don't think he had.

Q. Do you know of any testimony that he has given in this case? (Objection overruled.) A. I think that he was called to Peoria in regard to this case, but I do not know anything in regard to his testimony.

Q. I will pass that for a moment. When was it you had this arrangement with Mr. Waddell to represent the Buckeye Powder Company in the mines? A. I cannot say just the date, but it was some time in 1907, I think.

Q. You are sure it was in 1907, are you? A. 5618
I think that is about the time.

Q. What part of the year was it, the first or the last part? A. I couldn't tell you, I could not say as to that. I think that it was along probably in June or July, or some time about that time. I am not certain as to that.

Q. How long were you in the employ of the Buckeye Powder Company? A. I think about two months.

Q. And then after that time did you at any time enter their employ? A. No, sir. 5619

Q. That ended it? A. That ended it.

Q. Do you remember the occasion when you presented your final bill for your services of having a conversation with Mr. Waddell? A. Well, I think I had a little conversation with him at the time.

Q. Yes. Well, what was that conversation you had at that time? A. I told Mr. Waddell at that time that I did not think it was worth while to go farther with the work, because the powder was not giving satisfaction to the miners in that mine and I felt that it was my duty to go to him and tell him that I could not do anything more for him in regard to getting the powder into the mines.

Q. Now, did you not state to Mr. Waddell at

5620 that time that another one of the Thrushes was at that time under contract with Dooley Brothers to see what the du Pont powder was kept in that mine and that Buckeye powder was excluded, and that he was getting $50 a month for that service, and that if Mr. Waddell would make the same arrangement with you that you would make an arrangement with this Mr. Thrush so that you would get one-half of Buckeye powder used in the mine and the other half would be du Pont powder? Did
5621 you not make that statement? A. I never made no such statement.

Q. And did not Mr. Waddell say to you that he would not countenance that sort of a deal in any way and that he would no longer have any use for you and would not keep you in his employ? A. I want to tell your Honor that there was no such conversation between me and Mr. Waddell.

Q. And you are absolutely sure that nothing of that kind happened? A. Yes, sir.

Q. I will ask you to look at that paper and state
5622 whether you know whose signature that is (handing witness paper)? A. (After examination) That is my signature.

(Paper marked Plaintiff's Exhibit for identification 1421.)

Q. How was that commission that you were telling about awhile ago constituted? A. How was it constituted?

Q. When was that commission first organized; do you know? A. I do not exactly know, but it has been probably organized I think for seven or eight years.

Q. Are you sure that that commission was organized previous to 1908? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. Do you not know as a matter of fact that previous to 1910 there was no such commission as you have referred to, but there was a committee that had charge of overseeing these final contests between miners regarding powder, and that that committee was a different affair from this commission that you have in mind? A. No; I understand it to be the same thing.

Q. You understand it to be the same thing? A. Yes, sir.

5624

Q. And this man Walker you say was a member of that commission? A. Yes, sir.

Q. Do you remember when Mr. Walker came to the mine for the purpose of considering the question of this test that had gone on, that some question was asked him by Mr. Morton as to whether he had ever used any Buckeye Powder? A. No, sir; I do not remember.

Q. And do you not remember that Mr. Walker replied to Mr. Morton that the powder was not any good and that he would as leave sit on a keg of it and have it blown up; and did not Mr. Morton 5625 say to one of the men nearby, "Bring out a keg and touch it off under Mr. Walker"? A. No, sir; I never heard no such conversation.

Q. Who was present of the miners' union of the State of Illinois at that time? A. Mr. Walker.

Q. Did you yourself have any experience in the shooting of Buckeye powder? A. Yes, sir.

Q. Did you see these men when they used Buckeye powder? That is to say, did you see how they bored their holes and fired their shots and so on? A. Yes.

Q. That was part of your duty, to see that, was it not? A. Yes.

Q. Was not that the only part of your business for the purpose of introducing the powder in that

way, explaining how it was to be shot, and so forth? A. Yes, sir.

Q. What results did you yourself obtain—good results? A. Yes, I obtained good results from the powder I shot.

Q. And so reported to Mr. Waddell? A. Yes.

Q. Do you know of any reason why the others should not have obtained as good results as you did? A. I do not think they took the pains to get their shot in proper condition before it was used, with that or with any other powder.

5627

Q. These men, then, simply did not know how to handle powder; is that right? A. They simply did not seem to want powder to do the work in the place of doing it themselves with their picks.

Q. Then that was not the fault of the powder? A. No, but they seemed to get the result from the du Pont powder without picks.

Q. Oh, yes, that would go anyhow. But you got results with it? A. I got good results from the powder I used as long as I had a uniform grade of powder.

5628

Q. How many kegs of powder did you use in making your demonstration? Do you recollect that? A. I don't recollect how many kegs of powder I used.

Q. I show you another document and ask you to state whether or not you know anything about that? A. (After examination) Yes, sir.

Q. Did you ever see it before? A. Yes.

Q. Do you know whom you gave it to? A. I am not positive now whom I gave it to.

Q. Is that your handwriting on there? A. No, sir.

Q. Do you know whose it is? A. No, sir.

(Paper referred to marked for identification Plaintiff's Exhibit 1422, as follows:)

STATEMENT OF ACCOUNT.

Hanna, Ill., 190 .

A Thrush & Son,

APPLEGATE & LEWIS COAL CO.

For Pay ending Oct. 31, 1906.

Cars	Tons	Price.
Yds. Entry		
C. C. Yds.		
Slips		5630
Rooms		
Days		

Credits.

Pow. 7	12.25	
Oil	We have charged this amount up to	
Smith	your account as the Buck-eye Powder Co.	
Coal	refuses to stand it.	
SS.		
Cash		
Rent		
Fuse		
Paper		5631
Dues	D'fts. ex. A-5-12	
Per ct.	For identification.	
C.W.		
Levy Fines		

Q. You talk about Mr. Morton taking some interest in this matter of getting Buckeye powder introduced. Is it not the duty of an operator, where a man is trying to make a change in his powder, is it not the duty of the superintendent to represent the owner of the mine; is not that correct? A. Yes.

Q. And Mr. Morton was representing the owner of the mine, was he not, in endeavoring to get Buckeye powder introduced? A. Yes, I think so.

Q. So there was nothing wrong in his representing Buckeye powder, was there? A. I don't think there was.

Q. Was there anybody present, Mr. Thrush, at the time when you had this final conversation you have referred to with Mr. Waddell? A. No, sir.

Q. There was no one present? A. No, except Mr. Waddell and myself.

Q. Were you paid by cash or were you paid by check? A. By cash.

5633 Q. Who handed you the money? A. Mr. Waddell.

Q. Personally? A. Yes.

Re-direct examination by Mr. Button:

Q. At the time you ended this arrangement with Mr. Waddell was there some Buckeye powder which you had previously used which had not been allowed on your wages? A. Yes.

Q. How much? A. There is my statement there, the last statement as shown, as to the amount due me. I have not been paid that.

5634 Q. $12.25? A. $12.25.

Q. Is this a statement rendered to you for that bill by Applegate & Lewis? A. It was a statement that was rendered to Mr. Waddell, I never had it.

Q. Who is A. Thrush & Son; is that yourself and son? A. Yes.

Q. Was your son connected with you as a miner in this mine? A. He worked with me in the mine.

Q. After this arrangement you had with Mr. Waddell was broken off did Mr. Waddell refuse to allow this $12.25 which had not yet been credited on your wages? A. He did not refuse to allow it, but it appears as though the coal company had refused to give me credit for it.

Q. That is, after the arrangement was brought to an end, did you endeavor to have this $12.25 allowed you? A. Yes.

Q. Instead of that what happened? A. Mr. Waddell paid for it finally, and that is his receipt from the coal company and not mine.

Q. For how long would this $12.25 worth of powder last you in the general run of things? A. I suppose probably that would have lasted two weeks; I don't know.

Q. Was this $12.25 finally allowed you by somebody? A. It was allowed me by Mr. Waddell.

Q. He paid you how? A. He paid that in a check. 5636

Q. Do you know whether this is the ordinary bill form of the Applegate & Lewis Company? A. Yes, sir.

Q. In use at that time? A. That is the form of the payroll bill in use at that time.

Mr. Button: I offer this in evidence.

Mr. Abbott: We do not object.

(Paper referred to was marked Defendant's Exhibit A-512).

Q. Were these miners whose operations you have described the ordinary run of miners in the town and in the mining field? A. Yes, sir. 5637

Re-cross examination by Mr. Abbott:

Q. This allowance in which you say there was some difference between you and Mr. Waddell was a matter that came up after you had ceased representing him, was it not? A. Yes, sir.

Q. Did not Mr. Waddell contend that that should not be allowed by Applegate & Lewis because of the fact that your relations had ceased; was not that his contention? A. I don't know what his intention was.

Q. That was the reason? A. I know it was some time afterwards before I got my pay.

Q. And there was no contention on Mr. Wad-

5638 dell's part so far as you know or as you now recall, was there? A. (Interrupting) No.

Q. That this was not proper to have been allowed if it had been allowed to you during the time you were in his employ? A. No, sir; Mr. Waddell thought I ought to have had it while I was in his employ.

CHARLES B. SPICER, called as a witness in behalf
5639 of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Button:

Q. Where do you reside? A. Pittsburgh, Kansas.

Q. In 1905 were you in the employ of the E. I. du Pont de Nemours Powder Company? A. Yes.

Q. In what capacity? A. Traveling salesman.

Q. Traveling through what territory? A. Southern Illinois mostly.

5640 Q. Where were your headquarters? A. St. Louis.

Q. You reported to the St. Louis office? A. Yes, sir.

Q. Were you present last August, 1913, on an occasion in Kansas City when certain testimony was given by certain miners or people who purported to be miners at one time connected with the Great Northern Fuel Company at Novinger, Missouri? Were you present when that testimony was given last August? A. Yes, sir.

Q. Do you recollect Mr. Kelly, Mr. Hess, Mr. Stevens and Mr. Rutherford testifying in your presence on that occasion? A. Yes, sir.

Q. Do you recollect that one or two of them purported to identify you as a man who had been at Novinger in 1905? A. Yes, sir.

Q. Had you ever seen any one of those four men before that day? A. No, sir.

Q. Are you sure of that? A. I feel certain of that, yes.

Q. You heard their testimony? A. Yes, sir.

Q. In 1905 did you in any way come in contact with the affairs or powder trade of this Great Northern Fuel Company at Novinger? A. Yes, sir.

Q. Where is Novinger located? A. Novinger is located on what is called the O. K. road. I think it 5642
is the Omaha, Kansas City & Western, or at any rate Omaha and Kansas City come in and they call it the O. K. road.

Q. Were you in Novinger at all in 1905? A. No, sir.

Q. What part of the State is that in—the northern part? A. The central northern part, yes.

Q. Is it an extensive coal field up there? A. There are several coal mines there.

Q. What two important mines are there, or comparatively large mines, near this Great Northern Fuel Company's mine? 5643
A. Well, in the same general territory or locality as the Kansas Midland Coal & Mining Company, and the Rumbaugh Coal Company.

Q. Do you know approximately what prices the du Pont Company was charging those concerns in the spring and summer of 1905?

Mr. Abbott: We object unless the witness personally knows this from actual information of his own. Perhaps I can ask the witness a question or two.

By Mr. Abbott:

Q. Did you make these prices yourself, Mr. Spicer?

5644 *Charles B. Spicer—Direct*

Mr. Button: Wait a minute. I asked him if he knew it.

The Court: On the question of knowledge I will allow cross examination.

A. Did I make prices?

Q. Yes. A. How do you mean?

Q. Did you have authority to make prices with any of the customers, of black blasting powder, or did you have to get it from somebody else? A. I
5645 had authority to quote the prevailing price.

Q. You yourself quoted these prices which you say that you made without having to especially ask for them from the du Pont Company? A. I had a general knowledge of what the prices were in Northern Missouri at this time.

Q. Where did you get that general knowledge? A. Just as any one would get it in the regular course of business. I knew what prices were in southern Illinois and in a general way in Missouri.

Q. Tell us how you got that? A. Well, there were certain established list prices.
5646

Q. Who established those lists? A. They were established by the du Pont Powder Company.

Q. When did they have an established list, according to your knowledge, first? A. I could not recall just when they started to have an established list price, from which rebates were given, according to the quantity of the powder that was consumed or purchased by the coal companies.

Q. Did that list obtain during the whole time you were representing the du Pont Powder Company, from 1903 to 1908? A. I will not say it obtained all the way from 1903 to 1908; I do not recall just when it was established or when it was discontinued.

Q. Do you not recall that it did not obtain until

1907? A. No, I do not think it was established that late.

Q. Then tell us again just all the information you have upon which you base your knowledge of the prices made by the du Pont Powder Company at that time? A. I had the information that anyone would get from the fact of being employed in the powder business.

Q. You have said that before, but we want definite information as to where you got that information. 5648
Did you get it from the du Pont Powder Company? A. Certainly.

Q. You got it from the du Pont Powder Company? A. I got it from the agent of the du Pont Powder Company.

Q. What was he? A. W. H. Waters.

Q. Where was he located? A. At St. Louis.

Q. Was this information in writing from time to time given to you? A. Possibly so.

Q. You say possibly? A. Yes, possibly.

Q. You must remember that we do not know all about this and we want definitely where you got 5649
your information. A. Well, I would naturally get my information from the agent representing the company, who at that time was Mr. Waters.

By Mr. Button:

Q. Mr. Spicer, you traveled this country and from time to time called on customers, did you not? A Yes, sir.

Q. Did you have access to the files of the St. Louis office showing the prices of du Pont powder charged to the people through that district? A. Yes.

Q. Did you at that time know from those sources what was being charged to those concerns? A. At that time I was very familiar with it, yes.

5650 Q. And you got your information from the St. Louis office? A. Yes.

Q. Now can you state what in 1905, in the spring and summer, the prices were the Rumbaugh and the Kansas City Midland Companies had? A. According to my best recollection it was about $1.10.

Mr. Abbott: I object to that.

The Court: Yes, unless you know.

5651 A. I feel certain the price was $1.10.

Q. Who was Mr. I. B. Grant? A. Mr. I. B. Grant was superintendent of the Great Northern Fuel Company.

Q. This concern at Novinger? A. Yes, sir.

Q. Do you recollect meeting Mr. Grant in June, 1905, or thereabouts, some place? A. Yes.

Q. Where did you meet him? A. I met him in Kansas City.

Q. Was that the first you had to do with the powder business of the Great Northern Fuel Company? A. Yes, as near as I recollect.

5652 Q. What occasion was this meeting with Mr. Grant? A. There was a meeting in Kansas City of the Coal Operators' Association, all members of the Coal Operators' Association, and I went up to Kansas City knowing that at that meeting I would come in contact with a number of coal operators, members of the Asociation.

Q. Did you go up to meet Mr. Grant purposely? A. I met Mr. Grant there.

Q. Was that your object? A. No; I won't say that I went there purposely to meet Mr. Grant. I went there to attend this conference, knowing that I would meet a number of coal operators.

Q. And among others you met Mr. Grant? A. Yes.

Q. Did you talk with them about powder? A. Yes, sir.

Q. What was that conversation? A. Well, I inquired as to the powder proposition in his mine and solicited the business.

Q. What did he do? A. He told me that they were not in shape at that time to transact any business with us, but he felt they probably would be about the 1st of September.

Q. This was what year? A. 1905. 5654

Q. Did you follow that information of Mr. Grant up later in the summer? A. Yes.

Q. About what time did you take it up again? A. I think along in August I wrote a letter and addressed it to Kansas City, referring——

Q. To whom did you write the letter? A. Either to Mr. Grant or Mr. McCaull, the president of the company.

Q. Had you done anything whatsoever about that business between this interview with Mr. Grant and the time you wrote the letter in the latter part of August? A. No, sir. 5655

Q. You did nothing between June and August on that business? A. No, sir.

Q. Did you dictate the letter to Mr. McCaull? A. Yes, sir.

Q. I show you a document and ask you what it is?

Mr. Abbott: Do not let him say what it is. If he knows anything about the document let him identify it.

The Witness: I can identify that document.

Mr. Abbott: Do not say what it is.

Mr. Button: I asked him if he knew what it was.

5656 *Charles B. Spicer—Direct*

Q. Did you dictate it? A. Yes, sir.

Q. What did you do with it? A. I dictated it to the stenographer and it came back to me and I passed it in to Mr. Waters for his signature, he being the general agent of the company.

Q. What happened to the letter then, to your knowledge? A. Naturally it would be mailed.

Mr. Abbott: You say "naturally." Do you know that?

5657 The Witness: It must have been, yes, sir.

Mr. Abbott: Do you know it was mailed?

The Witness: I did not put it in the box, Mr. Abbott, no.

By Mr. Button:

Q. Is this a carbon copy of that letter? A. Yes, sir; a carbon copy of a letter that was put through our office in the regular course of business.

Mr. Button: I offer this letter in evidence.

5658 Mr. Graham: What is the date?

Mr. Button: August 17, 1905.

Mr. Abbott (after examination): No objection.

(The letter referred to was marked Defendant's Exhibit A-513, and read to the jury as follows):

St. Louis, Mo., Aug. 17th/05.

Mr. W. S. McCaull,
563 Sheidley Bldg.,
Kansas City, Mo.

Dear Sir:

Our representative, Mr. C. B. Spicer, met your superintendent, Mr. Grant, at Kansas City, during

June, at the time of the Coal Operators' meeting, and discussed with him the subject of powder. He understood that your company would be ready to enter into a new contract about the first of September. We will be plased to figure with you on a contract for your supplies for the coming year, and can arrange to have our Mr. Spicer see you at Kansas City or wherever you suggest.

If you will kindly let us know at your earliest convenience what time he can arrange to see you, we will then send Mr. Spicer to you prepared to 5660
close a contract.

Thanking you in advance for an early reply, we beg to remain,

Yours very truly,

E. I. DU PONT COMPANY,
W. General Agent.

S/.H

Q. At this time, Mr. Spicer, was the du Pont powder, the union powder? (Objection overruled.) A. 5661
No, sir; it was not.

Q. Was the Buckeye powder a union powder? A. Yes.

Q. You testified this morning, as I recollect, that you ran across Mr. Grant in June, 1905, and that he had stated that they could not do any business or make any contracts until September and then you wrote this letter, following it up in August—August, 17? After sending this letter to Mr. McCaull, did you immediately go to Kansas City and see him? A. Yes, sir.

Q. Where did you see him in Kansas City? A. I saw him in his office in Kansas City. Q. Did he run his affiairs from that office in connection with this Great Northern Fuel Company? A. Yes, sir.

Q. Can you state about how long after August 17, when you wrote this letter, when that interview was? A. I think it was the following day.

Q. Had you received from Mr. McCaull an answer to this letter at the time you went to Kansas City? A. Not at the time I left St. Louis, no, sor.

Q. You saw Mr. McCaull, and did you discuss with him at that time the proposition of selling the powder to the Great Northern Fuel Company? A. Yes, I did.

5663 Q. When you went there were you aware that the Buckeye Powder Company had a contract with the Great Northern? A. No, sir.

Q. Now will you state that interview, what occurred? A. Well, when I talked to Mr. McCaull about powder he replied that the Buckeye Powder Company had a representative in the Novinger field who visited the mines and agitated the question of union label, and that the Buckeye Powder had a union label, and because of this he had been compelled to close a contract with the Buckeye Powder

5664 Company; and he further told me that he had written me the day previous along that line.

Q. Did he say the date on which he had been compelled to make this contract with the Buckeye Powder Company? A. I don't recall that he did, no sir. It was previous to my visit at that time.

Q. Did he state any more particulars about what had been done by the Buckeye representative there in getting that contract? A. Well, I don't recall that he stated anything other than that this Buckeye representative told them of its being a union powder.

Q. Did you then go back to your St. Louis office? A. Yes.

Q. When you got there did you find the letter from Mr. McCall which you say he had written you? A. Yes.

Q. Are you familiar with his signature? A. Yes.

Q. I show you A-372 for identification and ask you if that is Mr. McCaull's signature? A. (After examination.) Yes.

Q. Is that the letter you found the next day when you got back to your St. Louis office? A. Yes, sir.

(Defendants' Exhibit A-372 read to the jury as follows):

Kansas City, Mo., August 18, 1905. 5666

Mr. W. H. Watters,
Gen. Agent, du Pont Powder Co.,
St. Louis, Mo.

Dear Sir:

I have your favor of the 17th inst. concerning the supplying of powder to our mines at Novinger, Mo., and in reply beg to say that owing to action of the Miners' Union, your powder was boycotted and we were compelled to sign a contract for another brand of powder. Would be pleased to do business with you at some future time, should the miners change their mind and be willing to use du Pont powder again. 5667

Yours truly,
W. S. McCaull,
President.

Q. Thereupon, Mr. Spicer, did you make an application to the company for a price for this business? A. Yes, sir.

Q. Did you dictate that application yourself? A. I did, yes.

Q. And did you in that detail the conversation you had had with Mr. McCall? A. I did, yes.

5668 *Charles B. Spicer—Direct*

Q. And did you enclose it to the du Pont Company?

Mr. Button: I offer it in evidence.

Mr. Abbott: No objection.

(Same received in evidence and marked Defendants' Exhibit A-515, and read to the jury by Mr. Button as follows:

5669 APPLICATION FOR { CONTRACT / OR / SPECIAL } PRICE.

Your file CD-3544
Our " L-1409

Customer Great Northern Fuel Co.
Location, Kansas City, Mo.
Business Coal Operators
Work at Novinger, Mo. on Ry.
Associated with

5670 Present Price $1.15 — Previous sales None 1 lbs. for one year, from kegs to
Price Desired $1.10 — Brand Du Pont
Supply Point, Mooar, Iowa.
Nearest Mill " "
Prob. Cons. { this year } 2500 kegs

DELIVERED — Competitors that have sold in the past. Buckeye now supplying under contract

At	Del'y cost per cwt.		keg
At Mooar	38	" 48	10-2/4 13-1/4
Belleville,	49	" 63	13-1/2 17-1/4
Kan. City	39	" 51	10-3/4 14
Peoria	48	" 60	13-1/4 16-1/2
Marion	65	" 95	17-3/4 26-1/4

What trade will be affected by the application of this price.

Statement of reasons making prices necessary. Referring to the trade of the Great Northern Fuel Co., Novinger, Mo., beg to advise that our Mr. Spicer visited Kansas City on the 19th inst., in order to see Mr. W. S. McCaull, President of this company, to whom the matter of a powder contract had finally been referred. We had written Mr. McCaull previously that Mr. Spicer would visit him at any time suitable to him, and a letter reached 5672
this office the day Mr. Spicer reached Kansas City, copy of which we enclose. Mr. McCaull stated that recently the miners in their employ made a demand for Buckeye powder because of its having Union labels, and rather than bring on a fight with the miners, they consented to this and bought some Buckeye powder and made a contract with them. He would not state the price, and when we suggested to him that we might have been able to overcome this had he let us know about it, he referred to matters of the past, particularly when 5673
their company was a new one, and said at the time they tried to buy DuPont powder the Du Pont Co. was not willing to sell them for some reason or other, and for this reason they did not feel like making a fight in favor of Du Pont as against Buckeye and for that reason made no effort to overcome the demand for Buckeye powder. This matter was discussed quite a little and Mr. McCaull stated that if later on the miners changed their minds, which they frequently do, they might be quite willing t try Du Pont powder, but as long as matters remain as they are, they will probably use Buckeye, unless there is some inducement for them to change the brand.

We regret that this business is lost for the pre-

5674 *Charles B. Spicer—Direct*

ent, and suggest that if you authorize the same figure to the Great Northern Fuel Co. as now applies to the two other operations in the Novinger district, viz.: the Rombauer Coal Co. and the Kansas City Midland Coal Co., this lower price might act as an inducement to the company to change back to Du Pont. If you will authorize this figure, we will make another attempt to get the business

5675 .. August 21, 1905.

E. I. Du Pont Co. St. Louis District.
Urgently need price by 19
Submitted to Sales Board Aug. 23, 1905
Approved .....
Approved by Sales Board Aug. 23, 1905
Promulgated unless stopped Aug. 24, 1905

E. I. du Pont Co.
By W. H. Watters,
General Agent.

5676 Mr. Button: And the letter from Mr. McCaull was as follows:

"Great Northern Fuel Company.
Kansas City, Mo., Aug. 18, 1905.
Mr. W. H. Watters, Gen'l Agt.
du Pont Powder Co., St. Louis, Mo.
Dear Sirs:

I have your favor of the 17th inst. concerning the supplying of powder to our mines at Novinger, Mo., and in reply beg to say that owing to action of Miners' Union your powder was boycotted and we were compelled to sign a contract for another brand of powder. Would be pleased to do business with you at some future time should the miners change their mind and be willing to use du Pont Powder again."

Q. Is that the application that you put in at that time (indicating)? A. Yes, sir.

Q. Was it dictated by you? A. Yes.

Q. And your initials on it? A. Yes.

Q. Did you send it to the du Pont Company in Wilmington? A. Yes.

Q. Did you attach to it a copy of this letter of Mr. McCaull that I have just read? A. Yes.

Q. That is the information that was sent on by your St. Louis office to the home office at Wilmington, was it? A. Yes, sir. 5678

Q. At this interview which you had with Mr. McCall, referred to herein, had he said anything about the prices at that first interview that the Rumbaugh and the Kansas City Midland had? A. At the first interview; no, sir.

Q. Did you see Mr. McCall again in Kansas City in regard to this matter? A. Yes, sir.

Q. About when? A. I would say about in the early part of September, but I cannot recall exactly.

Q. 1905? A. Yes, 1905.

Q. At that time did he say anything to you about the Rumbaugh business? A. Yes; he stated that he had learned indirectly that the Rumbaugh and Kansas City Midland Coal & Mining Company were getting better prices than he was enjoying under his contract, and wanted to know whether we would make the same price to him as we did to Rumbaugh and the Kansas City Midland. 5679

Q. What did you tell him? A. I told him we could probably arrange it.

Q. What else was said? A. Mr. McCall said that if that was the case he would see what he could do towards switching over to du Pont powder, and he said he would get some of his company men to make a demand for du Pont powder, and that he would see me later.

Q. What did he mean by company men doing so? A. He meant men that were friendly to the company as distinguished from those who might not be so disposed.

Q. That is, miners, you mean? A. Yes, miners; men working in the mines.

Q. Was there on that occasion, or on this previous occasion when you talked to Mr. McCall, anything said in regard to your going to Novinger to see the miners? A. No, sir; he said he would at-
5681 tend to that.

Q. Was there anything said in regard to your sending anybody else there? A. No, sir.

Q. At this interview in September he said he would attend to it, did he? A. Yes.

Q. And you did not go to Novinger? A. No.

Q. And a little later did you receive a further letter from Mr. McCall on the subject of this business? A. Yes, sir.

Q. In October? A. Yes. I got two different letters, or one anyway.

5682 Q. Is that it—October 17, 1905 (indicating)? A. Yes.

Q. Is that his signature? A. Yes; that is his signature.

Q. And another one October 24, 1905? A. Yes.

Q. Is that his signature (indicating)? A. Yes, sir.

(The letters referred to were marked Defendants' Exhibits A-516 and A-517, and were read aloud to the Court and jury as follows):

Kansas City, Mo., Oct. 17, 1905.

Mr. Chas. B. Spicer,
St. Louis, Mo.

Dear Sir:

On my return to the city, I am in receipt of

your favor of the 11th, and also learn that you called to see me last week. Very sorry I was not in. Our Superintendent advises me, however, that things are not in such shape at Novinger that we can make a contract with you at this time.

Yours very truly,

W. S. McCaull,
President.

Kansas City, Mo., Oct. 24, 1905. 5684

Mr. Chas. B. Spicer,
St. Louis, Mo.

Dear Sir:

I have yours of the 20th, also your telegram, on my return to the office this morning. I guess you will think I am a pretty hard person to find, but I am down in Oklahoma nearly all my time. I expect to be in St. Louis in a couple of weeks, and will see you personally in regard to the powder question. 5685

Yours truly,

W. S. McCaull,
President.

Q. In accordance with that letter, did Mr. McCall call upon you in St. Louis? A. Yes; he did.

Q. What did he do then? A. We discussed the powder proposition again, and he finally expressed a willingness to close a contract with us, and we had the contract papers made up and he signed the contract.

Q. There and then? A. There and then.

Q. Had you been at Novinger at all during all of this performance? A. No, sir.

1895

Q. When was the first time you went to Novinger? A. The first time I went to Novinger was in February, 1907.

Q. What was the occasion of your going there then? A. There was a complaint that came from the Kansas City and Midland Coal & Mining Company. The complaint came in the shape of a telegram advising us——

Q. No matter about that. You went down there to settle some dispute about du Pont powder, with
5687 the Kansas City Midland in 1907? A. Yes.

Q. That was the first time you ever went to Novinger? A. Yes, sir.

Cross examination by Mr. Abbott:

Q. Mr. Spicer, you say you were present in Kansas City when these depositions were taken? A. Yes, sir.

Q. In which you were mentioned as having been at Novinger. Did you observe the men who identified you at that time? A. The men who identified
5688 me with your assistance.

Q. With my assistance? A. Yes, Mr. Abbott.

Q. Did you see me assist any of them? A. Yes.

Q. State in what manner. A. From the fact that you called on Mr. Stevens to identify Mr. Spicer at the same time you asked me to stand up, and like a fool I did.

Q. Did I ask you to stand up before he identified you—will you swear to that? A. I did not say before; I said just at the same time.

Q. Did these gentlemen, when they identified you, get any signal or anything of that kind from me to the effect that you were the man desired to be pointed out? A. Nothing other than your request for me to stand up.

Q. Did not Mr. Stevens, who was the first one

to identify you after looking around the room state he saw a man in the rear, who looked like the man sitting over there, is not that true? A. No, I didn't sit alone, I sat with—

Q. You were sitting with another gentleman, in the rear, and each one of them pointed you out and I asked you then to stand up, is not that true? A. You asked me to stand up and I stood up.

Q. After they had pointed out a gentleman sitting back there, you two? A. I was back there, yes, sir, and he pointed in the general direction of both of 5690 us.

Q. I asked you to stand up? A. Yes, sir.

Q. Did any of the other gentlemen show any hesitation in pointing you out as the party they had seen? A. Am I to answer the question?

Q. Yes. A. I think they did.

Q. Did I point at you in that manner on that occasion? A. I had already been identified then.

Q. Were these gentlemen in the room, all of them at the time? A. Yes, sir.

Q. Isn't it a fact that two of them were not there? A. I do not recall, I think they were all there on 5691 this day.

Q. Nevertheless you were pointed out as the man they had met in Novinger, were you not? A. Yes, sir.

Q. By four different men? A. I recall that one of the parties clearly indicated that he could not remember the party.

Q. Which one was that? A. I cannot be sure, but I think it was the last one.

Q. Then there were three. There were five that testified altogether, and you will admit that three of them pointed you out? A. I will not admit quite that much. I do not remember just the testimony, but my recollection is that those following Mr. Stevens were rather hazy in their identification of me.

Q. At any rate, they did point you out? A. With that qualification, yes, but they were rather hazy. Their testimony will indicate to what extent.

Q. Yes. They did not hesitate to say that you were the party that came to them in Novinger? A. I think they did.

Q. Your judgment is, then, that you were not well identified at that time? A. Yes.

Q. The record in the case would have to be referred to in order to determine whether your judg-
5693 ment was right? A. Yes, sir.

Q. All right. Do you make reports from day to day to your office as to where you were? A. Yes, sir.

Q. Did you make any report of where you were during the time when this particular affair was said to have occurred at Novinger? A. Yes, sir; I made reports to the St. Louis office.

Q. Have you those? A. No. I have not been connected with the du Pont Company for two years.

Q. Could you find them, do you suppose? A. I don't know anything about them.

5694 Q. This time you had this conversation with Mr. McCall in St. Louis, will you give the date about when that was when you finally closed your contract? A. The contract was dated November 1st, and it was several days after that that Mr. McCall dropped into the office, and he asked that the contract be dated back to November 1st.

Q. Do you remember anything that passed between you and Mr. McCall at that time in reference to compliments as to your success in putting this deal through? A. Whereabouts do you mean?

Q. In St. Louis. A. No, sir.

Q. Nothing at all? Do you remember you gave Mr. McCall an umbrella as a compliment to him for having assisted you in getting that contract through? A. I remember Mr. McCall practically

grafting me for an umbrella. He said he thought a deal of that consequence should be worth at least the price of a $5 hat. Yes, the price of a five dollar hat, and when the contract was signed he decided that he did not need a hat, but he would like to have an umbrella for his wife. That is the first time that any proposition like that had been put to me.

Q. Well, you gave him the umbrella? A. At his request, yes, not at my suggestion at all.

Q. I was trying to find out whether or not you did, and it seems you did give it to him. You have, at various times, made cut prices to people for powder? A. I would not say I had. 5696

Mr. Button: I object to that as not cross examination.

Mr. Abbott: As I understand it, one of those documents shows that he made a better price to the Great Northern Fuel Company than they were receiving? If that is not correct then I am mistaken.

Mr. Button: Testified to here to-day? 5697

Mr. Abbott: Yes. Where is that document?

The Court: In that document he asked him for a special price.

Mr. Button: Yes, and also said he did not know what the Buckeye price was.

Mr. Abbott: This states here that the present price the Great Northern is paying is $1.15 and the price desired is $1.10.

The Witness: The present price I would have been authorized to quote or that the du Pont Company authorized at that time, was $1.15. If there was a lower figure I had to make application for a special price.

Q. Did you make a lower price? A. Yes.

Q. Which was $1.10? A. Yes.

Q. Which was less than they were paying? A. At that time, I have no knowledge whether it was or not, but it was the same price we were quoting the Raumbauer and the Kansas City Midland, and was the prevailing price according to our information at that time.

Q. You asked him for a lower price, did you? A. Yes.

Q. Did you get it? A. Yes.

5699 Q. And you closed with him on account of the lower price you gave him, did you not? A. I don't know why he closed.

Q. I say you did close with him on account of a lower price? A. I closed with him, I don't know why he closed. We were glad to get his contract at a price we were authorized to name.

Q. You have from time to time, have you not, Mr. Spicer, approached or used your influence and employed miners to use their influence to put du Pont powder in various mines, have you not? A. I have done what?

5700 (The question was repeated by the stenographer).

A. I have not employed any miners, no.

Q. Have you employed anybody in the mines for that purpose? A. No, sir.

Q. You remember giving your testimony in this case in St. Louis, do you not? A. I presume my memory could be refreshed on it.

Q. I will ask you to state if this did not occur at that time:

(Reading testimony): "Q. Did you ever approach any person or persons with reference to influencing miners in the mines of persons to whom you were trying to sell powder, to accept your powder in that mine and make a demand for it on the operator? A. I cannot recall at the present time.

"Q. Will you state you did not? A. I think I will let the answer go as it stands." Did you testify that way? A. I did, yes, sir.

Q. Why was it, then, you were not willing to go on and tell what you knew about it, instead of letting the answer go as it stood? (Objection overruled) A. Well, I told them all I knew about it.

Q. Did you ever employ any miners in a mine known as the Duquoin mine at Duquoin, Illinois? A. No, sir.

5702

Q. You are sure you did not? A. I am quite sure.

Q. Did you ever attempt to employ any miners in that mine to put in du Pont powder and throw out another powder? A. No, sir.

Q. Did you ever employ any miners in the mine of the DeCamp Powder Company for the purpose of putting in du Pont powder and putting in other powder, Buckeye powder particularly? A. No, sir.

Q. Do you remember going to the superintendent of that mine and telling him if he would queer Buckeye powder you would make it all right with 5703 him? A. No, sir; I never made any such statement.

Q. Did you not before you obtained the contract with the Great Northern Fuel Company make a price as low as $1.05? A. That is the price at which the contract was closed, yes.

Q. You still further cut below $1.10, the price which you say you had authority to make later? A. I made a price of $1.05, yes.

Q. And you got the business at $1.05? A. Yes, sir.

Q. You made trade reports from time to time, did you not? A. Yes, sir.

Q. A good many of them? A. Quite a few of them, yes, sir.

5704 *Charles B. Spicer—Redirect*
T. C. du Pont—Direct

Q. Did you make trade reports of the business of Mr. Brechnitz from time to time? A. Yes, sir.

Re-direct examination by Mr. Button:

Q. Was this $1.05 the same price that Rombauer and the Kansas City Midland were getting at that time? A. Yes, sir, at the price at which powder could be bought at that time.

5705

T. C. DU PONT, called in behalf of the defendants, testified as follows:

Direct examination by Mr. Graham:

Q. Let me ask you to state who composed the Executive Committee of the du Pont Powder Company from 1903, when it was organized, down to 1908? A. Mr. Pierre du Pont, Alfred du Pont, J.
5706 A. Haskell, H. M. Barksdale, A. J. Moxham and H. F. Baldwin. Mr. Baldwin's place was taken in a few years by Mr. C. A. Patterson, and myself.

Q. Mr. Baldwin died in 1907, did he? A. Yes, 1907, I think.

Q. And his place was taken by Mr. Patterson? A. Yes, sir.

Q. You are also a member of the board of directors and President of the Company? A. Yes, sir.

Q. As a member of the executive committee and an executive officer of this corporation, do you know of any control exercised by the du Pont Powder Company over the Equitable, Austin, Egyptian or United States Powder Companies during that period? A. No, sir; none whatever.

Q. Was there any action ever taken by your ex-

ecutive committee or by your board looking to the exercise of any control over all or any one of these companies? A. No, sir.

Q. Did you have anything to do whatever with shaping the business policy or the prices for black blasting powder chargend by these companies or any of them? A. None whatever.

Q. Was there ever any arrangement made with these companies, or any of them, by the du Pont Company, by which the du Pont Company was to be compensated in any way for any losses which it 5708
might sustain in carrying on any competition against any competitor? A. None whatever.

Q. Was there any such arrangement or understanding, express or implied, between your company and any of those companies concerning the Buckeye Powder Company? A. No, sir.

Q. In view of that, of course, it follows that the du Pont Powder Company never did receive any such compensation? A. None whatever.

Q. Was there any understanding or agreement made by you as executive officer of the du Pont Pow- 5709
der Company or by your executive committee or board with any other of the competitors in the black blasting powder business with reference to any such arrangement as this? A. None whatever.

Q. Did you ever hear of any having been made by your company or your officers? A. No, sir.

Q. Was there ever any action taken or instructions given by you as the president or by the executive committee or by the Board of Directors of the du Pont Company to any of the employes or agents of your company to make a drive at the Buckeye Powder Company or its business? A. No, sir.

Q. Was there any action taken by you as the executive head of the corporation or by your executive committee or board of directors aimed at the Buck-

eye Powder Company or its business with the intention of driving it out of business? A. No, sir.

Q. I think you have already stated, Mr. du Pont, in your prior examination, that the policy of your company was to meet prices and not to cut them? A. Yes, sir. When I came into the business I was told that at equal figures—

Mr. Abbott: Wait a moment. Let us find out by whom you were told.

5711 The Witness: By Mr. Waddell and Mr. Barksdale. They are two I happen to remember.

Mr. Abbott: While Mr. Waddell was in your employ?

The Witness: Yes, sir. du Pont powder at equal prices would have preference, and for anybody to get their business they would have to reduce the price.

Q. Have you any knowledge, as the president and
5712 executive officer of the du Pont Powder Company, of any action having been taken by yourself or the executive committee or the board of directors authorizing or directing a cut in prices below what was necessary to meet the quotation or what you understood to be the quotation of some competitor? A. No, sir; not that I ever heard of.

Q. A good deal has been said here, both by counsel and by the witness Mr. Waddell, about the establishment of a contract system. Do you know of the establishment of any contract system by the du Pont Powder Company, its officers or directors? A. I know that powder was sold under a contract. The business was such that frequently that it a necessity, and that was so when I came with the company, and a good many years before—

Q. You mean when you came in contact with the business, a good many years before? A. Yes.

Q. Because this company I am speaking of was organized in 1903. What I am particularly asking is this: Was there any system created for making contracts for the purpose of tieing up the business of the country, or were these contracts those which were made in the usual and natural course of business? (Objected to and objection overruled.) A. As I say, when I got into the powder business in 1902, for a good many years before that it was a 5714
custom to have contracts for powder, and the usual course of business in many cases demanded a contract. There was nothing done in the way of creating a system of any kind, nothing that I know of.

Q. Do you know of any action taken, either by your executive committee or the Board of Directors, to create any system of making these contracts? A. No, sir.

Q. From 1903 on down to 1908, inclusive, who fixed the prices at which powder was sold—the du Pont Company independently or in connection 5715
with any other company? A. The du Pont Company fixed their own prices.

Q. Did they consult or confer with the Equitable, the Egyptian, the Austin, or any of these other competitors that were in that field with reference to what prices should be charged? A. Not that I know of or heard of.

Q. Was there any arrangement or understanding between you and any of these companies with reference to prices? A. No, sir.

Q. Or with any of the other competitors, the King, the Miami and the others that have been mentioned as competing in this district? A. There were not.

Q. Mr. du Pont, Mr. Waddell has testified that

one of these interviews held with him when he was about leaving the employment of the du Pont Company and starting out for himself, you said or offered him 25,000 of preferred and 25,000 of common stock in your corporation, in the Powder Company. Is that true or not; what is the fact? A. I think Mr. Waddell left us in December, 1902, and the Powder Company was not formed until some time in 1903, so it could not have been the fact and was not the fact.

5717 Q. So that there was no stock in existence at that time to offer to him? A. That is right.

Q. Mr. Waddell has testified that at one time you came to him to ask his advice and did inquire of him how you could get rid of Donnelly's howlers in the mine. Did you ever have any such conversation or go to him and inquire about such a subject as that? A. I don't think I ever went to Mr. Waddell's office——

Q. In the Smoky Hollow Coal Company, it was connected with? A. I don't think I ever went to

5718 Mr. Waddell's office. He came to my office. And I certainly would not have asked him about a man not in his district. And I know how to get rid of a man without asking Mr. Waddell or anybody else.

Q. In the first place you say you did not go to his office, and as to the fact itself, did you hold any such conversation with him as that? A. No, sir.

Cross examination by Mr. Abbott:

Q. These three companies that were named to you that you say you never exercised any control over in any way,—the Equitable, the Austin and the United States—the du Pont Company had a

stock interest in those companies, did it not? A. It had a stock interest in the Equitable and in the Austin.

Q. And Mr. Olin is a large owner, is he not, in the United States? A. I understand so.

Q. And he was during a good portion of the period? A. I don't remember when they made that arrangement.

Q. You do not know about that. Is it not a fact that Mr. Haskell was a member of the Board of Directors of the Equitable Powder Company? A. 5720
I think we had two representatives on the Board, but they had nothing whatever to say with reference to the policy of the business.

Q. Then, it is because of the fact that you say they do not attend the meetings and do not attempt to vote the stock independently that they exercise no control over the affairs of the company? A. I did not say they did not say they did not attend the meetings. At least, I did not intend to.

Q. Well, what is the fact about that; did they attend the meetings? A. They may or may not 5721
have done so. I don't know.

Q. You do not know as to that? A. But I know others that have been directors have always said they had no control or anything whatever to do with the business.

Q. You have also stated that your company during the time that the Buckeye Powder Company was in existence did nothing in the way of making a drive at the Buckeye Powder Company. What did you understand by that term drive? A. To put prices below their prices, or anybody else's prices.

Q. And is that all—the question of prices? A. What do you mean by is that all?

Q. I am asking you for your interpretation of

5722 *T. C. du Pont—Cross*

the word drive. A. When I answered the question that is what I had in mind.

Q. Do you know anything about a price of 95 cents that was made to the trade in the district that Mr. Waddell or the Buckeye powder reached from 1905 to 1907? A. No, sir; I do not.

Q. You do not know about that? A. No, sir.

Q. You do not know anything about that price having been made to something in the neighborhood of 400 or 450 different customers in that dis-
5723 trict? A. No, sir.

Q. Then you do not know anything about what transpired in the sales board? A. I don't know anything about that? If you will ask me the question I might know something.

Q. I was trying to draw out your information when your counsel interrupted. Do you know anything about any prices which were made—that is, a rate of 95 cents—to something 400 or 450 consumers of black blasting powder in that district? A. I don't remember of any price of 95 cents being
5724 made to anybody.

Q. You say that wherever you made a cut in prices it was made solely for the purpose of meeting some other person's price for the purpose of getting business? A. I don't remember saying we made a cut in prices.

Q. I don't want to misquote you. I have a note to the effect that is what you said. If that is not the fact, correct me, please. What is the fact about that; did you ever make a lower price for any purpose whatever than your regular price for powder? A. We met prices of our competitors.

Q. Whenever you made a lower price it was for the purpose of meeting a price made by a competitor? A. Yes, sir.

Q. That you know of your own knowledge, do you? A. No; those were the instructions.

Q. So you know nothing about the matter of making prices, of your own knowledge? A. No, sir.

Q. Now, this matter of the contract system, about which counsel interrogated you. You say, if I did not misinterpret your testimony, that you merely took over a custom which prevailed at the time when the powder company was organized. Is that correct? A. The contract system was there when I got in the powder business.

Q. And you followed a system which was in existence at that time? A. Yes, sir. So far as I know 5726
there was no change made in it.

Q. I beg your pardon? A. There was no change that I remember.

Q. And whatever you did in the way of making contracts, then, was a continuation of what had preceding the organization of the powder company? A. Well, as far as I know; but the details I paid practically no attention to. It was a matter for the sales department.

Mr. Abbott: That is all, Mr. du Pont. 5727

HAMILTON M. BARKSDALE, called as a witness in behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Graham:

Q. What is your official position in the du Pont Powder Company? A. I am a member of the board of directors, a member of the executive committee, and vice-president.

Q. You are part, then, of the executive and administrative departments of the corporation? A. Yes, sir.

Q. Your associates on the executive committee are those whom Mr. T. C. du Pont named? A. Yes, sir.

Q. Do you know about what time Mr. Baldwin died? A. Mr. Baldwin retired as a member of the board of directors and a member of the executive committee, I think, in 1907.

Q. The latter part of 1907, or earlier? A. I have no recollection of the exact time.

Q. And he was succeeded by Mr. Patterson? A.
5729 Charles L. Patterson.

Q. Was or was not the executive management of the du Pont Company and its affairs in the hands of this executive committee? A. Yes.

Q. So you would be acquainted with and know what the policy of the company was and what the instructions to the agents and employees would be? A. Yes, sir.

Q. Now, I want to ask you whether you, as an officer, or your executive committee or your board of directors of the du Pont Powder Company, ex-
5730 ercised any control whatever over the policy or business of the following companies: Equitable, Austin, Egyptian and the United States Powder Companies? A. We did not.

Q. Did you have anything to do with fixing or adjusting the prices which they or any them charged for black blasting powder which they sold? A. None at all.

Q. Did they have anything to do with fixing or regulating the prices which the du Pont Powder Company fixed for the sale of its black blasting powder? A. Certainly not.

Q. Did any competitve company or any other corporation have anything to do or say with the adjustment of your prices? A. No, sir.

Q. Was there ever any arrangement between yourself or the executive committee or board of di-

rectors with any of the companies that I have named or any of the other competitive companies by which the du Pont Company was to be compensated in any way for any loss that it might sustain through any competition with a competitor? A. No such compensation was ever paid us——

Q. That is hardly the question. Was there ever any agreement or understandng by which you were to be compensated? A. No, sir.

Q. And you have added that none was ever paid you, of course. Do you know of any action having 5732
been taken by yourself, as one of the executive officers, by the executive committee or the board of directors of the du Pont Powder Company, against the Buckeye Powder Company for the purpose of driving it out of business? A. No, sir.

Q. And by driving it out of business I mean to include the cutting of prices or any other expedient that might be suggested or adopted? A. No, sir.

Q. You never heard of any such step being taken, did you? A. No, sir.

Q. Was there or was there not any attitude differing from your attitude toward all competitors 5733
taken by the du Pont Company toward the Buckeye? A. No, sir.

Q. Do you know of anything that was done by the du Pont Company especially directed against the Buckeye Powder Company as a competitor? A. I do not.

Q. Were there any other competitors in the field besides the Buckeye during this period? A. Oh, yes.

Q. Will you name some of them or all of them if you can? A. There was the Austin, the Burton, the King, the Miami, the United States, the Egyptian, the Senior. That is as full a list as I can recall at the moment. Oh, yes, I think I failed to mention the Equitable.

Q. As I understand it, of course the du Pont Company had a 49 per cent interest in the stock of the Equitable Company? A. Yes.

Q. And that stock had its representation in the board? A. Yes.

Q. Was the Egyptian an independent competitor? A. Yes.

Q. Was the stock of that company acquired at any time by the Equitable? A. Yes; I understand so.

5735 Q. About what time? A. I cannot give you the date. I have no knowledge in regard to details at all.

Q. Can you state whether or not it was some considerabl time after the Buckeye started in business? A. Oh, yes.

Q. Several years? A. Yes.

Q. I understand also that Mr. Olin had some stock in the United States Company? A. Yes, I so understand.

Q. Taking all those circumstances into consid-
5736 eration, you still say that the du Pont Powder Company, and its board of directors, executive committee and yourself, and as far as you know your associates, had nothing whatever to do with the policy or the shaping of the policy or the prices or the business of the Equitable Company? A. We left that entirely to the majority ownership of those companies.

Q. What was the attitude of the du Pont Powder Company during this period with relation to reducing prices?

Mr. Abbott: I think that question is a little too broad and I object to it for that reason.

Mr. Graham: Subtstitute "policy" for attitude.

Mr. Abbott: It is pretty nearly as broad in that form, but I think I will not object to it.

The Witness: Will you repeat that?

(The question repeated).

A. A policy of reducing prices as little as possible in order to retain the trade that we had been serving in that territory.

Q. Do you know of any prices having been cut other than a reduction to meet competition? A. 5738
No.

Q. What was the policy as practiced by yourself and associates in that respect? A. To endeavor to retain the trade by making a lesser reduction than that necessary to meet the quotation of the competitor; never to go below the quotation made by a competitor.

Q. Was there any action taken by yourself of your associates in the committee or board to establish any system of contracting so as to tie up the trade in the black blasting powder business? A. No. 5739

Q. Were there any contracts made other than in the usual course of the business? A. No.

Q. State whether it is or not a fact that customers requested you to make contracts for periods of time? A. In many instances; yes.

Q. Do you know of any reasons that existed for making these contracts, following the convenience and the usual custom of trade? A. Reasons on the part of the buyer?

Q. Yes? A. Oh, yes; many instances in which the buyer who procures explosives must determine at what prices he must secure his explosives in order that in turn he can make his bid for work he has in view.

Q. Do you remember the request that came from

the powder consumers of the Pocohontas coal field for contracts, that your company should make contracts with them? A. No; I don't remember it.

Q. You do not remember that incident. Now, Mr. Barksdale, do you know whether or not your associates entered into any conspiracy or combination directing toward the driving of the Buckeye powder out of business? A. No, sir; they never did.

Cross examination by Mr. Abbott:

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Q. Mr. Barksdale, as I understand it, you have been connected mostly with the dynamite end of the explosive business. Is that correct? A. So far as operations are concerned; yes, sir.

Q. You were connected with that business, were you not, that part of the explosive business, before you connected yourself with the powder company? A. Yes, sir.

Q. How long before? A. I first came into the explosives business in 1887.

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Q. And were you associated, were you not, from time to time, with Mr. Haskell, in connection with the handling of dynamite? A. Yes, sir.

Q. And in the handling of the interests which he represented at that time? A. The dynamite interests that he represented?

Q. The dynamite interests that he represented. A. I was; yes.

Q. And you were continuously associated with him down to the time you became associated with the powder company? A. Yes, sir.

Q. You had some experince, had you not, previous to the time when you entered the powder company, with the making of contracts with customers? A. Oh, yes.

Q. And the contracts which you made, or which you had anything to do with, were contracts which

were made largely for the consumption of dynamite, were they not? A. That I personally made?

Q. Yes; or that the interests that you represented made. A. Are you speaking now of the time prior to the formation of the powder company?

Q. Yes; prior to the time you became associated with the powder company? A. Yes.

Q. The same method of contracting for explosives, either dynamite or blasting powder, that prevailed prior to the time when you became associated with the powder company has continued since? A. Yes, sir. 5744

Q. The same thing? A. Yes, sir.

Q. You state that one of the reasons why some of your consumers, or some of the consumers of explosives, desire to have contracts is because it enables them to know how they will deal with particular instances, where they had to know the price of their explosives before they go in and make a contract. Is that correct? A. Yes.

Q. Does that apply to blasting powder? A. Frequently. 5745

Q. Tell me why it applies to blasting powder in view of the fact that the consumer of black blasting powder always has a contract with his miner whereby he knows just what the miner is going to pay him no matter what he pays for his black blasting powder? A. I was not referring to that portion of the black blasting powder consumption that is in connection with coal mining.

Q. What portion, then, of the black blasting powder consumption were you referring to? A. That portion which is used in construction work, and quarry work.

Q. Oh, yes. Then, it is only such contracts as are made, say, by railroad contractors, or others who have to have black blasting powder in connection with high explosives, such as dynamite? A. I will have to make that more specific.

(The question was repeated.)

A. Such contracts—what do you mean?

Q. I mean those are the kind of contracts you have reference to where the purchaser must know what he must pay for his explosives always in advance and therefore must have a contract? A. That was the particular kind of contract to which I referred in my previous answer.

Q. Yes, sir. Now, do you or do you not know that practically every consumer of black blasting
5747 powder where that powder is used for mining purposes, for coal mining purposes, who has a sufficient amount of black blasting powder to entitle him to have a contract, is or was under your contract with your company from 1903 to 1908, in the district known as the Central District? A. Is the question whether I know that all of our customers in that district throughout that period were under contract——

Q. Who were entitled to have a contract. A. I don't know that.

5748 Q. Do you or do you not know that according to the system of contracts which prevailed during this period no consumer of black blasting powder who did not consume at least 1200 kegs per year was entitled to have a contract? A. I did not know that detail.

Q. You say that the powder company did not at any time, to your knowledge, as I understood you, do anything which was in the nature of a special drive or special effort against the Buckeye Powder Company. I understand you correctly, do I? A. That is correct.

Q. Do you know anything about a price which was made to a large number of consumers of black blasting powder in 1905, 1906 and 1907 at the rate of 95 cents? A. I only know that in the acute com-

petitive conditions that existed throughout that Middle Western country during the period to which you have reference we with reluctance followed the declining market and finally reached a price below which we would not go, preferring to see the trade go to others. I cannot say at this moment that that price was 95 cents.

Q. Now, then, as a matter of fact, do you have anything to do with the making of prices for black blasting powder? A. Personally?

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Q. Or did you have during this period? A. Did I personally have anything to do?

Q. Yes. A. Only in my capacity as a member of the Executive Committee in so far as the policy to be followed by our sales department was fixed.

Q. By whom? A. By the Executive Committee.

Q. If that price was made by the sales board of the powder company, then it was made by authority of the powder company, was it not, even though you did not have knowledge of it?

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Mr. Graham: That is a hypothetical question.

The Witness: That is a question I would like to have a little more clearly put.

The Court: I think it may be asked.

A. If made by the Sales Board?

Q. Yes. A. Yes, I do not think our sales board, while it was in existence, would have made a lower price than that fixed by the policy outlined by the executive committee.

Q. But now your answer is not exactly responsive. What I want to know is that if a price of 95 cents was made to a large number of customers during the years 1905, 1906 and 1907 by the sales board, then it was made by authority of the Powder Company, even if you did not have personal knowl-

edge of that fact, or even if the executive committee did not have personal knowledge of that fact? A. If it is a fact that our general price thoughout that territory during the period to which you refer was 95 cents, then I should say that the executive committee had authorized that minimum.

Q. Now then, would it not also be a fact that if certain special prices at the rate of 95 cents during that period, that that also would be made with the authority of the Powder Company? A. No—

5753 Q. If it was made by the Sales Board? A. You are rather confusing me by the introduction of this sales board. Do you—

Q. You do have a sales board, do you not? A. No. We have a sales department. That sales department has certain methods of its own for handling the business entrusted to it. Do you use sales board in a synonymous sense with sales department?

Q. If I state this to you—perhaps you will understand why I am asking you this question. You know who Mr. Coyne is, do you not? A. Yes.

5754 Q. He is your director of sales, is he not? A. Yes.

Q. If he has stated several times on the stand that there was a sales board and that that sales board made certain prices then he spoke authoritatively, did he? A. Yes. That is a portion of the business that came under his department.

Q. That is the department that you have in mind when you say it was authorized to make certain prices? A. The instructions or authority issued by the executive committee in matters of sales are issued to our sales department. The executive committee holds the head of that department responsible. What arrangement or organization the head of that department may have for handling the details

for his department is largely a matter of his own judgment.

Q. Now I would like to have, after this explanation, I would like to have you give me a direct answer on that point, so we may have no confusion in your testimony. That is, whether or not if certain prices were made by the Sales Board during the years 1905, 1906 and 1907, at the rate of 95 cents, to a large number of consumers, that then those prices were made by the authority of the Powder Company? A. I should think that was probable. 5756
I do not believe authority would be exceeded by our sales department.

Q. You have never yourself, as I understand from your testimony now, given any specific attention to the making of prices either in particular cases or in general cases with reference to black blasting powder; that is not a part of the business of the Powder Company which immediately comes under your control, is it? A. No; it is not.

Q. As a matter of fact you see very little of that department? A. Yes. 5757

Q. So that when you say that you have never made special prices for special purposes, such for instance, as getting certain special business or even putting a customer out of business, those are things that you only know from having gotten a report from some other part of your organization? You would not know that personally? A. I don't think I made any such statement as that.

Q. You stated on your direct examination that you endeavored to obtain business either in special or general cases by making a reduction but never a lesser reduction. Did I understand that correctly? A. I stated that as the policy of the executive committee of the company which lays down the policy that the several departments of the company must follow. That was my statement.

Q. Did you make the statement or not that while you made reductions it was never a lesser reduction? A. No.

Q. Then, as I understand it, Mr. Barksdale, your testimony is to this effect: That while you made reductions in prices for the purpose of meeting prices made by competitors, you never made a less price than that competitor made for that specific business. Is that correct? A. My statement, Mr. Ab-
5759 bott, that that is the policy announced by the executive committee of our corporation.

Q. I see. Now, then, is or is it not possible that that policy may at times have been violated or that rule broken by the powder company or some of its officers? A. Oh, possibly by some salesman being misinformed as to what is the price his competitors are quoting, or misinformed in some other way. It would be an isolated instance, I should think.

Q. Then, as a matter of fact, you do not know anything about the conduct of that department of your business? A. The sales department?

5760 Q. Yes. A. I have never had any connection with the sales department.

Q. You stated that you had certain competitors and you named the Austin. You own 33 per cent. of the stock of the Austin Company, do you not? A. Approximately.

Q. And have owned it during all of the time of the existence of the Powder Company? A. Yes.

Q. You stated that the Equitable was another one of your competitors, and in that company you own 49 per cent. of the stock, do you not? A. Yes.

Q. And have owned it during the entire period of the company's existence? A. Yes. That is of the Powder Company's existence?

Q. Yes. A. Yes, sir; of the Powder Company's existence.

Q. And you stated that the Egyptian was one of your competitors. The Egyptian was owned by the Equitable Powder Company, was it not? A. Not in the beginning, but I believe in the end they acquired it.

Q. Are you or are you not or were you or were you not at any time a member of the Board of Directors of the Equitable Powder Company? A. Never.

Q. You said the King Powder Company was one of your competitors. I will ask you whether or not 5762
down to the period of 1906, some time in the spring of 1906, you had a contract with the King Powder Company or the King Mercantile Company, for the purchase of its entire output? A. The King Powder Company's contract was cancelled.

Q. In 1906 it was cancelled? A. I don't remember the date of the cancellation of that contract.

Q. But it was cancelled in 1906, sometime, was it not? A. Well, I say I don't remember the date. Up to the cancellation of that contract we did sell their black blasting product. Subsequent to that 5763
time they were very active.

Q. But you had a contract in 1906, down to that time? A. I don't remember the date, but up to the date of the cancellation of the contract we sold thier black blasting product. Subsequent to that time they were very active competitors.

Q. And you paid something like $100,000 for canceling that contract at that time, did you not? A. Yes, sir.

Q. You said that the Miami Company was one of the competitors. Who was the president of that company at that time? A. Really I don't know, but——

Q. I will ask you if it was not Mr. Fay. A. Mr. A. O. Fay was president of that company for many

years, but for some years before his death his health was such that he paid no attention to business.

Q. I was only asking you for the fact of whether or not he was the president.

The Court: Which company?
Mr. Abbott: The Miami.

Q. Is it not a fact that until some time in 1905 the Powder Company had a contract known as the
5765 Sullivan agreement whereby there was an arrangement between the Miami Powder Company and your company for the allotment of certain business between your companies and other things? A. I remember that there was such an arrangement as you refer to, but my recollection does not connect the Miami Powder Company with it.

Q. Do you know that there was an agreement made by Mr. Sullivan in the name of Sullivan on behalf of the Powder Company with Fay and certain interests he represented? A. My recollection is—I
5766 may be in error of course, but my recollection is that the Fay interests there was the Fay dynamite interest.

Q. If that agreement did include the Miami Powder Company interests, then your statement that that was a competitor previous to some time in 1905 would not be correct, would it? A. Not if the Sullivan agreement covered the territory to which my previous question related.

Q. What territory did that relate to? I did not know it was restricted. A. I don't recall.

Q. What territory does it relate to, will you say? A. I say I don't know.

Q. You did have some sort of an agreement with the Miami Powder Company, did you not, for the allotment of business between you? A. I have al-

ready stated that I did not know whether that included the Miami.

The Court: What year was that?

Mr. Abbott: That was the early part of 1905. It was nine months from June, 1904.

Mr. Katzenbach: It ended March 30, 1905.

Mr. Abbott: Yes, somewhere along that time.

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Q. The United States Powder Company you mentioned as one of the competitors. That company during this period became partly owned by Mr. Olin, did it not, and his assocates connected with the Equitable Powder Company? A. I understand they had a minority interest there.

Q. You stated that there were a number of instances in which customers requested you to make contracts. Can you recall any of those instances? A. May I have my previous answer read?

Q. Yes, if it can be located. I would be glad to locate it.

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Mr. Graham: May I state my recollection of it?

Mr. Abbott: Certainly.

Mr. Graham: I asked Mr. Barksdale whether customers had not asked the Powder Company to make contracts, and he said they had.

Mr. Abbott: That is sufficient for my purpose.

Q. I want to find out who those customers were that requested that. A. I would not undertake to give specific instances.

Q. You cannot name any? A. Oh, yes; I could go back and name some, I presume.

5770 Q. Well, name them—— A. Whether I could name any in this period to which you have referred I do not know. I can go back prior to that time, when I had to do with the sales of high explosives, and mention some important cases of that sort, and what has followed since has been merely a continuation of that which existed then. Will it serve your purpose if I mention some——

5771 Mr. Abbott: I think your answer is sufficient. Yes, that is all.

Re-direct examination by Mr. Graham:

Q. You said, with relation to the contract system, that contracts had been made in the high explosives business back in your time, along prior to 1903. Is that the fact? A. Yes.

Q. It was not unusual to make contracts at that time, I understood you to say.

Q. Oh, no.

5772 Q. Now, the point of my inquiry was this—I want to see if I understood you correctly. In reply to Mr. Abbott you said the same method of making contracts was continued down. What do you mean by that? A. Well, you used in your question the word "system." That is susceptible of several definitions. Nothing that we have ever done in the explosives industry in the way of selling under contract can, it seems to me, be properly defined as a system. We had a method.

Mr. Abbott: Now, may it please your Honor——

The Court: (Addressing witness): You are not interpreting your own language now. That is the trouble. I will allow you to

interpret your own language. Just listen to the question of Mr. Graham.

Mr. Graham: What I intended—perhaps I was not sufficiently explicit—was to draw out from the witness what he is stating now.

The Court: Do you want to reframe your question?

Mr. Graham: No. I will let it be repeated and let him finish his answer.

A. I mean the method previously followed in 5774
making contracts with customers covering the sale by us and the purchase by them of explosives was the method which we continued to follow after 1903.

Q. Was there anything, Mr. Barksdale, in that method, as we call it, differing from that which is pursued in all business?

Mr. Abbott: That is objected to.

Q. (Continuing):—the making of contracts that grow spontaneously out of the growth of the busi- 5775
ness. (Objection overruled.) A. Nothing different from methods pursued by those businesses with which I have come in contact. We buy raw materials, for instance, under a similar contract.

Q. Was there anything in that method that would be denominated a system to control or tie up the business of the country? A. Oh, no.

Q. So that when you answered Mr. Abbott if this method was continued, that is what you meant—the making of contracts in the usual course of business? A. Yes.

Q. This contract that the King Mercantile Company had expired about what time? A. I stated I could not remember.

Q. But after it did expire the King was a very independent and active competitor in the field, was it not? A. Yes, peculiarly active.

Q. Peculiarly active. And the Sullivan agreement that you speak of, if it included the Miami, related simply to the apportionment between the powder company and the Fay interests? A. My recollection of that is not distinct enough for me to answer that question in all its details.

5777 *Re-cross examination by Mr. Abbott*:

Q. In what way was the King Powder Company peculiarly active after that agreement was cancelled? A. In their efforts to secure trade?

Q. Yes. Well, you used the words "peculiarly active." I wanted to know what you meant by that. I would like to have you tell me now what you know of your own knowledge? A. What I know of my own knowledge?

Q. Yes, sir? A. Specifically?

5778 Q. Yes? A. Do you mean to follow that up by specific instances?

Q. Yes? A. I cannot say that. I don't know the details; I am not in touch with that end.

Q. You used the words "peculiarly active." I wanted to know what there was peculiar about the activity of the King Powder Company? A. The general level of prices they made in order to re-establish themselves in the industry.

Q. And you know about that of your own knowledge? A. Well, I think I would have to be a little careful about that.

Q. Very well? A. Except as reported to our executive committee, or our sales department, I would not know of it in any other way.

Q. So whatever information you have in that matter is something that has come in through your

various agents and salesmen? A. Has come into the executive committee through the regular channels for such information, namely our sales department.

Q. You stated that this contract system you referred to was not at all different from the system which were followed in other lines of business, if I did not misinterpret your statement. Will you state any other lines of business in which the contracts of a similar character to which you have been making, or your company has been making, 5780
are made or were made during this period? A. We purchase a large part of our own necessary materials under similar contracts.

Q. No, you misunderstand me. I want to know some other line of business now, somebody else's business, that you can give me the name of, where this system of contracts or a similar system is carried on? A. My most intimate knowledge in matters of that sort, in connection with the business, those businesses that we deal with, on the other side, where we are the buyers, and the other party is 5781
the seller.

Q. Tell me some business, for instance? A. The acid manufacturers, for instance; the glycerine manufacturers.

Q. And those companies have contracts with their various customers of an exclusive character, similar to this? A. What do you mean by exclusive, Mr. Abbott?

Q. I would like to have you specify what it is now that these acid people or these other customers from whom you buy your materials insert in their contracts; what are the general provisions? A. A very common provision in an acid contract is for the entire requirements that the buyer will want at certain specified manufacturing points.

Q. How about this other—the glycerine? A. The glycerine contracts are usually quantity contracts.

Q. And do they have exclusive provisions in those contracts? A. In the glycerine contracts?

Q. Yes? A. No, I don't think so. We frequently buy coal——

Q. Coal, did you say? A. I will be a little guarded about that. I don't want to make any misstatement. I am under the impression that we buy coal at times on the basis of the consumption at
5783 given points.

Q. Do you know anything about when this method of making contracts was originated? A. No.

Q. You do not know anything about that? A. It was before my time.

Q. Going on a little further on this line of interrogating, to find out what other concerns with whom you have had business, do with reference to making contracts, I would like to have you tell us now just how wide in extent is the business of
5784 the acid manufacturers of this country; is it one that covers a very large portion of the country, or are there comparatively few customers for acids, are there few purchasers of acids? A. My impression is it is a large business.

Q. Does it apply to druggists and to every consumer of acid that may consume acid in a general way throughout the country? A. Does what apply?

Q. This contract system? A. I don't know.

Q. You do not know anything about that? A. No, sir.

Q. And the same would apply to glycerine? A. I have no idea of the limits as to quantity a refiner of glycerine places or fixes when he concludes, for instance, that above this limit I will make contracts and below that limit I will not.

Q. As a matter of fact, Mr. Barksdale, you have no knowledge of what other lines of business in this country do with reference to making contracts excepting such ones as you have happened to come in contact with personally, who have asked you to make contracts; is that it? A. When you——

Q. Can you not answer that directly? A. If I have to answer it from the standpoint of my own personal knowledge, if I am to exclude in my answer my general understanding as a business man, as a manufacturer, the methods followed by 5786
other manufacturers, if I have to exclude that——

Q. Yes, I think that is not proper. If the Court pleases, I do not think it is proper for you to say what your general understanding is, but what I want to know is your personal knowledge. I am perfectly willing to have you tell what you know personally.

(After argument question withdrawn).

Mr. Abbott: That is all.

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ALFRED G. CUMMINGS, called as a witness in behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Graham:

Q. Where do you live? A. At Terre Haute, Indiana.

Q. What is your business? A. Manufacturing and selling black blasting powder and blasting supplies.

Q. Are you in business for yourself or a corporation? A. For a corporation.

Q. What is the name of the corporation? A. United States Powder Company.

Q. What is the location of the mill of the United States Powder Company? A. About 24 miles south of Terre Haute, near a town called Coalmont.

Q. In what State does the United States Powder Company sell its product? A. In Ohio, Indiana and Illoiois, Kentucky, Missouri, Texas, and I have sold powder in Colorado. I think that covers most of the territory.

Q. That is sufficient for my purposes. You sell it in those States mentioned? A. Yes, sir.

5789 Q. When was the United States Powder Company organized? A. In 1904.

Q. Did you take part in its organization? A. Yes.

Q. What is your connection with it—as a stockholder and officer? A. I am a stockholder and an officer. I am vice-president and general manager and treasurer.

Q. How long have you held those positions? A. I have been general manager of the company from the beginning; also treasurer. I have been vice-

5790 president for three or four years.

Q. What is the capacity of the United States Powder Company? A. We think we have a capacity of 2,000 kegs a day.

Q. How long did you say this corporation had been engaged in the powder business? A. This corporation has been operating, manufacturing and selling, since December, 1904.

Q. Then you are a new corporation that came into existence in 1904? A. Yes, sir.

Q. And embarked in this business? A. Yes, sir.

Q. How far are you separated from Peoria, according to distance, about? A. I do not know just exactly the distance from Terre Haute to Peoria. Our plant is south of Terre Haute 24 miles, and Peoria is about a five-hour ride by pas-

senger train from my city. I could not tell you the mileage exactly.

Q. Is the business policy or the fixing of prices of your corporation controlled in any manner by the E. I. du Pont de Nemours Powder Company, or by the officers of that company? A. They are not.

Q. Have they any voice or say in the management at all? A. They have not.

Q. Have they anything to say with reference to the fixing of prices at which you sell your blasting powder? A. They have not. 5792

Q. Have you anything to say in reference to the prices at which they sell their powder? A. Not anything.

Q. Did you ever have? A. Never.

Q. Did you ever have any agreement or understanding with the du Pont Powder Company or anybody connected with it—— A. No, sir——

Q. Covering the sale of your product or the prices of that district or territory in which you might do business? A. No, sir.

Q. Have you or have you not always exercised through your own officers complete control over these matters? A. I have. 5793

Q. Was there any competition at the time you started in this business? A. Yes, sir.

Q. Do you know some people who are competing in that district? A. Yes.

Q. Will you name them as far as you can? A. The du Pont Powder Company, the Equitable Powder Company, the Austin Powder Company, the Burton Powder Company, the Senior Powder Company, the Buckeye Powder Company, the Egyptian Powder Company. I think possibly that is about as many as I can name just now.

Q. Was the Rand also a competitor in that field? A. I did not so regard it, as much of a competitor, the freight rates probably interfering with their

5794 *Alfred G. Cummings—Cross*
Jonathan A. Haskell—Recalled—Direct

coming in—excepting in Ohio. Yes, I would modify that; I would say the Rand was a competitor in Ohio.

Q. And the Excelsior Powder Company? A. No, not much.

Q. Not much. Where was their mill located? A. The Excelsior—at Kansas City—at Holmes Park, Kansas.

5795 *Cross examination by Mr. Abbott*:

Q. You came here under subpoena, did you, Mr. Cummings? A. No; I did not; I came here at the request of Mr. Simpson, of the du Pont Powder Company.

JONATHAN A. HASKELL, heretofore sworn, called as a witness in behalf of the defendants, testified as follows:

5796 *Direct examination by Mr. Graham*:

Q. You are a member of the executive committee of the du Pont Powder Company? A. I am.

Q. And a member of the board of directors of that company? A. Yes, sir.

Q. What other official position do you hold? A. Vice-president.

Q. Are you or are you not acquainted with the policy governing the executive and administrative management of that corporation? A. I am.

Q. I wish you would state to this jury whether or not, so far as you are concerned, or the executive committee or the board of directors of the du Pont Powder Company are concerned, you have or your associates, so far as you know, have exercised any

control whatever in shaping the business policy and prices of the following companies: Equitable, Austin, Egyptian or United States Powder Companies? A. With regard to the selling policy?

Q. Yes. A. We have exercised absolutely no control or influence. I as a member of the board of directors of the Equitable Powder Company have attended the meetings, discussed questions of acquisition of property——

5798

The Court: This question does not embrace the Equitable——

Mr. Graham: Yes; I meant the Equitable.

A. (Continuing): The other physical matters pertaining to the operation of the plant; but nothing whatever with regard to sales.

Q. You say you acted as a member of the board of directors of the Equitable. Who are the other members of that board? A. There are five directors. They are Mr. Olin and Mr. McMurray, and their attorney—I have forgotten his name for the moment—and Mr. Patterson and myself. 5799

Q. How many did you say there were? A. Five.

Q. Mr. Patterson and yourself represent this minority holding? A. Yes.

Q. And the others are Mr. Olin's connections, who represent the majority? A. Yes.

Q. Do they fix their own prices for their black blasting powder and conduct their own sales department independently of you? A. They have entirely since June 30, 1904.

Q. Mr. Haskell, was there ever any arrangement between the du Pont Company and any of these companies which I have named, or any other of the companies which I referred to as competitors, by which the du Pont Powder Company was to be compensated for any losses it might make in competi-

tion, in selling its powder in competition with any particular or any competitor? A. I know of no such arrangement ever having been made.

Q. You have never heard of any such thing? A. No.

Q. And so, of course, then the du Pont Company has never been compensated for its losses in that way incurred? A. It has not.

Q. Was there ever, to your knowledge, any action taken by the executive committee or by the Board
5801 of Directors against the business of the Buckeye Powder Company, to drive it out of business? A. No, sir.

Q. Was there any action taken by the executive committee or board of directors or yourself and associates, as executive officers, making any special attack upon the Buckeye Powder Company? A. No.

Q. Did you or your associates ever do more than simply meet the competition existing at this time and during this period, or try to meet it? A. Often we did not attempt to meet it.

5802 Q. Many times you allowed the trade to go rather than to follow the prices? A. Yes.

Q. Was there any different attitude, or rather, was there any different policy maintained toward the Buckeye Powder Company than there was maintained towards all these other people who were in that field selling black blasting powder? A. I should say no, excepting for a very short period.

Q. And in that you refer to what? A I refer to the time when we knew that the Buckeye Powder Company was selling its nitrate of soda, and therefore disregarded its quotations absolutely.

Q. Instead of making powder it was selling nitrate of soda on the market? A. That was the case.

Q. And the exception you referred to, when you disregarded its prices, referred to competitive prices altogether? A. Absolutely, during that period.

Q. You did not try to meet them? A. No; paid no attention.

Q. Did you, Mr. Haskell—and I address this to you as one who was connected with the sales board for a time—either in that capacity or as a member of the Executive Committee or as a member of the Board of Directors, authorize or know of the authorization of a price other than to meet what you understood to be the prices of competitors made by your authority or theirs? A. We never made any authorization other than to meet the prices which 5804
we either knew or understood a competitor to be making.

Q. Was that the policy that governed you throughout this period? A. Invariably.

Q. Do you know of any exceptions to that? A. No.

Q. Was there from 1903 to 1908 any contract system authorized by you or your associates or executive committee, or your board of directors, by which you intended to tie up the business of the country for the du Pont Powder Company? A. I know of
no such authorization. 5805

Q. Or to tie up the business in black blasting powder? A. We tried to tie up our customers continuing our service to them; nothing else.

Q. And that in the usual line of contracts? A. Absolutely.

Q. Do you know of any system—my friend on the other side is constantly calling this thing a system—of making contracts that had such an object in view as tying up the trade of the black blasting powder? A. No, sir.

Q. Was there or was there not in the method of making contracts anything differing from what prevailed, so far as you know, in the business world among manufacturers? A. The method of making

contracts is common to almost all businesses, and, as I understand it, we pursued the policy which is very largely followed in contracting with our customers, either for specific amounts or their needs for certain operations.

Q. What is the fact with reference to making contracts with contractors engaged in building certain things, like canals or railroads or any other thing that may last for a long period of time? A. It has always been the custom for contracts to be made for
5807 the explosives necessary for the prosecution of various pieces of contract work, and we have competed for that work and have had a large list of customers in it.

Q. And would those contracts generally be made at the request of the contractor or at the option of the Powder Company? A. Both parties wanted them. Sometimes they were very much more anxious than we, particularly at a time when prices were low.

Q. Were there no requests that came to you from
5808 other customers, such as coal operators, for contracts for a period of time? A. I can recall no specific instances, although our branch offices manager reported at a time when no contracts were made, immediately after 1896, that a great deal of disquietude was present among the customers.

Q. On account of the suspension of the making of contracts? A. Yes, at that time.

Q. And I believe you testified that the suspension arose from the agitation of the silver question and other conditions that existed at that time? A. Yes.

Cross examination by Mr. Abbott:

Q. Referring to this matter of the contract system—I must persist in using the term regardless of

counsel—you state that the method which you followed was that which was followed in other lines of business, did you not? A. Yes.

Q. Do you know any other lines of business that makes exclusive contracts with its customers? (Objection sustained.)

Q. Do you know of any other line of business that requires its customers to buy all of a certain article it may purchase of it? A. Yes. The coal business very often makes a contract for all the coal to be consumed at a certain factory or certain 5810
factories.

Q. Will you name one coal concern that does that? A. When I was in the coal business I did it very regularly.

Q. I do not doubt that, but I am speaking now of somebody else besides yourself, that would make contracts of that character? A. I have no personal knowledge of contracts being made by coal companies, because I am not in the active business.

Q. Now is it not a fact that the kind of businesses you have in mind is those businesses which are in 5811
the nature of combinations and large concerns, so-called "big businesses," that make contracts of that character, and have made contracts of that character? A. Absolutely no.

Q. Then tell me some business that is not of that character? A. I have not any present knowledge of contracts being made either way.

Q. No, and you do not know of any concern that makes contracts with the rebate provisions in them, do you? A. Not for the moment.

Q. You said that you heard that Mr. Waddell, or, rather, the Buckeye Powder Company, was selling its nitrate of soda, at a certain time. When was that? A. Prior to 1907 and during the earlier part of 1907.

Q. Then it was during 1907 that you heard they

were selling nitrate of soda? A. That is my impression. I cannot recall the exact date.

Q. And it was then you ceased to have any interest in the Buckeye Powder Company's competition? A. Yes, the price of powder had gone down to about a dollar, and the price of nitrate of soda had gone up considerably above two cents a pound, and I knew that from the fact that the nitrate of soda was being resold the Buckeye desired to do nitrate business more than powder business, and it was not
5813 worth while to consider their quotations at all.

Q. You knew that it could not manufacture powder at the then price of nitrate of soda and sell it at the then prices of powder and live, did you not? A. They could if they chose.

Q. You think they could have made money at 95 cents and paid the then prices of nitrate of soda? A. 95 cents was then being made the price only in very exceptional cases. It was not the general price by any means, and they could have sold their powder and made a profit if they had chosen to do so.

5814 Q. You said that when you were a witness in this case before, and I am asking you now in regard to questions that have been put to you by counsel on the other side. The fact is, however, that at the then price of nitrate of soda it was impossible to make powder and sell it at a profit at 95 cents? A. Yes; but the Buckeye was not buying nitrate of soda. It had nitrate of soda which it had bought at much lower prices, at which it could make a profit.

Q. I understood that to be your answer. But exclusive of your conclusion in the matter my question is whether powder could be sold at a profit at 95 cents at the then price of nitrate of soda, regardless of the other conditions which you state in your answer? A. Under certain conditions, yes.

Q. Tell me what those conditions were? A. Provided the business was sufficiently close to the mill and a fair volume of output was maintained.

Q. But you think it would have been possible for a company to have manufactured powder and sold it in a normal, natural way, in the normal, natural market, and have made money at 95 cents? A. At that time the market was not normal.

Q. I am not asking you concerning normal conditions of the market, but concerning the normal trade that such and such a powder company would have had, if it could have reached that trade and make a fair price on its powder? 5816

Mr. Graham: This is not cross examination.

The Court: Yes; I think it is.

A. That is a negative question; I do not quite understand.

Q. I will state it again, so you may get my idea. In your judgment, could the Buckeye Powder Company have made powder at the then price of nitrate of soda and sold it at 95 cents, at a profit, anywhere within the district which it would have normally reached? A. If it had accumulated a near-by business, through having won the regard of its customers, and by making good powder, it could have sold trade near Peoria at the then existing price of nitrate of soda and made some money. 5817

Q. You think it could have done all those things and made a profit provided it could have sold it to a little nearby trade, where it could have carted; is that the idea? A. No; there is a large trade around Peoria.

Q. Then your contention is that if it had confined itself to a narrow area within which it could sell, without much expense in the way of freight, it

might have made some profit at 95 cents? Just answer that question yes or no, will you, and then explain it. A. I think it could have made some profit.

Q. Do you wish to explain it? A. I would assume that if the conditions of the Buckeye Powder Company had been normal, it could have continued as an active business concern for the purpose of manufacturing and selling powder, when the 95-
5819 cent prices were being made by us and others in exceptional cases it would have possessed certain other trade at higher prices which would have enabled it to have manufactured at such a rate that it could have sold a portion of its output at 95 cents without loss.

Q. Now, having made that statement, will you tell me of something that you know of your own personal knowledge that the Buckeye Powder Company did at that time which was not in the line of manufacturing powder? Just tell me that, will you? A. Sold its nitrate of soda.

5820 Q. Anything else? A. It had accumulated a feeling on the part of certain buyers that its product was not as good as that of other companies.

Q. Do you know that? A. I do.

Q. Did you have anything to do with the making of that feeling? A. Absolutely no.

Q. I assume that is your position, but do you not know that there was a feeling stirred up and created through representatives of the du Pont Powder Company against the Buckeye Powder Company in just that way? A. I know of no such thing being done.

Q. You do not know of it. Is it not a fact that in the policy which you had pursued against the Buckeye Powder Company of forcing it down in making its prices until you forced it to sell its nitrate of soda at a time when you knew it could

not make powder at a profit at the price then prevailing, that that was why you ceased to have any further interest in the competition of the Buckeye Powder Company?

A. I cannot let go unchallenged the statement that the du Pont Powder Company forced the price of powder down, because that is not the case. The policy of the du Pont Powder Company, then, as it has always been, was one of defense, in retaining its own business. The price was forced down not by the du Pont Powder Company, but mainly by 5822
the competitors for business in that central territory, of which the Buckeye was one of the chief competitors in reducing prices. I answered the question as to whether we had treated the Buckeye any differently from others in the way I did because I felt that it had been less seriously considered during a large part of the time when I was in charge of sales. We felt that it really did not want to get customers, and it was perfectly useless for us to consider at all the quotations that were reported to us as having been made by the Buckeye 5823
Company.

Q. Have you finished; is that all? A. I think I have answered the question.

Q. Now, I will ask you why it was that immediately after you found that the Buckeye Powder Company was selling its nitrate of soda in the fall of 1907 you raised your prices and then for the first time in the history of the du Pont Powder Company you made a special price, you made a regular price and published it to the world; why did you do that, when these other so-called independent companies were still in the field? A. The presence of the independent powder companies had nothing whatever to do with the advance in our price. The prices of black blasting powder had been forced down by quotations made mainly by

the Miami, as I recollect it, and the Buckeye, in the central field, and by other competitors all over the country. The price of nitrate of soda started to rise in 1906. I seriously considered recommending to our executive committee advancing the price in 1906. I was of the opinion that it should be done then because the outlook for the price of raw material for 1907 was still higher than for 1906. It was delayed because our salesmen, our sales managers who were consulted, practically without ex-
5825 ception, said we would lose a very large proportion of the trade we then had if we advanced the price. It was only in the spring of 1907, May or June, as I recollect it, that we came to the conclusion that it was absolutely necessary that the price should be advanced regardless of whether our competitors followed us or whether we lost to them a considerable portion of our business; and we did advance our price. We published a price list, so that all of our customers could know what the prices were in their territory and any other ter-
5826 ritories.

Q. And from that time on that price list has been maintained, has it not? A. I believe it has. Several others have been issued.

Q. And the competition from these so-called competitors has continued right along, has it not? A. Yes.

Q. But you have managed to keep your prices up? A. Not in all cases.

Q. Is it not a fact that these so-called competitors immediately went to the prices which you had established in that price list, and have continued to maintain them, save in exceptional cases, ever since? A. I believe they advanced their prices to the same extent we did. I do not think they have maintained it since.

Q. But they have maintained it except in excep-

tional cases, have they not? A. Oh, they have deviated very considerably.

Q. Sometimes you have deviated, in exceptional cases, have you not? A. Surely.

Redirect examination by Mr. Graham:

Q. Mr. Abbott said you continued to keep these prices up, referring to the prices you mentioned, that were fixed in consequence of the conditions and the price of raw material. May I not ask you 5828
whether you did not continue to lose some of your business? A. I did not understand that question as you expressed it. He asked me if we continued to issue a price list.

Q. No; if you continued to keep those prices up. A. The price lists had been issued from time to time, but they have been the maximum prices; special prices have been made all over the country and are today.

Q. State whether or not, as a consequence of these advances in these prices and this competition, 5829
you have gained or lost in business in black blasting powder. A. We have lost very considerably in our share in the volume of trade since the price list was issued in 1907.

Recross examination by Mr. Abbott:

Q. I want to find out if you or any member of the powder company was an officer or a director in the Equitable, the Austin, the Egyptian or the United States Powder Company at any time. A. I think I am vice-president now.

Q. Of what company? A. Of the Equitable Company.

Q. You were a director also? A. I am a director.

Q. And Mr. Patterson was also a director in the Equitable? A. Yes.

Q. And were you or any of the officers of the powder company connected with the Austin Company in any way? A. We have a director on the board. I do not know who he is.

Q. You cannot name him. How about the Egyptian Powder Company? A. We have never had any representation on the board of the Egyptian.

Q. But that is controlled by the Equitable. Now, how about the United States? Have you any control there? A. No.

5831 Q. I will now ask you whether the Egyptian Company, or the control of the Egyptian Company was acquired during 1907 or 1908? A. The control of the Egyptian was acquired some time during that period.

Q. Now, as to the United States? A. Mr. Olin, or the Equitable Company, have a minority interest in the United States Powder Company.

Q. Are you or not an officer of the United States, or are any other officers of the powder company connected with the United States Powder Company

5832 as an officer or as a member of the board of directors? A. No.

A. J. MOXHAM, heretofore sworn, called as a witness in behalf of the defendant, testified as follows:

Direct examination by Mr. Graham:

Q. What is your official relation to the powder company? A. I am one of the vice-presidents and a member of the board of directors and a member of the executive committee.

Q. The executive and administrative control of the company is in the hands, as I understand it, of the executive committee? A. Yes.

Q. Will you state whether or not you as an officer

and the executive committee of which you are a member, or the board of directors, have ever at any time exercised any control over the business policy or the making of prices and the sale of its products of any of the following companies? Equitable, Austin, Egyptian or United States Powder Companies; during the period of 1903 to 1909? A. The question is whether I have not——

Q. Or the executive committee or the board of directors, exercised any control over the business policy of these companies? A. Neither the board 5834
of directors nor the executive committee have ever done so, nor have I.

Q. Was there ever any arrangement made or entered into by the board of executive committee, or by any of the officers of the du Pont Powder Company, by which the du Pont Company was to be compensated for any losses it might sustain in conducting any competition with any independent company during that period? A. May I have that question again?

(The question was repeated by the stenog- 5835
rapher as above recorded).

A. There was not to my knowledge.

Q. No action ever taken by the board or by the executive committee on that subject? A. None whatever that I know of.

Q. Was there any action taken by the board or the executive committee, or by yourself as one of the officers, or by your associates in the executive control or management of the company, of any kind directed against the Buckeye Powder Company as a competitor? A. None that I know of.

Q. No action by the board or the executive committee? A. There was no action by the board.

5836 *A. J. Moxham—Recalled—Cross*

Q. Was there any plan arranged or any scheme devised to contest the Buckeye Powder Company as a competitor? A. None whatever.

Q. Was there any different policy adopted as against the Buckeye by the du Pont Powder Company from that which controlled it in the general management of its business in relation to its competitors during that period? A. There was not.

Q. Was there anything done, to your knowledge, having for its object the driving out of business of
5837 the Buckeye Powder Company? A. There was not.

Q. Was there ever, to your knowledge, any price fixed or authorized other than that which was necessary to meet prices which you had quoted against you by the competitors who were in this field? A. There was not.

Q. Now, with relation to contracts, was there ever any system devised by you or the executive committee or by your officers, for the creation of a contract system for the purpose of tieing up the trade in black blasting powder during that
5838 period? A. There was not.

Q. Were the contracts that were made different from what were the natural contracts to be made in conducting this or any similar business? A. No.

Cross examination by Mr. Abbott:

Q. Mr. Moxham, you know of an address which you delivered before the Association of Gunpowder Manufacturers on December 19, 1902, do you not? A. Yes.

Q. Nothing that you have said here today with regard to making prices or with reference to contracts is intended to contradict what you said in that report? A. No.

Mr. Abbott: That is all.

Redirect examination by Mr. Graham:

Q. That address, as I understand it, was made to the members of the Powder Association and not to the du Pont Company individually or in the management or control of its business, was it not? A. That is correct.

Mr. Graham: That is all.

Recross examination by Mr. Abbott: 5840

Q. I will ask you whether or not shortly after that you did not increase prices and take other steps with reference to recommendations which had been made by you in that report, which action has since been followed and continued by the Powder Company? A. We did increase prices subsequent to that report. How far that was done exclusively as the result of that report I do not know. There were many arguments by many others bearing on that question at the same time; as to our policy then, covering a period of five years, I think there is no 5841
correlation whatever to the particular conditions governing us at the time the report was made, or to what influenced us at that time. Every month, every year, the varying conditions of trade called for varying treatment.

Q. You say that you think there is no co-relation, if I understand the word you used— A. (Interrupting) I think that was my word.

Q. —Between the system which you recommend at that time and what was afterwards followed, or the thing which your recommendation at that time covered and the things that were afterwards done by the Powder Company? Now, I will ask you to state, if you know—not what you think but if you know—of any change in any particular thing that

was recommended in that address at that time different from what you recommended? A. Everything, I think, excepting the advance in price.

Q. And in everything else there has been a change? A. Everything else was different. The recommendations of the report were very many things besides merely the advance in price. The advance in price occurred. The other things, so far as my memory goes, did not occur.

Q. You continued to make contracts as recom-
5843 mended by that address, did you not? A. We have always made contracts, before and since.

Q. Very well. Then, so far as anything was said in that report in respect to contracts, that has been followed since the same as before? A. I think not. Q. Tell me wherein it was different. A. The report, if my memory is right—and I am speaking entirely from memory, not having refreshed it recently—among other things recommended was a certain form of contract. Subsequent to that the forms of contract we made were manifold. There was no
5844 longer any one form but they were following the many different conditions of trade, as is always the case in all staples. The contract matter was governed by our customers rather than by us. Trusting to my memory once more, I recommended and very strongly urged that this advance in price, if it resulted in a condition of affairs that I hoped it would result in, should be followed by a still further advance. That did not occur. As I say, I think the subsequent period to the delivering of that address was correlated to that address only in the matter of the advance in price.

Q. The policies, however, that you recommended in that address with reference to the increase in prices and of the continuance of a system of contracts according to certain plans which had been recommended in that address, have been continued,

have they not, by the Powder Company since that time.

Mr. Graham: I do not think there is any recommendation about the continuing of any system of making contracts.

The Witness: I would ask if I may be allowed to see that address, to see that contract.

Mr. Graham: Certainly; he has a right to see that.

5846

Q. You mean to see the speech? A. Yes, sir.

Mr. Abbott: Yes, sir. (Handing Plaintiff's Exhibit to the witness.)

The Witness: Is the form of contract recommended exhibited here—will you tell me?

Mr. Abbott: I beg your pardon?

The Witness: Is the form of contract as recommended in this address of mine on exhibition here?

Mr. Abbott: We have, Mr. Moxham, a large number of contracts— 5847

The Court: He means is it in this report?

Mr. Abbott: Oh, is it in the report?

The Witness: I would like to see it, if you can find it for me. It will save some time.

Mr. Abbott: What am I to understand?

The Witness: Whether there is any form of contract that I annexed to my address or report and whether it is on exhibition.

Mr. Abbott: That I am unable to say offhand.

The Witness: May I have that again, please?

Mr. Abbott: Yes. I was going to make inquiry.

Mr. Graham: Look and see if there is any

5848 *A. J. Moxham—Recalled—Recross*

recommendation of any system of contracts in that report. I fail to remember it—either their form or recommendations.

A. (Continuing.) My report states:

"It has been the general policy to cover the future demand by contracting for as lengthy a period as possible. There has been no universal policy adopted as to the form of contract. Various forms are in use. Disregarding minor details, the contracts may
5849 be divided into two classes:

"(A) Those selling on the basis of a card rate, subject to change, from which basis the necessary deduction or concession is made. These contracts permit of a change in price.

"(B) Those selling at a fixed price, which is a basis for the rebate. These contracts permit of no change in price.

"In addition to the trade covered by contract, there is the trade covered by special price. This trade also permit of a change in price." I think
5850 that confirms my previous memory of the matter. We may perhaps have endeavored to work up some form of contract, to work to some standard; but whether we did or did not try to, we certainly did not do it.

Q. As I understand it, that portion of the speech which you have just read is correct, and that that was followed in the subsequent policy of the du Pont Powder Company, that portion of it, regardless of the form, Mr. Moxham? A. I have every reason to believe that the statement I have just read in that address is correct. As I have stated, it was not followed. We tried to but we could not.

Q. Now, will you state in what respect it was not followed? A. As I stated before, I think in no respect was it followed.

Q. I am asking now as to that particular portion of the speech which you have just read, where you said that your policy was to tie up the trade as much as you could by making these contracts —whether that policy has been followed.

Q. Will you point out what it was you read, so I may know what it was? A. (Pointing out on Exhibit): "Effects of existing contracts."

Q. This is the part that I had in mind (reading): "It has been the general policy to cover the future demand by contracting for as lengthy a period as 5852
possible."

Q. Was that policy continued or not? A. I would be inclined to say it was, so far as it could be done.

Q. Yes— A. (Continuing): Will you please let me finish? Our customers wished—and it was convenient and cheaper for us, to sell on that contract basis.

Q. But regardless of what was the reason for it, you did continue that policy, did you not? A. We have always continued the policy of selling as our customers wished. 5853

Mr. Abbott: That is all.

PIERRE S. DU PONT, called as a witness in behalf of the defendant, testified as follows:

Direct examination by Mr. Graham:

Q. Mr. du Pont, you have been sworn heretofore? A. Yes, sir.

Q. I do not know whether you have stated your official relationship to the du Pont Powder Company. Will you kindly state them, preliminary to

my questions? A. I am treasurer of the company and a member of the executive committee and a member of the board of directors?

Q. You are part, then, of the administrative and the executive organization of the powder company? A. Yes, sir.

Q. Do you know, so far as you are concerned as an officer, so far as the executive committee and directors are concerned, whether or not there was any control exercised by you or by your executive
5855 committee or you board of directors over the business policy of affairs of the Equitable, Austin, Egyptian or United States Powder Company? A. There was not.

Q. That is during the period from 1903 to 1909. That is the period to which my question relates? A. I understand.

Q. Was there ever any arrangement entered into by you or your associates or either of these two bodies—the executive committee or board of directors—through which the du Pont Powder Company
5856 was to be compensated for any loss it might sustain in conducting competition against any competitor? A. No, there was not.

Q. Therefore, of course, you never received any such compensation? A. No.

Q. Was there anything, to your knowledge, done by the board or by the executive committe or by your associates in the executive and aministrative control of this company to drive the Buckeye Powder Company out of business? A. No, nothing.

Q. Did you adopt any policy or plan of operations against this Buckeye corporation? A. No.

Q. In the matter of making prices, what was the policy of your executive committee with regard to making any reductions in prices? A. We believed that our reductions, if necessary at all, were not

such as would more than meet competitors' prices, and we felt that we were able to get a better price than our competitors, and therefore it was unnecessary to go below their figures.

Q. In other words, you had confidence in the established reputation of the du Pont powder, so that you felt you could meet competition on an equal footing? A. Yes.

Q. Do you know of any instance at all where the price was cut below what you understood the price quoted against you by some competitor? A. I know 5858
of none, no.

Q. And this, as I understand it, was done in order to try to retain your own business? A. I do not understand the question.

Q. I say this was done to retain your business in the black blasting powder trade? A. What was done?

Q. The authorization to meet prices, to meet quotations? A. Yes, surely.

Q. Now, with relation to the matter of contracts, was there any system of contracting created or 5859
devised and put in operation for the purpose of tieing up the trade in black blasting powder? A. No, there was not.

Q. Was there any other method of making contracts than that which the demands of the business naturally required? (Objection overruled.) A. No, there was no regular system of making contracts. We made contracts if it suited the convenience of our customers and ourselves, at prices and on terms that met the conditions at the time of making the contract; but there was no specified system of contracts.

5860 *Pierre S. du Pont—Recalled—Cross*

Cross examination by Mr. Abbott:

Q. Was there a regular method adopted, or was there not, of providing for rebates in these contracts? A. Not that I have in mind, no. There may have been but I do not know about it.

Q. Have you any contracts in mind for which there was any rebate provided for according to a regular form or a regular plan? A. I could not say whether they were under a plan or whether they
5861 were rebates.

Q. Well, I will ask you whether or not a man who got 1200 kegs was not entitled to a certain rebate and a man who got 2500 kegs was not entitled to a certain other rebate, and so on, up, say, to ten thousand kegs. Did not each one of those men have a certain fixed rebate which you allowed? A. I cannot state that. It may have been so.

Q. Was there not a regular plan used in all of these contracts requiring the person with whom you made the contract to buy powder of you exclusively
5862 for his uses? A. In all of our contracts the provision was to meet the requirements of the customer for the period under contract.

Q. For all he used while under contract with you? A. Yes.

Q. You say you do not know of any cuts which were made or any prices which were made which were at a less price than those which were made by competitors. I will ask you whether or not such prices might have been made without your knowledge? A. They might have been, yes.

Q. I will ask you about those companies you spoke of. I don't want to be repeating, but you have heard the testimony and have heard the cross examination in regard to the interest the du Pont Company has in the Equitable and the Austin Companies? A. Yes.

Q. Is that correct? A. Yes, that is correct. About 25 or 30 per cent. in the Austin and 49 per cent. in the Equitable.

Q. And also that the Equitable is the owner of the Egyptian plant and has an interest in the United States Powder Company's plant? A. My recollection is that it has 25 per cent. in the United States and the controlling interest in the Egyptian.

Redirect examination by Mr. Graham:

5864

Q. Is Mr. Patterson in this country or abroad? A. He is abroad.

Q. Mr. Alfred I. du Pont, the other remaining member, is afflicted with great deafness, is he not? A. Yes.

Q. And is it not almost impossible for him to hear and does he not have to use instruments to facilitate his hearing even in conversation? A. Yes, sir.

Q. And those are the only two remaining members of the executive committee? A. Yes.

Q. The only two that have not been called? A. Yes.

5865

Q. Now, about the rebates Mr. Abbott spoke of, there was in some of these contracts a rebate based upon quantity. First I want to ask you whether there was any secret about that; or whether it was spread out in the contract.

A. I know of no secret rebates.

Q. Was that method of charging a certain price and then depending upon the quantity whether it was a wholesale or retail price, allowing a certain rebate or discount or whatever you choose to call it, abandoned about 1905? A. It had been abandoned, but I don't know when.

Q. Well, it has been for several years abandoned; it has been abandoned for a number of years, has it not? A. I am uncertain that that practice was ac-

tually in force. I have no knowledge of that subject, if it did exist.

Q. And the charge is made at a flat rate for the powder? A. Yes, sir.

Recross examination by Mr. Abbott:

Q. I will ask you whether or not there is a provision in the contracts, which are made by your company, or a very large portion of them, similar to the
5867 following: "The terms as well as the existence of this contract shall be confidential"? A. I don't remember that appearing on a contract.

Q. You say you do not remember. The contracts, then, will speak for themselves.

Mr. Graham: None of the recent contracts has any such provision as that in it.

Mr. Abbott: We have some in evidence that have that in them.

Mr. Graham: Well, they are in evidence and will speak for themselves.

5868

Q. I would like to inquire whether or not the executive committee, which has been referred to here, has absolute exclusive control over the affairs of the sales board of the powder company? A. Yes.

Q. Does it take cognizance of the affairs of that board from day to day and direct its business, or does it only consider such matters as are occasionally referred to it for determination? A. The executive committee lays down a broad policy for the sales board to follow and the sales board, on its part follows that policy and brings to the executive committee the exceptions it wishes to take for consideration.

Q. But the executive comittee does not have actual knowledge from day to day of the detailed workings of the sales board? A. No, they do not.

Pierre S. du Pont—Recalled—Recross 5869
John T. Barron—Direct

Redirect examination by Mr. Graham:

Q. But they are required to bring before your executive committee any exceptions they desire to make to your general instructions? A. Yes, sir.

Mr. Graham: That is all.
Mr. Abbott: That is all.

5870

JOHN T. BARRON, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Button:

Q. Where do you reside? A. In Chicago.

Q. Have you been in the powder business for some years past? A. Since 1882.

Q. During the years 1903 to 1909 what was your relation to the powder business? A. I was the 5871
western manager of the American Powder Mills, a Boston corporation.

Q. Did you have an office in the West some place —headquarters? A. Headquarters for the West were in Chicago. We also had branch offices under the jurisdiction of the Chicago office.

Q. Were you engaged in the sale of black blasting powder during those years? A. I was.

Q. For the American Powder Company? A. Yes, sir.

Q. And also a sporting powder for that concern? A. Yes, sir.

Q. Did you sell the black blasting powder throughout the States of the Middle West? A. Yes, sir. From practically west of Pittsburgh. Very

5872 *John T. Barron—Direct*

little in Ohio and Indiana; more largely west of the Mississippi River.

Q. Did you sell any in Illinois? A. Yes, sir.

Q. And in Iowa—— A. Yes—some.

Q. Where was the powder manufactured which you sold? A. The greater part of it was manufactured at Xenia, Ohio, by the Miami Powder Company. And also at Fayville.

Q. That is the Miami and American Companies have always been associated in ownership, have
5873 they? A. Yes.

Q. Was the black blasting powder sold by the American manufactured largely by the Miami Company? A. Yes.

Q. During this period was the Buckeye Powder Company in operation, for part of this period? A. Yes, sir.

Q. Were you in competition with that company? A. Yes, sir.

Q. Did you have various salesmen under you there? A. Yes, sir.

5874 Q. Did you solicit the trade generally throughout that territory? A. Yes; in 1903. We were very active in our solicitation then.

Q. Mr. Waddell's enterprise began about the fall of 1903. Can you state in a general way, from that time down to the latter part of 1908, what companies you came in competition with in that territory? A. The du Pont Company, the Equitable Powder Manufacturing Company, the Egyptian Powder Company, the Austin Powder Company.

Q. The United States? A. The United States Powder Company. The Excelsior Powder Company I believe was in operation during that period.

Q. Did you mention the Equitable? A. Yes.

Q. How about the King Powder Company? A. We did not see much of King in our territory.

Q. The Senior? A. The Senior.

Q. Did you mention the Burton Company?

The Court: Not yet.

A. No. The Burton was not active in the territory in which we operated.

Q. Were all of these companies competing against you at that time? A. Yes, sir.

Q. And you against them? A. We against them.

Q. Was there any time during that period when the American Powder Company was not actually 5876
selling its product in those States? A. No, sir.

Q. Was there ever any time in which the American Powder Company withdrew from those States and left the business to the du Pont Powder Company? A. No, sir.

Q. Was there ever any arrangement whereby the du Pont Company was to exclusively have the trade there, so far as the American was concerned? A. No, sir.

Q. No arrangement of that sort? A. No arrangement whatever.

5877

Q. Of course, then, there was no arrangement as to your company compensating the du Pont Company for any losses, in whole or in part? A. No, sir.

Q. Was the competition active and fierce during a portion, at least, of this period? A. Competition, as I recall it, the latter part of that period, commencing with 1904, was very keen.

Q. Did your company have an office also at St. Louis? A. Yes, sir.

Q. And Kansas City? A. We had an office at St. Louis and sub-agencies in other points. We had one at Keokuk, Iowa; one at Omaha, one at Denver.

Q. St. Paul, did you mention? A. We used St. Paul as a distributing point, but did not maintain an office there—had our magazines.

5878 *John T. Barron—Direct*

Q. What was the result of this competition on prices during the years 1904, 1905, 1906 and 1907?

Mr. Abbott: I would like to have the witness understand that he is to testify only from his personal knowledge—any prices which he knows of personally.

The Court: That is understood.

A. As I recall it, commencing with the last half
5879 of 1904, the prices commenced to reach a lower level. The market was declining, and there did not seem to be business enough to keep the mills going. It was simply a fight for every piece of trade we could get.

Mr. Button: That is all.

Cross examination by Mr. Abbott:

Q. What relation did you say you sustained to the American Powder Company? A. I was its Western manager.

5880 Q. By Western manager, what territory did you cover? A. I covered everything west of the New England States, and also the South.

Q. Then these branch offices you speak of, in St. Louis and other places, were under your control? A. Under my control.

Q. How many customers did you have for black blasting powder in the State of Ohio during the years from 1903 to 1909? A. I cannot answer that question.

Q. Can you not give it approximately? A. Very few. I should say probably three or four.

Q. How many did you have in the State of Illinois? A. Practically the same number.

Q. And how many in the State of Missouri? A. In Missouri, eight or nine probably.

Q. How many in Iowa? A. Nine or probably ten.

Q. That would make all told about 25 or 30 altogether, in those four States? A. Yes.

Q. You say there was very active competition between yourself, between your company, and the du Pont and other companies. What do you mean by active? A. I mean that we not only tried to hold our own, but we tried to take customers at the expense of any powder company that was in the business. 5882

Q. Yes; that is true; but I want to know how you went about that. Tell me what the activity was, what were the things you did? A. I would explain it in this way: That if we found a man was in the market for powder we would attempt to get the order. We would attempt to find out the price that prevailed, that he was quoted by any other company, and if we could get the busines at the same price we would take it, and if it was possible to get it at a little lower price it was put up to me, and I had to use my best judgment as to whether we would make such price. 5883

Q. Do you know of any instances in which you made a lower price than any of your competitors? A. I know of instances where we had to cut the du Pont price.

Q. Well, give me some of those instances. A. I am speaking now from memory. I cannot recall the names.

Q. I do not want you to say you did unless you do know of some cases. If you have only a general recollection—— A. Yes; I recall one case, the Northwestern Improvement Company, of Red Lodge, Montana, where we cut the du Pont price.

Q. What was the price they made at that time? A. Of course, I could not say. My information is based on what our customer would tell us.

Q. Well, what was the information you had, then, as to their price? A. As I recall it, our price

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Q. Not your price, but theirs. A. Oh, their price?

Q. Yes. A. As I recall it, their price was about a dollar a keg at Chicago rate point, but I think we cut the price two or three cents a keg, enough to turn business our way.

Q. Can you give another case? A. That is all I have in mind just now.

5885 Q. When did you say this competition between the American Powder Company and the du Pont Powder Company began? A. The competition between the du Pont and the American Companies has gone back for years.

Q. Well, tell me how far back. A. Very active prior to 1896.

Q. Yes—— A. Not so——

Q. Pardon me; were you the agent at that time? A. Yes, sir.

Q. All right. A. Not so active for the next six or

5886 seven years. That would carry us to 1902.

Q. Then after that? A. After that very active.

Q. What was the reason for the inactivity which you refer to after 1896? A. After 1896 all the business of the country was tied up, under contract.

Q. How? A. By the different powder people. They had their own customers. They controlled that trade. I am speaking now of 1896.

Q. Yes, 1896. A. And to get business at that time, it was rather difficult.

Q. Is it not the same system of tieing up the business under contracts that is in use today? A. No, sir.

Q. Are there no contracts made now the same as before? A. Yes, sir, at that time I would explain the contracts were rather peculiar ones, they

were based on the quantity of power the man would take, I recall, if he required a certain number of kegs, why he got a certain discount and he could not very well violate one of those contracts.

Q. Tell me why it was from 1896 down to 1902 you did not compete with each other? A. We were competitors, but the competition was not as keen as it was after that time.

Q. Is it not a fact that during that period there was an association of powder manufacturers of which the American was one of the members, and 5888
that that is the reason you did no compete—because you agreed among yourselves as to the division of the business? A. After 1896?

Q. After 1896. Now, is it not a fact that that association continued down to June, 1904, that same arrangement continued? A. Well, I would not know the exact dates, as to the expiration of those agreements.

Q. Is it not a fact also that after 1904 the Miami Powder Company—do you know anything about the Miami Powder Company? A. Yes; I am on the same floor and have a talking knowledge and I am 5889
connected with the Miami today.

Q. These companies, the American and Miami, are known as the Fay companies, are they not? A. Yes.

Q. And you are representing Mr. Fay? A. Yes, sir.

Q. Do you not know that after 1904, after the association was dissolved, there was an arrangement made between the Miami and the Aetna and the American Powder Companies on the one hand, and the E. I. du Pont de Nemours Powder Company on the other, whereby the trade between those two companies was allotted, and that that arrangement continued for a certain period, down into 1905? A. I know of the Sullivan agreement. But

my recollection is that it did not relate at all to black blasting powder.

Q. Oh, it had no relation to black blasting powder at all? A. Absolutely not.

Q. It represented the Miami and the American companies, did it not? A. Well, it represented them in this way. That the three companies were known as the Fay Companies, but my recollection is that there was no mention whatever of black blasting powder in that Sullivan arrangement.

5891 Q. Very well. Then the agreement, whatever it was, will speak for itself, and your recollection is it related only to dynamite A. Yes, sir.

Q. However, there was an arrangement made? A. The Sullivan agreement was made.

Q. And that agreement continued until what time, according to your recollection? A. I think nine months; I am not positive as to the date of that.

Q. Prior to the time that that arrangement was concluded, in the spring of 1905, what was the condition of your competition, as you call it, between

5892 the Miami, the American and the du Pont Powder Company? A. I could only speak for the American at that time.

Q. Oh, yes? A. As I recall it, the Sullivan agreement had no effect. (After argument.) (Continuing): In so far as the American's business was concerned. We put forth every effort to get business prior to the time you mentioned.

Q. Do you mean from 1902 to 1905? A. Yes, sir. We had men in the field all the time.

Q. Then you did not regard the agreement or arrangement which you had with the Powder Association which was then in existence? Is that right?

Mr. Button: During which period?

Mr. Abbott: From 1902 to 1904, when it was formally concluded.

The Court: He answered from 1902 to 1905.

Mr. Abbott: Counsel has asked me between what periods this Association was in existence. The Association was in existence formally down to June, 1904. After that it was the Sullivan agreement. Now I am 5894
going to separate it and take the Association first, and then after that I will take up the Sullivan agreement.

The Court: You may separate it, but the witness is answering as to the other period I have named. Proceed.

Q. Then I will ask you whether during the time of the continuance of the Association from 1902 down to June, 1904, whether your competition was just the same as it was after 1905, when the Sullivan agreement was cancelled? A. Our solicitation 5895
for business, I think, during the period you have mentioned was quite as active before and after. I received instructions to sell powder previous to the cancellation of the agreement. Our sales had fallen off very materially. In 1896 the American Powder Mills found themselves with very little blasting powder business and we remained rather inactive, as I recall it, for a period of five years.

Q. Now, then—

Mr. Button: Let him finish.

A. After that Mr. Fay, L. A. Fay, who was then president of the company, gave me instructions to build up a black powder business. I am not quite

sure as to dates, neither am I as to years; but I am approximately correct. I am quoting this from memory. I say from 1902 to 1904 our efforts were quite as active as they were after 1904.

(Motion to strike out the answer overruled.)

Q. Then, during the time from 1902, after 1902,
5897 your company disregarded its arrangements with the Gunpowder Trade Association and the other members of that association? (Objection overruled.)

A. My understanding of the arrangement under which the companies were operating previous to the cancellation of these agreements was that the American should receive a certain sum for its under-sales. We were not manufacturers of blasting powder, and we found ourselves in 1896 in a rather peculiar position, without business— (After argument.) A. (Continuing)—without business, and the
5898 arrangement by which companies who had two years previous to 1896 controlled trade would have the right to make special prices. That curtailed our efforts, and we went along to probably 1902 and received a sum of money for our under-sales. Mr. A. L. Fay, as president, gave instructions to me that we must go in and sell powder, that the time had come when he did not think it wise to continue to receive this money. In other words, that we should create and maintain a position in the black powder business. The result was that we made an effort to get business.

The Court: This is during what period?
The Witness: This was after 1902.
The Court: That is not really an answer

to the question. The question turns on whether you disregarded the arrangement.

The Witness: The disregarding of the arrangement would be this, during this period, if the American Powder Mills did not sell any powder—its allotment was fixed, and it received a certain sum of money for not selling. They were free at any time to go out and sell. For every keg they sold the amount received was reduced just to that extent. 5900

The Court: The question is whether you disregarded the arrangement of 1896.

The Witness: We were free at any time to sell.

The Court: Well, did you disregard the agreement; you did or did not.

The Witness: We had no agreement not to sell.

The Court: The question is whether you disregarded the agreement of 1896.

The Witness: Well, we did not disregard it. We did not. 5901

Q. And you did not disregard that after 1902, did you, down to the time when it was dissolved? A. No, we did not.

Q. That is the point I was trying to get at. You simply went out for business? A. Yes.

Q. And then you made an accounting for under-sales or over-sales on the same basis as you did before? A. Yes.

Q. You wanted more business, and that would simply change the relation of your under-sales and over-sales? A. Yes, sir.

Q. That is it exactly. Who were the three customers that you had in the State of Ohio during

this time you stated you had customers there? A. I cannot recall them.

Q. Not at all? A. No.

Q. Who were the three, or any of the three—I believe you said there were three—in the State of Illinois? A. Without consulting the records I could not say.

Q. Well, it being a matter on which you are testifying—— A. (Interrupting) We had one old customer there, James Donn.

5903 Q. When did he become a customer of yours first? A. Oh, probably thirty years. We had a cement company at Utica, Illinois.

Q. What was the name of that company—the Utica Hydraulic? A. No; I think the Illinois Hydraulic.

Q. By the way, when did that company become a customer of yours first? A. I could not say.

Q. Can you not give approximately the year? A. The Illinois Hydraulic was a customer of ours probably, I should say, in 1900.

5904 Q. Give us the next one. A. We had a customer at Streator—F. H. Eads.

Q. When did he become a customer? A. He was a customer for twenty or thirty years.

Q. Now take some of those in Missouri. Give us the names of some of your customers there. A. The Witte Hardware Company.

Q. When did that first become a customer? A. They were very old customers, for years back.

Q. About how old? A. On the books probably thirty years.

Q. Give us another customer in that same State. A. The Simmonds Hardware Company.

Q. When did the Simmonds Hardware Company become a customer of yours? A. About 1900.

Q. Give us another one. A. A customer in Novinger, Missouri. I cannot recall the name.

Q. Was it Raumbauer? A. No.

Q. The Great Northern Fuel Company? A. No; I think the name was Brown, as I recall it.

Q. Now when did he become a customer of yours? A. About 1902, I think.

Q. Now give us another one? A. I cannot recall any others.

Q. Can you give me the names of some customers in Iowa? A. The Brown-Camp Hardware Company.

Q. And when did that company become a cus- 5906
tomer? A. In 1904.

Q. Give me another one in Iowa. A. The Luthy Hardware Company.

Q. When did that become a customer? A. About the same year, 1904.

Q. What time in 1904? A. I could not give the date.

Q. Was it in the spring or fall? A. I could not even say that; but it might be 1903.

Q. Give me the name of another customer in that same State. A. The Blom Colliery Company— 5907
Keokuk, Iowa.

Q. When did they become a customer of yours? A. That dates back to about 1900.

Q. Another one? A. Woodruff Brothers, Knoxville, Iowa.

Q. When did they become a customer of yours? A. Very old customers; probably 1895.

Q. Could you give another one? A. National Union Hoe Company, at Albia, Iowa.

Q. When did they become a customer? A. I think in 1905.

Q. What time in 1905? A. I could not say.

Q. Was it the spring or the fall? A. I could not say.

Q. Now give us the name of another one. A. The Back Coal Company, at Des Moines.

Q. When did they become a customer? A. About 1906.

Q. Give us the name of another one. A. Madison Coal Company.

Q. Where are they located? A. At Des Moines.

Q. When did they become a customer? A. 1907.

Q. Give us another customer. A. The Greenwich Fuel Company.

Q. Where located? A. At Greenwich, Iowa.

Q. When did they become a customer? A. In
5909 1907.

Q. In regard to the Madison Coal Company, I want to ask how long did they remain a customer of yours? A. I think we held them about a year.

Q. That company was before that a customer of the Buckeye Powder Company, was it not? A. No. I thought we took the business from the du Ponts.

Q. You are not sure about that? A. Yes, I think from du Pont; I would not be sure without examining my records; I could not say.

Q. Have you recalled all you can in the State of
5910 Iowa? A. All I can quote now from memory.

Q. As I understand it, then, all of the customers whose names you have enumerated here were customers which you had, prior to the time when the association went out of business? A. Yes.

Q. You made contracts from time to time with these various customers, did you not—some of them? A. Yes, sir.

Q. And you renewed these contracts from time to time? A. Yes, sir.

Q. You had an agency one time in Peoria? A. Yes, sir.

Q. When was that agency discontinued? A. I think the agency was discontinued in 1904.

Q. Are you sure it was not 1903? A. I am not sure. Possibly it was 1903.

Q. Who was your agent there at that time? A. A. H. Barnewald.

Q. It is a fact, is it not, that you discontinued that agency in 1903? Can you not refresh your memory sufficiently to testify on that point? A. No. I would not be sure of that. When I say 1904, it is more or less of a guess. It might be 1905 or 1903.

Q. You have bought powder of a company known as the Western Powder Company, have you not? 5912
A. Yes.

Q. You spoke about some of these companies that were in competition with you, and among others you mentioned the Burton Powder Company. Now, when did the Burton Powder Company enter the field, if you know? When did it begin manufacturing powder in that district?

The Court: He said the Burton was not active in his territory.

Mr. Abbott: I know he said it was not active, but it has been given in one of the 5913
lists here and I wanted to find out from the witness when it was that the Burton Company entered the field, if he knows. Of course, if he does not know——

The Witness: No, I cannot answer that.

Q. Do you know when your competition with the Egyptian Powder Company, as you call it, began—what year? A. I think in 1903; but I am not sure.

Q. How long did it continue? A. The competition is still in existence with the Egyptian.

Q. Do you know of any customer of the Egyptian Powder Company with whom you came in contact during this period from 1903 down to 1909? A. We took the O'Gara Coal Company from the Egyptian, I think, in 1909.

5914 *John T. Barron—Redirect*

Q. In 1909? A. I am not positive as to that.

Q. Give me one now previous to 1909. A. That is the only customer I know of that we took from them. When I speak of the O'Gara—there are three or four interests. It means three or four other companies.

Q. That is, the O'Gara Coal Company, with headquarters at Chicago? A. Yes, sir.

Mr. Abbott: That is all.

5915

Redirect examination by Mr. Button:

Q. You stated that this Montana business took a dollar price from the du Pont Company, according to your understanding, with a Chicago rate? Does that mean the freight rate? A. Yes; the freight rate.

Q. That is, the customer paid the freight from some Chicago point? A. Some Chicago point.

Q. In regard to your sales in these Western States, in the Middle West, could you give us ap-
5916 proximately the number of kegs that your company sold during the years 1904, 1905, 1906, 1907 and 1908? A. Yes, sir. Can I read it from a memorandum?

Q. Do you know these figures to be correct? A. I know them to be correct.

By Mr. Abbott:

Q. Something you have personally checked up yourself? A. Yes; from a memorandum I kept myself, from records that were made there, through office men.

The Court: What period is that?

Mr. Button: From 1904 to 1908, each year, I think, as I understand it.

The Witness: I have it from 1903.

By Mr. Button:

Q. Then give it from 1903, then. A. In 1903, 258,000 kegs.

The Court: Of black blasting powder?

The Witness: Black blasting powder. In 1904, 172,000 kegs; in 1905, 206,000; in 1906, 261,000; in 1907, 248,000; in 1908, 252,000 kegs.

Mr. Button: That is all. 5918

Recross examination by Mr. Abbott:

Q. Where was this powder manufactured that you have just given a memorandum of? A. At Xenia, Ohio.

Q. That is the Senior Powder Company? A. No, the Miami Powder Company. And at Fayville, Illinois.

Q. What company there? A. The Miami Powder Company. The Excelsior Powder Company, at Kansas City. I am not quite sure as to whether we took any from the Western Powder Company, at Peoria, in 1908. 5919

Q. How many kegs did you buy of the Excelsior Powder Company during this period? A. I am not quite sure as to that. We made a contract with the Excelsior and I think it covered part of the year 1908. I am not positive as to that.

Q. This is the same Excelsior Powder Company that you spoke of a while ago as being one of your competitors? A. Yes, sir.

By the Court:

Q. Let me ask you: Did these sales cover simply American Powder Mills Company's sales? A. Yes, sir.

5920 *Samuel Rand—Direct*

Q. Did you get your powder from different mills? A. Yes.

Q. The Miami? A. The American made only sporting powder at their mills at Boston and Mr. Fay was president of the Miami and the American and the Miami undertook to supply us with the blasting powder that we required. Conditions then prevailed by which they could not—we sold more than they could produce and then we went to the other companies like the Western and the Excel-
5921 sior and had them make it under our brand.

Q. Did you go to the Excelsior before 1908? A. I think in 1908 we did.

By Mr. Abbott:

Q. Did you buy powder of the Western Powder Manufacturing Company? A. Yes, sir.

Q. When did you begin buying that? A. I am not sure as to the date or the year.

Q. The Western Powder Manufacturing Company is the one that succeeded the Buckeye Powder
5922 Company at Edwards, Illinois? A. Yes, sir.

Q. How was that powder shipped? (Objection sustained.)

SAMUEL RAND, called as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. Button:

Q. Mr. Rand, where do you reside? A. At Birmingham, Alabama.

Q. Are you in the powder business? A. Yes, sir.

Q. How long have you been in the powder business? A. About 28 years.

Q. Have you owned and operated various plants during that period? A. Yes, sir.

Q. During the years 1903 to 1908, what plants did you operate? A. I operated a plant at Fairchance, Pennsylvania, from the year 1900 to 1905, and from 1905 to 1908 I operated a plant near Knoxville, Tennessee, at Marlow.

Q. What was the name of the first company, at Fairchance? A. The Rand Powder Company.

Q. And what was the name of the second one, in Tennessee? A. The Rand Powder Company of 5924
Tennessee.

Q. The Fairchance plant blew up in 1905, did it? A. Yes, sir.

Q. Was destroyed by an explosion? A. Yes, sir.

Q. About what time in 1905? A. It was on the 9th of September.

Q. Did you construct a plant in Tennessee yourself? A. Yes.

Q. Had you begun that before the explosion in Fairchance? A. We were just beginning to manufacture in Tennessee.

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Q. So your sales of powder were practically continuous, despite the explosion, were they? A. Yes, sir.

Q. Did you sell powder in Ohio and Tennessee and West Virginia, from one or both of these plants during this period? A. Yes, sir.

Mr. Abbott: What powder?

Mr. Button: I asked him if he sold powder in Ohio, West Virginia and Tennessee.

Q. Can you state what other powder companies were selling in competition in those States during that period? A. During our operations in Pennsylvania, our competition was from the du Pont Powder Company, the Austin Powder Company, the

Senior Powder Company, and I think it is the Cresson Powder Company; the Burton Powder Company in the last year, during 1905, and the Egyptian in 1905. I think that was all.

Q. That was in the Fairchance plant? A. Yes, sir.

Q. How about the later period when you were running the Tennessee plant, with whom did you come into competition? A. We came into competition with the du Pont people, the Senior Powder
5927 Company and slightly with the Austin people, the Austin Powder Company. I think that was all.

Q. What were the capacities of those two plants of yours respectively? A. The capacity of the Fairchance when it was first built was 500 kegs.

Q. 500 kegs a day? A. Yes. And it was increased in the year 1902, I think, to about 1,000 kegs.

Q. And the Tennessee plant? A. And the Tennessee plant was 500 kegs originally, and that was increased to 850 or 900 kegs in 1907, I think.

Q. During this period have you been actually en-
5928 gaged yourself in the manufacture of powder? A. Yes, sir.

Q. And still are engaged in it? A. Yes, sir.

Q. Are you familiar with the uses of black blasting powder and the requirements of its manufacture? A. Yes.

Q. How many different sizes of grains ordinarily are manufactured for coal mining use? A. Usually about five different grains.

Q. How are they designated? A. They are designated under the name of C, which means coarse. They do make a double C, but it is seldom used in coal mines. I do not know that it has ever been used. And the next finer grain from a C is F, and it runs FF, FFF and FFFF, the FFFF being the finest.

Q. What is the effect of the size of the grain upon the explosion of the powder? A. The finer the grain, the quicker the powder.

Q. It explodes quicker when it is finer, does it? A. Yes.

Q. What would you say as to the effect of mixed grains, different sized grains, in a keg of powder, that is used in blasting operations? I will put it this way: If you loaded a shot with a certain amount of C powder, CC, and another shot of the same sort and load it with a powder which would 5930
be C mixed with finer grains, what would be the relative result of those operations? A. The powder of the same size would burn uniformly and the powder with different sized grains would not. The smaller grains would burn before the larger grains.

Q. And what would be the result of the moving of the coal, or whatever was being blown up? A. There would be several effects.

Q. Won't you explain in your own way? A. In a coal mine?

Q. Well, yes, put it in a coal mine. A. In a coal mine, it is apt to blow the tamp. The burning of 5931
the small grains first does not create a uniform pressure on the material which is to be moved, and naturally, the result would be sometimes the blowing out of the tamping, as it is called.

Q. That is, the result would be, not so much pressure on the coal? A. Not so much pressure, not a uniform pressure.

Q. And you say it would have a tendency to blow out the tamping from the end of the hole? What effect would that have upon the blast? A. That would tend to make what is called a windy shot, that is, they claim the powder would be thrown out in the mine, and that is considered very dangerout on account of it igniting the gases which sometimes exist under ground.

Q. And of course the effect of such a shot on the coal would be small, would it not? A. Yes; when it blows the tamping, the coal is hardly disturbed.

Q. And those results do not occur if the powder is of a uniform grain? A. They are not so apt to occur. They do occur.

Q. Therefore, what would you say from your experience of the desirability of a mixed grain of powder in coal mining operations? A. It is con-
5933 sidered dangerous to use grains which are not uniform in size. It is more dangerous to do that than to use grains of uniform size.

Q. And more ineffectual, too, is that correct? A. Yes, sir.

Cross examination by Mr. Abbott:

Q. Mr. Rand, did you ever see a keg of C powder that was all of the same size? A. No, sir.

Q. Now, is it not a matter of fact that all grades of powder are more or less mixed? A. Yes.

5934 Q. So that in C powder are some grains small enough to be marked as one of the Fs? A. Yes.

Q. And is it not a fact that that applies to every make of powder, whether it is made by the du Ponts or any other company that makes powder? A. Yes, sir.

Q. Has it not been a matter of considerable difficulty and experience on the part of manufacturers of powder from the beginning of time since powder was made, to get powder as uniform as possible, and have they not as a rule failed to accomplishing that completely? A. It is a difficult matter to do it.

Q. You state that there is a C and a double C. Did you state that there were any other Cs? Is there still another C? A. I do not believe I have ever manufactured anything coarser than CC.

Q. There is what is known in the trade, though, as a CCC, is there not? A. Yes; I have heard of it.

Q. And it is one in general use? A. I don't think it is in general use; I don't know.

Q. Well, it is used a good deal, is it not? A. Well, I have heard of it being used, but not often.

Q. Is it not also a fact that in the uses of these various grades of powder considerable experience is necessary to determine which is the best grade for a particular kind of coal, whether C, CC, CCC, 5936
or F, FF, or FFF? A. Yes; I should say so.

Q. So that in any case, whether the powder is du Pont, Rand, Buckeye or other grade, there must be some experimenting in the particular kind of coal where it is to be used to determine what is the best grain to use? Is not that right? A. I think so, yes.

Q. After this Rand mine at Fairchance, Pennsylvania, how far did the business of that mine extend, how far west did that extend? A. That mine, I don't know of any mine there.

Q. Did I say mine? I meant mill, your mill. A. 5937
We sold as far west as middle Ohio. We did not go further west than that, except Pennsylvania, in an instance or two, that I recollect. I don't think we did.

Q. How far east did the business of the Rand Company of Tennessee extend? A. Into Western Virginia and slightly into West Virginia.

Q. In other words, the Rand of Tennessee and the Rand of Pennsylvania reached entirely different fields, did they not? A. Yes, sir.

Q. They did not compete with each other at all? (No answer.)

Q. So that when the Rand of Tennessee was built—I will put it this way, first: When the Rand

5938 *Samuel Rand—Redirect*
Franklin W. Olin—Direct

of Pennsylvania was in operation it was only in competition with other mills as furnishing powder within that particular district, and did not cover the region which was afterwards incorporated or reached by the Rand of Tennessee? A. Yes, sir.

Redirect examination by Mr. Button:

Q. Did not both your companies ship into West
5939 Virginia? A. I suspect they did lap a little, possibly, in West Virginia; but not to amount to anything.

FRANKLIN W. OLIN, called as a witness on behalf of the defendants, testified as follows:

Direct examination by Mr. Button:

Q. When did you first go into the powder business, Mr. Olin, 1891? A. No, before that I was
5940 in the business of constructing powder plants and building powder making machinery as early as 1887.

Q. And were continuously so engaged until you went into the Equitable Powder Company in 1891? A. Yes, sir.

Q. And then you took up the manufacture of powder yourself? A. Yes, sir.

Q. Now, in that connection have you paid personal attention to the actual operation in the manufacture of powder ever since? A. Yes, sir.

Q. Have you discharge the same duties in reference to the Egyptian Powder Company recently, watching its operations? A. Yes, sir, I am directing its operations.

Q. And the operations of the Western Powder

Company attending to them in the same regard? A. Yes, sir.

Q. And you are so occupied at the present time, I take it? A. Yes, sir.

Q. Now what—have you ever had occasion to build any mills, Mr. Olin, powder mills? A. Yes, sir.

Q. What powder mills have you built or been concerned in building? A. I have built a complete plant at Pompton, New Jersey, and another complete plant at Farmingdale, New Jersey, a complete line, one at Penobscot or Gracedale, this is on top of a mountain which is east of Wilkes Barre, a complete line of mills there. A complete line of mills at Huntington, West Virginia. Another complete line at East Alton, Illinois. Fort Smith, Arkansas, a complete line. A part of a plant at Chattanooga, Tennessee, for the Chattanooga Powder Company and several—parts of several plants through Pennslyvania where it was revamping or reconstructing some of the older style of mills and have supplied a complete outfit to the Giant Powder Company in California; and this year nearly a complete outfit for the British Columbia mills, a complete outfit for them, at the present time I am engaged on some powder machinery for the United States Government at Picatinny Arsenal, Dover. 5942 5943

Q. Are you an engineer or professional man? A. Yes, sir.

Q. Are you an engineer by profession also? A. Yes.

Q. When did you take possession of the plant of the Buckeye Powder Company?

Q. Did you take possession? A. Yes, sir,—I think September 19, 1907.

Q. And did you organize the Western Powder

Company for the purpose of taking over that plant? A. Yes, sir.

Q. Did you immediately go to operating that plant? A. Not immediately after taking it over.

Q. How long after you took it over before you actually operated it? A. I don't think I could state just when we began to turn out the powder, but soon after we acquired the plant we began to prepare it for operation.

5945 Q. What was its condition, with reference to the necessity for repairs, Mr. Olin? A. Well, it was not as I would consider in good repair for manufacturing powder.

Q. Did you immediately go to spending money upon the repair of the plant? A. Yes, sir.

Q. Can you state how much money was spent in repairing that plant from the time you took possession of it down to date, approximately? A. I don't think I can tell you in detail; the cost of the repairs, it was in so many localities, and partial repairs in some localities and complete construction

5946 in others that I would not be able to give you figures separating the details and all that work that was carried on.

Q. Could you give us the approximate total? A. There has been invested in the plant since we took possession of it in the latter part of 1907 over $100,000.

Q. 1908— A. 1907 we took possession of it, in September, 1907.

Q. I think you are mistaken about that. A. Just one moment—you are quite right, 1908.

Q. You had previously testified 1907? A. Did I previously state 1907?

The Court: Yes, he did.

Q. Well, the correct date is 1908; it should be 1908? A. Yes, sir.

Q. Now, what is the pack house in a powder plant, Mr. Olin, just in a general way? A. That is the mill where the powder goes after it has been finished in the process of manufacturing, to be separated into different sizes and put into the kegs and prepared for the magazine or for shipment.

Q. That is the place where the different sized grains are separated and those of the same size put together; is that the idea? A. Yes.

Q. Now, is it an important matter in the powder business to have the separating process carried 5948
on skillfully and correctly? A. Why, it is in a commercial way. The miners object to mixed grains of powder and it interferes—

Q. Well you, as well as having been engaged in the operation of powder plants, have become familiar during your experience with the sale of powder and the requirements of the consumers, have you not, Mr. Olin?

Q. Have you or have you not? A. I have had charge of the sales of the respective companies I have managed.

Q. What effect, if any, does the separation of the 5949
grains of powder as to their size have upon the use of powder in coal mining operations? A. It causes complaint to come from the miners.

Q. That is the universal condition, or otherwise in that coal field? A. More seriously in some localities than others, but generally speaking it will cause complaint from the miners.

Q. Well, now, will you state in a general way what was the condition of the pack house of the Buckeye Powder Company when you took possession? A. The machinery was not competent as I found it to serve the intended purpose.

Q. What did you do to remedy that? A. Built an entire new packing outfit, sorting outfit, and installed it.

5950 *Franklin W. Olin—Direct*

Q. About when did you do that? A. The latter part of 1908; I think it was the first step after procuring title to the property, was to ship that machinery there; it was all in stock as a duplicate that I carry for various plants, and shipped that outfit there.

Q. And got it installed inside of a few weeks or how long? A. It only takes a short time; that was all in existence.

5951 Q. Was it installed prior to the time you furnished the DuPont Company any powder? A. Yes, sir.

Q. Now what other changes did you make or repairs did you make to the plant, Mr. Olin? A. Well, the changes began after you would leave the power house, which included the boilers, the engine, generators, tore down the soda mill, soda stock house, charcoal mill, charcoal stock house, and erected new buildings in place of those; also built up a keg factory, beginning in the line of mills and following through in the same direction in which

5952 the crude materials were moved. There is only one of the four wheel mills there now that were there originally,—that has not been operated lately. Three other wheel mills were replaced with entirely new parts except the large wheels themselves which are wheels weighing about eight tons.

Q. About when was that, Mr. Olin? A. We began those repairs immediately after we got the plant shaped up and started operations and from time to time disqualified one wheel mill and rebuilt it and continued that process of partial operating and partially repairing until we had replaced all of that class of mills. We built a new press mill in an entirely different location; put in a new press itself; new outfit entirely. The original corning mill was used for a time and met with an accident. It was replaced after the accident,

it was rebuilt and the construction somewhat changed. The next mill would be where the drying and glazing was done and those mills are somewhat in the original condition, but have been rebuilt and reinforced and to some extent remodeled and those are the only mills in the line that were there when we took over the plant.

Q. That is the glazing? A. The glazing.

Q. Everything else you mean has been changed? A. Yes.

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Q. Replaced? A. Yes.

Q. Now, has this been a continuous process since the 8th of September, down to date? A. Well, there hasn't been any constructing going on there for a little bit—oh, for some considerable time.

Q. Well, when did you get these repairs completed, then? A. Oh, there has been no construction work there in two years, about two years.

Q. What was the condition of the bed plates,—I believe they are called,—of the wheel mills? A. There was one of the bed plates that was cracked.

Q. Did you replace that? A. Yes.

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Q. What can you say in reference to the arrangement of the different sections of this mill or the different departments at the time you took it over as to economical production of powder, Mr. Olin? A. Well, it was not as economically arranged as it is at the present time.

Q. What was the trouble with anything in that regard? A. A great many places where there were little things that caused some extra labor in handling, as, for instance, in unloading the crude material, the nitrate of soda, which is 75 per cent. in weight of the composition, it was hauled up an incline over a railroad to a warehouse on top of the hill, and then—that was on a small tram car. At the present time the warehouse is so arranged

that it is dumped out of the steam car into an elevator that carries it to the top of the warehouse righ close to the railroad track. No cable hoisting or carts used in connection with it and saves money in unloading the crude material. The same is perhaps more strikingly illustrated in the saving which was affected in the handling of charcoal. The warehouse for the charcoal was some distance from the mill, and the material was carted from the warehouse to the charcoal mill in small trucks.
5957 At the present time the charcoal warehouse is on the railroad and the charcoal is dumped from the railroad cars into the warehouse, and the charcoal mills adjoining that warehouse with an elevator to take the material from the warehouse to the upper story of the charcoal mill. It saves considerable time and expense in handling that. The same might be said of the sulphur also.

Q. Well, then, will you state from your experience in building of powder mills and operating of powder mills what is your opinion as to the
5958 economic arrangement of that mill at the time you took it over? A. Why, I would not say that the engineering in locating the plant and laying it out was of the very best.

Q. Now, In reference to the operation of the mill, what was its condition when you took it over as to whether it could be continuously operated or not? A. It could not be.

Q. For what reason? A. Parts of the driving machinery would fail and shut downs would come during the operating hours and the pay roll would continue and it was thought advisable to reconstruct those parts where the trouble occurred, and put in heavier foundations and stronger machinery; and to build the outfit so it could run continuously.

Q. So, as a matter of fact, were you subjected

to shut downs in the early operations of the mill from those causes? A. Yes, sir.

Q. In referring to foundations, did you—how extensive was the trouble that you have mentioned in reference to the lightness of the foundations? A. All the foundations in the entire plant were too weak for the strain they had to carry.

Q. What sort of foundations should a powder mill have as to strength and firmness? A. Well, taking it where these large wheels, two wheels 5960
weighing eight and ten tons, each operating on powder, it has got to have a rigid, solid foundation under it,—it should have. And the foundations there were in some cases walls under each side of the wheel bed with I-beams ten inches in height carrying the bed plate; whereas we put in a solid foundation under the mill, 20 feet square and put in I-beams 15 inches deep instead of ten. In addition filled in concrete solidly between the flanges of the I-beams so as to make the whole foundation of the mill 20 feet square, one mass monolithic, so it was connected and tied together and more 5961
stable than we found it originally.

Q. What do you say as to whether or not powder mill machinery deteriorates from year to year, Mr. Olin? A. Oh, it deteriorates.

Q. And I will ask you the same question in reference to the buildings and plant in general of a powder factory, is there a deterioration? A. Necessarily.

Q. Is that deterioration increased or otherwise by shutting down and idle machinery? A. Deterioration continues faster in a shut down.

Q. Why? A. Because of the nature of the materials out of which powder is made, the nitrate of sodium carrying considerable salt, will attack cast iron or steel or any metal parts, and if these parts

are not being used so as to keep the moisture away from them, why, the rust affecting it, the erosion is much more rapid in a shut down condition than if operating.

Q. What was the nature of these buildings, were they wooden buildings or otherwise? A. Mostly wooden buildings, yes, sir.

Q. Were they subject to deterioration? A. Yes, naturally.

5963 Q. From your experience in powder mill business, can you state what would be the minimum depreciation of a powder plant per year in your judgment? A. That is a pretty hard question. It might vary considerably in different localities, it would not be uniform.

Q. Give the limits which under ordinary circumstances you think would be fair. A. I have had the experience, with the observation of deterioration, and that is in a powder factory along the sea coast, it will have a different effect than those on the top of mountains in Pennsylvania.

5964 Q. Well, confine your answer then to Peoria, Illinois and East Alton and thereabouts, they are about the same climate, aren't they? A. Yes, sir, I should say that it would cost from five to ten per cent. of the investment to keep the buildings in repair.

Q. In the running of your plant is it customary for you to charge up some amounts for such depreciation? A. Yes, sir.

Q. Now when you started these mills, the Western Powder Mills in 1908, you recall who your powder foreman was, Mr. Olin? A. I think Henry Franks was the name of the powder foreman.

Q. Do you know who had been the foreman there previously under Mr. Waddell? A. No, sir.

Q. You do not know? A. I do not know.

Q. Now, when you bought this plant, Mr. Olin, did you have any communication whatsoever in reference thereto, with the du Pont Company or any officer connected with the du Pont Company? A. No, sir.

Q. Did they have any knowledge whatsoever of your intention of purchasing that plant? A. No, sir.

Q. At that time, had you been approached in any way as to furnishing du Pont Company with powder from that plant? A. No, sir. 5966

Q. Did you ever have any contract with them at that time in reference to the matter of any sort or description at the time you purchased it? A. No, sir.

Q. Is it true that immediately after the purchase you began to operate the plant at its full capacity? A. No, sir.

Q. Was Mr. Waddell there at that time? A. Yes, sir.

Q. Did he have something to do with the first operation of the plant? A. Yes, sir, he had charge of our business there for the first year. 5967

Q. Was he in a position to know whether or not the plant was running at full capacity during that period? A. Yes, sir, he had full charge of the company's business there.

Q. Do you recall how many kegs of black blasting powder you made during that year 1909? A. I could not state the figures, I know it was,—I should say somewhere 100 to—

Q. Are not those figures on the same exhibit? A. It was less than 150,000 kegs.

Q. They are given on this same Exhibit 1232, are they not? Won't you state how much was made in the end of 1908 and then in 1909, black blasting powder? A. For the year 1908 the statement shows 26,022 kegs.

5968 *Franklin W. Olin—Direct*

Q. What months were those, was that powder manufactured? A. November and December only were the two months that the plant was operated. In 1909, 98,236 kegs.

Q. Won't you give the next two years if they are there? A. 1910, 169,431 kegs. 1911, 146,734 kegs. 1912, 151,433 kegs.

Q. Running at full capacity any one of those years, Mr. Olin? A. We manufactured all the powder that we could, except, possibly in the summer
5969 season our magazine might be full.

Q. You testified this morning that in purchasing the Buckeye powder plant, you did not disclose your object to the du Pont Company. I will ask you if you took it up with any other powder companies besides the du Pont Company? A. No, sir.

Q. Was Mr. Lent associated with you in the purchase of the Buckeye Company? A. Yes, sir.

Q. Outside of you and himself and Mr. Waddell and his stockholders, did anyone know anything about it? A. Not that I know of.

5970 Q. After you got possession of the property, was it profitable? A. Well, not for some time.

Q. Have you any objection to stating how much money you have made at that plant during the four years you have operated it, Mr. Olin—approximately? A. For the entire time?

Q. Yes. A. Why, I don't like to publish our business any further than I have to. I don't know that—but that I would be agreeable to stating what the profit has been over the entire period, but it is difficult to—

Q. We would be glad to know if you think it will not damage you too much, Mr. Olin, say for those four years, for the first four years? A. I don't know just how much, how valuable this information will be to you because there has been some rifle powder manufactured during that time

on which there is a much greater profit than on blasting powder.

Q. Can you state first, about how many kegs of rifle powder you have made each year? A. In 1909 we made 21,623 kegs of rifle powder. In 1910—

Q. Right then, Mr. Olin, will you state about how many days' operation it would take of the plant to manufacture that 21,000 kegs? A. That would require approximately 50 days.

Q. Now, if you will get the number of kegs in the other three years. A. 1910, 9,231 kegs. 5972

Q. How many days would that be, about? A. That would be approximately 23 days. In 1911, 7,810 kegs.

Q. That would be about 20 days or 19? A. Approximately 20 days. 1912, 18,166 kegs.

Q. That would be about— A. 45.

Q. 45 or 46 days? A. 45 days, those were all kegs of 25 pounds each.

Q. Now, if you were willing to state the net profit of the business during those four years, Mr. Olin, we would be very glad to have you do so. 5973
A. Approximately $48,000.

Q. And the original investment was $75,000 for the plant, was it? A. Yes, sir.

Q. And $100,000, since that time or how much since that time for the plant? A. There is a total investment there at the present time of $201,000.

Q. For how long has that amount been invested there? A. Why, it has been put in gradually from the time we got it until the time we finished the construction work.

Q. Now, in addition to that amount of investment, was other capital employed in the production of this profit? A. No, sir, I don't think so.

Q. That would be—then the profit would be on the— A. On the product of the mill.

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Q. Was that much of investment, was that much capital employed as early as 1909? A. No, sir.

Q. How soon after 1909 would you say you got it all? A. It would be pretty hard for me to tell you the amount of investment there at any particular period. It began in 1909 and for a small portion of the year 1909, all of 1910 and 1911 and a portion of 1912, the total amount was the difference between what we originally invested and what we have now invested, was put in, and I can
5975 not give you dates as to what the investment was. I have not those figures with me.

Q. Could you apportion the profit as between the rifle and blasting powder in any way? A. No, sir, except that I can approximate it in a few minutes.

Q. I wish you would do that, Mr. Olin? A. Somewheres between one-half and three-quarters of that profit has been made on rifle powder.

Q. Now, Mr. Olin, when you purchased this property, did you take a deed of the real estate? A. Yes, sir.
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Q. Now, Mr. Waddell, as I understand it, went to work for the company; did you pay him a salary, Mr. Olin? A. Yes, sir.

Q. How much was that? A. $12,000.

Q. Was that a monthly salary? A. No, for the year, for a year.

Q. When was that arrangement made with reference to the sale of the property to you? A. At the same time that negotiations were carried through, for the purchase of the property.

Q. Was it a part of the same transaction? A. Yes, sir.

Q. Did you make that arrangement personally with Mr. Waddell, or were you present when it was made? A. Yes, sir, and Mr. Lent I think was also present.

Q. You say he did not get paid monthly then? A. No, we gave him our notes for the year's salary payable in one year and two years.

Q. Do you recall how much was payable at the end of one year? A. I think our arrangements called for $5,000 payable the first year, and $7,000 in two years.

Q. And that was represented by two notes which you gave Mr. Waddell? A. Yes, sir.

Q. And how was the—and were those notes subsequently paid? A. Yes, sir. 5978

Q. How was the purchase price of the mill property represented,—also by notes? A. No, we paid some cash and the balance by notes.

Q. Have you any of the notes here that were involved in these transactions? A. I have some of them, not all of them.

Q. May I see them? A. Some I am not able to find (Handing paper to counsel).

Q. I see this is a $5,000 note dated September 19, 1908, was that one of the salary notes that you mentioned? A. Yes, sir. 5979

Mr. Button: I would like to have that marked for identification.

(Same marked Plaintiff's Exhibit 1243 for identification.)

Q. Have you others? A. I have in my bag, the property notes.

(Bag handed to witness.)

A. There is one of the purchase notes. (Handing paper to counsel.)

Q. This is dated September 19, 1908, for $25,000, payable on or before two years, signed by yourself. A. Yes, sir.

5980 *Franklin W. Olin—Direct*

Q. That is one of the purchase—one of the notes for a part of the purchase of the mill property? A. Yes, sir.

Mr. Button: I ask to have that marked for identification.

(Same marked Plaintiff's Exhibit 1244 for identification.)

A. (Continuing.) I am of the opinion that the
5981 other note was signed by Mr. Lent.

Q. And you haven't got that? A. I have not got that.

Q. What experience had Mr. Franks had in the manufacture of powder when he took charge of the Western Powder Manufacturing Company? A. Well, he is an experienced powder man, he took charge of the first mill that I constructed in 1888.

Q. And had he been in the business continuously? A. Yes, sir.

Q. What in your opinion would you say as to
5982 his competency, Mr. Olin? A. Very, very—

Q. Was he in your mill continuously since 1888? A. Not continuously, he was with me when I managed the Phoenix Company and after I retired from that company, there was a time when he was not connected with any of my companies; then later he came back into them.

Q. Was he superintendent of any of the du Pont mills at any time? A. Yes, sir.

Q. What mills, do you know? A. I think at Birmingham, Alabama, for a time and at Paterson, Oklahoma.

Q. During the period from 1888 until 1908, twenty years, can you state about how many of those twenty years he had been working for you? A. I can not recollect the dates accurately, I should say at least one-half of that time.

Q. Was he superintendent of the mill at Bellville at one time? A. Yes, sir.

Q. Who was Mr. Jack Pierce? A. Mr. Pierce was a man that had been with some of my companies nearly eighteen—seventeen or eighteen years.

Q. In what line of business was his experience? A. General superintendent.

Q. Of the operations? A. Yes, sir.

Q. In the month of February? A. Formerly as a mill foreman and was graduated to general superintendant. 5984

Q. In your opinion was he a competent man in those regards? A. Yes, sir.

Q. Well, did you—was he familiar with the matter of repairing and making changes and alterations? A. Yes, sir.

Q. In this particular plant? A. Yes, sir. He had charge of construction work of some of our plants and—

Q. When did you first send him up there, Mr. Olin, to the Buckeye plant? A. I think soon after we purchased the plant. 5985

Q. And for what purpose did you send him there? A. To make an inspection and report on the condition in detail of the different mills.

Q. And did he do so? A. Yes, sir.

Q. And then did he take charge of the repairs? A. Yes, sir, he took part in the starting of the mills and the repairs of it.

Q. Do you recollect how long he stayed there on the job? A. I can't tell that, he was there at times, and would go back to East Alton and then return to Edwards at various times.

Q. Since the organization of the E. I. du Pont de Nemours Powder Company in 1903, has your company, the Equitable, been competing with it, Mr. Olin? A. Yes, sir.

Q. Have the sales force of the Equitable Powder

Company solicited business that you have known was being supplied by the du Pont Company during those years? A. Yes, sir.

Q. Has the Equitable gained some of that business during those years? A. Yes, sir.

Q. Has the Equitable lost some of its own business to the du Pont Company during those years to your knowledge? A. Yes, sir.

Q. Has there been any arrangement whatsoever between the two companies in reference thereto?
5987 A. No, sir.

Q. In reference to leaving each other's trade alone? A. None whatever.

Q. Has there been any arrangement in reference to contracts and respecting trade between the two companies? A. None whatever, sir.

Q. Likewise has your company been competing with the American and Miami Companies? A. Yes, sir.

Q. And both have been selling powder in the district which you reach? A. Yes, sir.

5988 Q. During all of that period? A. Yes, sir

Q. King powder, also? A. Yes, sir.

Q. Any arrangement with any of those companies? A. None whatever.

Q. Either to respect their trade or otherwise? A. No, sir.

Q. And they are competing against you? A. Yes, sir.

Q. Is the same true with the Austin Powder Company? A. Not to the same degree on account of their being further East.

Q. Well, so far as they reach the same territory is it true? A. Yes, sir, their St. Louis office is competitive with ours.

Q. Now, during—after Mr. Waddell came into the field in 1903, were there various other companies organized that supplied powder to that terri-

tory? A. Well, there were companies that came into the business about that time, I can not tell the year exactly.

Q. Do you remember the Burton Powder Company? A. Yes, sir.

Q. Do you know of the existence of the Burton Powder Company and its plant, Mr. Olin? A. Yes, sir.

Q. Do you know about when they were organized? A. I do not.

5990

Q. Where is their plant located? A. Near Youngstown, in the eastern part of Ohio.

Q. Were they to your knowledge selling powder at the same time the Buckeye Powder Company was? A. Yes, sir.

Q. And in the same territory? A. Yes, sir.

Q. The Egyptian Powder Company was organized about when, Mr. Olin? A. About 1902, to the best of my recollection.

Q. Had it been selling powder before the Equitable acquired the interest in its stock? A. Yes, sir.

5991

Q. And in the same territory with the Buckeye? A. Yes, sir.

Q. And do you know whether it had been competing with the Buckeye in that territory? A. Necessarily so, they are not far apart.

Q. How about the Excelsior Powder Company, do you know about that? A. That has a plant located near Kansas City and competes with the Illinois companies in the territory west of the Mississippi River.

Q. In part of the territory which was reached by the Buckeye mills? A. Yes, sir.

Q. Do you know of your own knowledge whether that was competing with the Buckeye during this period? A. Yes, sir.

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Q. Now, do you know about the Jefferson Powder Company? A. I know of the existence of such a company.

Q. Is that too far away to compete in that district? A. They did not compete as far north as Illinois.

Q. The King Powder Company I understand sends powder into that territory, doesn't it? A. Yes, sir.

5993 Q. Does the Miami compete in that territory? A. Yes, sir.

Q. And did it during 1903 to 1908? A. Yes.

Q. Where are the mills of the Miami Company? A. At Goes, Ohio, that is near Zenia.

Q. And near the Phoenix Company? A. And one is south of St. Louis at Thebes on the Mississippi River.

Q. Are both those mills supplying powder in this district during this period? A. Yes, sir.

Q. In which the Buckeye Company was operating? A. Yes, sir.

5994 Q. How about this powder company in Tennessee? A. The Rand?

Q. The Rand, was that furnishing powder in this district? A. I should say there would have been a territory in Northern Kentucky and Southern Ohio that might have been competitive, but the Rand Powder Company did, or has been doing very little business in Illinois.

Q. In that part of the territory that was competing, was it? A. Yes, sir.

Q. And the Senior Powder Company has its plant where? A. At Morrow, Ohio.

Q. Was this company selling powder throughout this district and competing directly during the entire period from 1903 to 1908? A. Yes, sir.

Q. And is the Tennessee Powder Company too far away to reach this district? A. I would not

say that they were competitive to any appreciable degree.

Q. Where is the plant of the United States Powder Company? A. Coalmont, Indiana and twenty-six miles south of Terre Haute.

Q. And they reach this territory? A. Yes, sir.

Q. And was it competing during these years? A. Yes, sir.

Q. Now, when the Buckeye Company came into the field, do you know personally of the prices it made as compared with the ruling prices at that 5996
time? A. Only as I would—

Mr. Abbot: Now do you know this of your own knowledge, Mr. Olin?

The Witness: Yes, sir, what I have to say is my personal knowledge.

Mr. Abbott: Yes, all right.

Q. Well, so far as you know of your own personal knowledge, will you state what they did in reference to prices, Mr. Olin? A. I only know as I would get the information from prospective and 5997
our customers.

Q. Have you any other sources of knowledge except what your customers told you? A. I have seen quotations from the Buckeye Powder Company in the hands of our customers.

Q. Letters you mean? A. Letters, yes.

Q. Signed by the company? A. Yes, sir.

Q. Well—can you remember any particular instances in the hands of what customers you ever have seen those letters? A. It would be pretty hard to state specifically the details of that matter. It was a long time ago.

Q. Now, in regard to the consumption of powder, Mr. Olin, in that territory during the years 1903 to 1907, did the introduction of these mine cutting

5998 *Franklin W. Olin—Direct*

machines, coal cutting machines have any influence on the consumption of powder, and if so, what? A. Yes, sir.

Q. Won't you state what the situation was during those years in that regard? A. For several years we have met the reduction of demand caused by the introduction of mining machines that reduced the quantity of powder that the mine uses very materially.

5999 Q. How much does the introduction of mining machines into the mine reduce the consumption of powder, can you give the percentage? A. In investigating the drift of the business as it has been running the last few years, we have made it our business to investigate certain specific mines before they put in mining machines and after they were introduced; and it will vary considerably according to the mine, the mines that we have investigated have shown a reduction—

Q. Have you studied this subject yourself, personally, Mr. Olin? A. Yes, sir.

6000 Q. Have you observed these machines working? A. Yes, sir.

Q. And have you been selling powder to various companies who have introduced those machines? A. Yes, sir.

Q. So that you know how much they used before and after the introduction of machines? A. Yes, sir.

Q. Well, now, will you state what in a general way the effect is on the consumption of powder in percentages?

Q. In how many instances, have you so investigated? A. I could not tell that. Wherever we have learned of one of our customers putting in mining machines, we have followed his business to see if it corresponded with the general average that

we had checked up. It is a vital part of our affairs now to determine how extensively mining machines are going to reduce the consumption of powder.

Q. Who has actually done the investigating? A. Our sales manager has written the letters at my suggestion in some cases and in some cases myself.

Q. And you have received answers to those letters? A. Yes, sir.

Q. So that information together with the information you personally had of the increase or decrease in the particular mines that you have supplied, is the basis of what you know on this subject? A. Yes, sir. 6002

Q. Can you state of your own knowledge circumstances of that sort as to any particular mine?

A. The information that I have is given to me as a statement in a letter from the coal operator of the number of kegs of powder used. I have not checked the number of kegs of powder that went down into the mine, nor have I checked the number of tons of coal that were lifted out of the mine. I have taken the operator's statement for those figures. 6003

Q. In what mine have you known of your personal knowledge that these machines have been introduced? A. Madison Coal Company.

Q. Were you supplying that mine before the introduction? A. We supplied the mine ever since we have been in business?

Q. And have been since? A. Yes, sir.

Q. Can you state how much powder—do they buy all their powder through you? A. Yes, sir.

Q. Can you state how much you furnished them before and how much after the introduction of these machines? A. I cannot give you the kegs. I remember the reduction in the demands or consumption of powder in particular mines, and it varied from—

6004 *Franklin W. Olin—Direct*

By Mr. Abbott:

Q. Now wait. Are you speaking only of the Madison Coal Company's mines? A. Specifically now of the Madison Coal Company.

Q. And this is information which you get from your own knowledge of how much powder you furnished them before and after the introduction of the machines, is that all? A. It is information that I took from letters inquiring about the output
6005 of their mines as to tonnage of coals.

Q. And their replies to you? A. Yes.

By Mr. Button:

Q. That was not in my question, Mr. Olin, my question was how much powder you furnished them before and how much after the introduction of the machines? A. I cannot give you the figures of powder shipped to particular mines from memory.

Q. Well, can you state whether or not you furnished them more or less after— A. Less.

Q. Can you state approximately how much less?
6006

By Mr. Abbott:

Q. Now, wait. Can you state this of your own personal knowledge? A. The results are determined by my own investigation, taking the figures from the operator's records of the powder consumed and the coal produced.

Q. But not of anything that you have personally investigated in the mines yourself? A. No, sir, not in the checking of the quantity of powder used or the quantity of coal produced; that is not my checking.

By Mr. Button:

Q. Do you know of your own personal knowledge,

in a general way, how much powder you sold them and furnished before and after; that is what I was inquiring about.

Q. Did you ever enter into any scheme with any other powder company of any sort to put the Buckeye Powder Company out of business? A. No, sir.

Q. Did the Equitable Company or any other company that you are connected with— A. No, sir.

Q. Do you know of any such effort having been made at any time? A. No, sir. 6008

Cross-examination by Mr. Abbott:

Q. You have stated that you built a number of mills at various times and were well acquainted with the powder mill business from the construction end. I am going to ask you to state how much of a plant the plant was at Pompton, N. J. How much of a plant was that? A. About 600 kegs a day.

Q. Is that plant still in existence? A. No, sir. 6009

Q. Has it been destroyed? A. It has been dismantled, I think.

Q. Do you know when it was dismantled? A. No, sir.

Q. Do you know why it was dismantled?

Q. The plant at Farmingdale, New Jersey, how much of a plant was that? A. That might be said to be competent for 800 kegs, it is not what we call——

Q. The plant at Penobscot, how much of a plant is that? A. That was about three-quarters as large as the Farmingdale plant.

Q. And the plant in Huntington, West Virginia? A. That was about the same size as the Farmingdale plant.

Q. This plant at East Alton, I take it was your own plant, the Equitable? A. Yes, sir.

Q. This plant at Fort Smith, that was your own plant also? A. Yes, sir.

Q. The plant at Chattanooga, Tennessee, how much of a plant was that? A. That was a larger plant than the one at Farmingdale.

Q. You said that you built several similar plants in Pennsylvania, how large were they? A. They were small plants.

6011

Q. This plant in California, what plant was that? A. That was for the Giant Powder Company, about the capacity of the Farmingdale plant.

Q. And the one in British Columbia, about how large was that plant? A. That was about half the size of the Farmingdale plant.

Q. And the one you are now employed by the United States Government to build? A. Not building plant, powder machinery.

Q. For whom did you construct these various plants, Mr. Olin, for yourself, or for some one else?

6012 A. I have a personal interest only in one plant, the Western Powder Manufacturing Company; the rest were for corporation.

Q. I am speaking of now by whom you were employed to construct these various plants. A. I was in business for myself in the building of those plants, my own business.

Q. Oh, yes; but did you build and sell those plants to somebody, or did you build them under a contract for somebody? A. My contract with the corporation that was developing or existing for operating those plants, covering in some cases the finding of a suitable location; the purchase of the location for their account, and the contract for building the complete equipment, and operating it for thirty days.

Q. What company was it that you were building these plants for; that is to say, who was proposing to build and operate those plants? A. The various corporations.

Q. Well, I am trying to get to that; name them, please. A. Farmingdale, New Jersey, Huntington, West Virginia, and the work that I did for the same company at Belleville, Illinois—were all built by the Phoenix Powder Manufacturing Company.

Q. Yes. A. The plant at Penobscot, Pennslyvania, was called the Enterprise Powder Manufacturing Company, a corporation, separate and distinct from the Phoenix. The plant near Chattanooga, Tennessee, was the Chatonooga Powder Company, the plant on the Pacific Coast, the Giant Powder Company, as was also the machinery that went to British Columbia. The Rand Powder Company of Tennessee was supplied with part of a plant; I cannot tell the name of the corporation, but A. B. McAbee of Pittsburgh was the principal manager, and it was called the Globe Powder Company, by the way; the Globe Powder Company near Pittsburgh, Pennslyvania. Then we had some machinery from the Shamokin Company, Shamokin, Pennsylvania, a partial plant, and contract for construction. The Miami Powder Company purchased parts of a plant. The United States Powder Company, the King Powder Company, the Senior Powder Company, Austin Powder Company —they all purchased more or less machinery at various times, and in some cases my men have erected it. 6014 6015

Q. Do you know anything about other plants than those that you have built, as to how they were constructed; do you know anything about any of the plants owned by the Du Pont de Nemours Company? A. I have seen some of their plants.

Q. Do you anything about their plant at Brandywine? A. No, sir, not in detail.

Q. Have you ever been there? A. No, sir; I have been at the testing station in connection with the ammunition business, but not in connection with powder business.

Q. You have never seen their plant at all? A. No, sir.

Q. You do not know how it is constructed? A. No, sir.

Q. You do not know the kind of machinery that is used there? A. No, sir.

6017 Q. Did you ever visit the mills of the Hazard Powder Company at Hazardville? A. No, sir.

Q. Or the mills of the Schaghticoke? A. The Schaghticoke, yes, sir.

Q. Do you know where that is? A. Yes, sir.

Q. Do you know how those mills are constructed? A. Somewhat, yes, sir.

Q. Will you state whether or not the buildings and arrangements of that plant are constructed according to your idea of how a plant should be constructed? A. In some respects, I would consider the construction quite modern.

6018 Q. In what respects would you consider it not modern? A. Some of their power system, and power transmission, was not of the very best.

Q. As to their machinery, how about that? A. Some of their machinery was good.

Q. Some of it, the rest of it? A. And some of it I would not consider as good.

Q. I will ask you that question as to whether or not it is not a fact that powder plants and powder machinery—the manner in which plants are constructed, and the way in which machinery is constructed—have changed in the same general way in which all other classes of industrial plants have changed from time to time? That is to say, have not they progressed in improvements? A. I should say there have been improvements.

Q. Yes, and is it not true with you yourself in your own mills, the Egyptian Mills, the Equitable Mills—that you have made very extensive improvements and changes in your machinery from time to time? A. In the Egyptian Mills I did, because the machinery that I found there after purchasing it, was identical with that in the Buckeye Mills.

Q. How about the machinery in your own plant in the Egyptian plant, the Equitable plant? A. That was constructed from my own plans and patterns. 6020

Q. You have never changed that since it was built, since 1892? A. In some respects.

Q. You have taken out some machinery and put in some new, have you not? A. We have added some new and more improved, but have not replaced very much of the original construction with improved methods.

Q. Did you have anything to do—I believe you stated that you did have something to do with the original construction of the Egyptian plant? A. No, sir, nothing. 6021

Q. You did not have anything to do with that; was that mill constructed by people who were supposed to have some knowledge of how to construct powder plants? A. I should judge not, by the appearance of the plant.

Q. You yourself did not see anything in the machinery at the time you took it over, that was specially to be condemned, did you? A. Yes, sir.

Q. And you took it out and made changes in accordance with your original plans? A. Yes, sir.

Q. Have you ever gone into any mills, any other mills of the Du Pont Powder Company beside the Schaghticoke? A. I think not.

Q. That is the only mill of the Du Pont Powder Company that you have ever seen? A. Yes, sir.

Q. Have you ever seen the Austin Mill plant? A. Yes, sir.

Q. Is that an up-to-date plant in all respects? A. Quite good, now.

Q. How long has it been such as to meet your approval? A. Some six or seven years. I was called there in consultation on the plans, that they were considering them, and helped work out revised plans, for nearly the entire plant; supplied certain parts of the machinery, but did not superintend
6023 or look after the construction work, but helped to decide on the plans quite largely, that should be followed.

Q. Now, were those plans followed? A. Not in every respect.

Q. Were they in the main? A. I beg your pardon.

Q. Were they in the main? A. Only in reference to power transmission. The plant was in fairly good repair, and it meant the disqualifying of quite a portion, but at that time it was not thought advisable to go into it; that work is now going on,
6024 however, under my engineers' directions.

Q. That plant is largely owned and controlled by Mr. Lent, is it not? A. I do not know, sir.

Q. Mr. Lent is the President of the Company? A. Mr. Lent is the President of the Company.

Q. And he is an associate of yours in the Western Powder Manufacturing plant? A. Yes, sir.

Q. Now, the Austin Powder Company has been doing business for a great many years, has it not? A. A very old company, I understand.

Q. And a very successful company? A. I do not know as to their success, sir.

Q. Well, don't you know that the Austin Powder plant has been doing a generally recognized successful business in this country? A. Yes, sir.

Q. That it has been making good powder? A. Yes, sir.

Q. And been selling very large quantities of that powder ever since it was built? A. I do not know as to their sales, how much they sold.

Q. It has been (in other words) supposed to be a successful powder plant? A. I should say so.

Q. Now, how about the American Powder Mill plant, do you know anything about that? A. Well, I do not know that they have any blasting powder plant.

Q. I mean the mills that are owned by the American Powder Mills—or Miami? A. The American 6026
have a rifle plant near Acton, Massachusetts.

Q. Do they not have, or control, the Miami Powder plant? A. I do not know, sir.

Q. I am assuming that if that is a mistake, if you know nothing about the Miami Company's plant. A. I know the Miami had a plant at Goes, Ohio, and another one at Thebes, Illinois.

Q. Have you investigated those plants? A. I have never been to them.

Q. Never been to them? A. No, sir.

Q. Will you just state what plants you have seen 6027
and inspected yourself outside of those plants you have constructed yourself, and the names of which you have given us. A. Several small plants through Pennsylvania.

Q. Give us the names of those, please. A. What was formerly called the O'Connell Powder Company, near the vicinity of Shamokin, The Miller Powder Company. I spent some time at the Rand Powder Company, after it was formerly called, at Fairchance, Pennsylvania, That plant was later dismantled. The Senior Powder Company; the King Powder Company; the Ohio Powder Company.

Q. How many wheels were there in the Rand Company's plant that you visited? A. Not any.

Q. I beg your pardon? A. Not any.

Q. What did they use? A. They used the barrel process, as it is called.

Q. How many barrels did they have? A. I cannot tell you that now, there are quite a number of barrels, and I do not remember the capacity.

Q. What is the relative merits of a barrel mill and a wheel mill, so far as the production is concerned? A. The wheel mill powder is superior to the barrel mill powder for general use, because the
6029 wheel mill powder is made of a short process and don't work out as dense a grain, won't stand storage, and has to be used much more promptly after it is manufactured.

Q. Then, as I understand you—in the first place, do you know how many powder mill plants there are in the United States? A. No, sir.

Q. Do you know how many approximately there are? A. Well, somewheres—if you are speaking of black powder mills?

Q. Yes. A. I am not able to state the number, no,
6030 sir.

Q. Are there as many as 150? A. I think not.

Q. You think not. A. No, sir.

Q. As many as 100? A. No, sir.

Q. Well, then, tell me about how any you think there are. A. About forty.

Q. About forty; so that of all the mills in the United States manufacturing black blasting powder, you have only seen outside of the mills which you have constructed, those five or six, the names of which you have read, is that right? A. I have given you the mills that I have constructed, and the mills that I have visited.

Q. Yes. A. Those are all that I have seen.

Q. Now you say that you are a manufacturer of powder machinery or have been? A. Yes, sir.

Q. You would naturally, would you not, think that your powder machinery was the best? The best make, the best grade; the best for all purposes? A. Perhaps so.

Q. And when you make changes in your plants, you install your kind of machinery, don't you? A. Yes, sir.

Q. The machinery which you make? A. Yes, sir.

Q. And that you think is the best for the purpose? A. Yes, sir.

6032 Q. Now, is your machinery purchased by the Du Pont Powder Company for installation in its mills altogether? A. It has been used.

Q. Altogether? A. No.

Q. They don't use any other kind but your machinery? A. No; I say in some cases I have sold them machinery.

Q. You stated that you bought the Egyptian Powder Mill? What did you pay for that plant?

Objected to and objection sustained.

6033 Q. Now, referring to the matter of the Buckeye Powder Company's plant, what was the kind of engine that they had in that plant, at the time you bought it? A. A high pressure Corliss valve engine.

Q. What was the size of the foundations upon which it was laid? A. Suitable as to size for the engine.

Q. It was a suitable foundation, was it? A. The foundation has proven to be somewhat weak.

Q. How long since it began to show some weakness? Well, soon after we began to operate the plant.

Q. When was it that you first noticed this weakness; I should like to get the date? A. I should say during the year, probably, of 1909.

Q. Have you made any changes in that? A. Yes, we have made some changes.

Q. When did you make those changes? A. I cannot tell you that; I should say during 1909.

Q. Do you know anything about the cost of the Corliss engine? A. Well, to some extent.

Q. Do you know what that plant cost—that engine? A. No, sir.

Q. You do not? A. No.

6035 Q. Now, what was the change that you made at that time, or at any time, in the foundation on which the Corliss engine was operated? A. The anchor bolts were loose, and pulled up through the foundation.

Q. How much did it cost you to make that change? A. I cannot tell you that.

Q. How long did it take you to make it? A. Not very long.

Q. Was it over a day? A. I should say yes, something over a day, and we found the cylinder of the engine cracked, aand we had to replace that also.

6036 Q. That would not be unusual would it, in the operation of a large engine, that the bolts would be loosened in the course of time? A. Well, if it was well put in, they would not come loose.

Q. Never? A. I never knew one to, if it was properly put in.

Q. What kind of a generator was there in the Buckeye Powder Company? A. A good generator.

Q. It was a good generator? A. Yes, sir.

Q. You never had to change that? A. Yes.

Q. Did you have to change it because it was not good? A. Well, it was incompetent to some extent for the load; the insulation had become charred by overheating.

Q. What was the make of the generator? A. General Electric.

Q. There are no better generators made than the General Electric are there? A. I think the generator was a satisfactory machine.

Q. Do you know what that cost? A. No, sir.

Q. Now, what kind of a boiler did they have? A. A horizontal tubular boiler, two of them.

Q. Have you got those same boilers yet? A. Yes, those two are still in use.

Q. You have not changed them; have you got that same generator yet? A. Yes, the same generator is there, but it has been taken out and repaired, and rewound, both in the fields and rotaries. 6038

Q. When was that done, what year? A. This last year, this present year.

Q. Just this last year? A. Yes.

Q. So you operated with it from 1909 up to the present time, practically up to last year? A. Yes, sir.

Q. Without any change? A. Yes, sir.

Q. Do you know what those boilers cost? A. Not the two that were in there, no, sir.

Q. Now, take the height and size of the stack, 6039
how high was the stack? A. I think about 125 feet.

Q. Did you measure it? A. No, sir.

Q. Don't you know as a matter of fact it was 140 feet? A. It may be.

Q. Have you ever changed that stack? A. No, sir, it is a good piece of work.

Q. Good work; now, how large is it in diameter? A. I should say perhaps 42 inches.

Q. Don't you know as a matter of fact it is six feet? A. No, sir, I do not, from my own investigation, I do not know that it is six feet.

Q. It might be, might it not? A. Well, there would be no very good reason for putting in a stack six feet in diameter coming from two horizontal boilers their size.

Q. You are simply forming a conclusion on that, you do not know the size of it? A. No, I don't know the size of it.

Q. What was it composed of, what material? A. It is an iron stack, boiler iron.

Q. Is it not steel? A. It might be, yes. The difference between steel and wrought iron is a close figure.

Q. Now, do you know what that stack cost? A. No, sir.

6041

Q. Have you any idea? A. No, I could not tell.

Q. Now, take the soda beaters; how many soda beaters were there when you took over the plant? A. There were two originally.

Q. Do you know what those cost? A. Approximately?

Q. What? A. About $400 each.

Q. Have you changed those soda beaters? A. Yes, sir.

Q. When did you change them? A. Soon after we took the plant over.

6042

Q. What do you mean by "soon after;" what date? A. Well, within a year.

Q. When you changed them did you put in some soda beaters of your own choice? A. Yes, sir.

Q. Some of your own manufacture? A. No, not altogether manufactured though according to my specifications.

Q. Do you know who manufactured the soda beaters that you found in there at the time? A. George T. McLaughlin & Company.

Q. Is he a reputable manufacturer of soda beaters? A. Yes, sir.

Q. And are not his soda beaters used pretty generally throughout the country? A. Yes, sir.

Q. Now, then, how many pulverizer cylinders did you find there in the plant? A. Charcoal?

Q. Yes. A. Pulverizing cylinders.

Q. Yes. A. I think there were 12.

Q. Have you made any changes in those? A. Yes, sir.

Q. When did you make your changes there? A. I won't be positive about the date, but as soon as we had an opportunity to get the other machinery together, and shut down the plant for the time that we had to, to make the change.

Q. That was immediately after you took possession? A. Not immediately, no, but some time, pos- 6044
sibly in the next 18 months.

Q. Now, what pulverizer cylinders did you have to take the place of those? A. Some that I had made to my own specification.

Q. Some of your own make; now take the length and size of that line shaft, how long was that, the line shaft? A. I guess they were about 200 feet.

Q. Now, was it not 260 feet? A. It might have been.

Q. And what is the size of the steel used? A. It varies in different points along the line. 6045

Q. It varies; well, what average then—what was the average size? A. Oh, I guess it runs from 5 15-16, or 6 inches down to four.

Q. Has that line-shaft been changed since? A. Yes, sir.

Q. Did you change that to some of your own grade and make? A. We left that portion of the shafting in there, that we could use up to the first building, outside the engine house. Then the changes were made from that point on.

Q. Yes. Now, do you know what that line shaft cost originally to install? A. No, sir.

Q. You don't know anything about the cost of it? Now, about the number of wheel mills, how many wheel mills were there in the plant when you took it? A. Four.

6046 *Franklin W. Olin—Cross*

Q. Do you know anything about the cost of those mills? A. Not those particular mills, only approximately.

Q. Have you made any changes in those? A. Yes, sir.

Q. When did you make those changes? A. Soon after we took the plant over.

Q. I would like to have you be specific as to dates, what date was it? A. I should say perhaps the latter part of 1909.

6047 Q. Did you substitute for those wheel mills, some wheel mills of your own choice and make? A. Only so far as the driving machinery was concerned. The same wheels themselves which are large cast iron wheels connected together with a spindle, passes through their center, those were the only three pieces that were retained of the old wheel mills. The rest of it was all new construction.

Q. What was there besides that that was used in connection with the wheel mills, beside those three pieces? A. Well, there is the bearing in the center,

6048 the upright shaft, which we changed from cast iron to steel, to make it larger put two key ways in, to carry the main driving gear, instead of one, and tore out the foundation underneath the upright shaft that supports it, and put in our own design of step-plate, and step and boiler blocks and bearings, that carried the driving pinions that drove the end gear.

Q. Well, those particular changes that you made in the wheel mills were what proportion of the total cost of the wheel mills? A. About three-fifths.

Q. Do you know what the original wheel mills cost? A. In that plant? No, sir.

Q. Now, take the horizontal press; have you made any change in that? A. Yes, it is an entirely new press.

Q. That is a new press; what make was the horizontal press that you found there at the time? A. I believe it was made by the Allentown Foundry and Machine Company.

Q. Is not that a reputable manufacture of powder machinery? A. I would not say that they are not.

Q. Well, is not the machinery that is manufactured by that company largely accepted and used throughout the United States? A. I do not know how extensively, sir. 6050

Q. When did you make this change in the hydraulic press? A. Soon after—No, it was later than, I think in the latter part of 1909. I think it was during the winter of 1909.

Q. Now, as a matter of fact, is it not true that the Allentown Foundry & Machine Company make a good deal of machinery for the Du Pont and Laflin & Rand Powder Companies? A. I do not know.

Q. As a matter of fact were not these very machines, this very horizontal press, made for the Laflin & Rand Company? A. I do not know, sir. 6051

Q. Now, the Corning Mill; do you know anything about the original capacity of that Corning Mill? A. In a general way.

Q. What was its capacity? A. I should think it would be competent for 1,000 kegs a day, if you ran it hours enough.

Q. For how many hours' run do you say? A. It ought to turn out 200 to 250 kegs an hour.

Q. That would be 1,000 kegs during how much time? A. Six to eight hours.

Q. Is it not customary to run the Corning Mills longer than that, about eight hours? A. About eight hours.

Q. Then, would not that Corning Mill have the

capacity of about 1,800 odd kegs output? A. Well, that would be rather overloading it.

Q. At any rate, it was a substantial Corning Mill, was it not? A. Yes, sir.

Q. Do you know what it cost? A. No, sir.

Q. You have that Corning Mill yet? A. No, sir.

Q. What happened to it? A. It blew up.

Q. Yes; now, is not that the reason that you substituted another Corning mill for it—because it was destroyed by explosion? A. No, sir, not al-

6053 together.

Q. You did not attempt to substitute anything for it until after it was destroyed, did you? A. No, sir, we used that until an accident destroyed it.

Q. When was it that an accident destroyed it? A. I think in the late winter or early spring in 1910.

Q. So you used it up until the latter part of 1910?

Q. Now, take the glazed building, and barrels, do you know anything about what they cost? A. No, sir.

6054 Q. Have you made any change in those? A. Some changes, yes, sir.

Q. Well, how much? A. Changed—strengthened up the foundations and driving apparatus.

Q. What was the capacity of those glazed mills? A. Well, we never operated all three of them at one time. There were three glazed mills, one of them with rather poor location, and I would say weak heads. We never operated that mill but very little.

Q. Did you not soon after you took over the Buckeye plant, make some changes for the purpose of making rifle powder? A. Well, there would necessarily be some changes made in little details in the dressing mill, as we call it, in cracking finer grains —but no changes were made for making rifle pow-

der that would not have been made for making blasting powder.

Q. Does it not require a finer grade of powder for rifle powder than it does blasting powders? A. That comes in the dressing of the sieves, and in the kind of material in the cracking of it.

Q. And is not there a difference in the formula? A. Different material, but don't call for any material change in the kind of machinery that you pass the material through.

6056

Q. Will you state in detail, so that we may know exactly how it happened, that you expended the sum of $100,000 in making additions to the Buckeye plant from the time you purchased it down to the present time?

Q. In what way did you spend this $100,000? Give us the details of that. A. I cannot give you details in dollars and cents on the different parts of the work, not the details.

Q. Tell us in detail what the repairs were that you made, so that we may form some conclusion about that. A. We put in a new soda mill and soda stock house.

6057

Q. A new house entirely? A. In the charcoal warehouse, and charcoal pulverizing mill.

Q. That is a new house entirely? A. Well, it was put in the place where the old one stood.

Q. And what happened to the old one, did you tear that down? A. Why, the materials that were being pulverized would leak out through the barrels around the shaft, and the whole thing was getting in such shape that we could not use it.

Q. Then you tore it down and put another one in its place? A. Tore it down and put a new building there, and put new barrels in.

Q. All right; now, what else? A. We put in a keg shop, a keg making shop.

Q. That was a new plant, was it? A. Yes, it was

new, and a small warehouse near the railroad for storing materials.

Q. Now this keg plant that you put in, that was for the purpose of manufacturing kegs, going into the business of manufacturing powder kegs? A. Yes, sir.

Q. And you manufactured powder kegs there not only for your own use, but to sell and dispose of them, did you not, as a part of your business? A. No, sir.

6059 Q. How much did this keg plant cost you? A. I should say seven to eight thousand dollars.

Q. That included everything, machinery and all? A. Yes, sir, I should say so.

Q. Well, now, what next? A. Starting in on the line going in the same directions that the crude materials would go through the mill, the Number 1 mill was not changed, and is standing idle still. No. 2 was moved to a new location, so that we could put in the foundations while the mill was in operation, and all of the machinery as I have related, except

6060 the two wheels, the two large wheels and the spindle was disqualified and thrown away, and new machinery of a different design put in. That was the same system we followed with all the wheel mills, which was to try and keep some of them in operation while we were rebuilding one at a time.

Q. How about No. 3 wheel mill? A. No. 3 wheel mill is a new outfit throughout, except the wheels and spindle.

Q. As a matter of fact, did not No. 3 wheel mill blow up? A. Oh, yes.

Q. And you had to reconstruct it? A. We had some explosions in those mills.

Q. That was the reason that you had to rebuild No. 3 mill, was it not? A. Well, when it blew up the foundation, the I-beams were bent, and could not be used again.

Q. Well, you could not charge that up to the original construction, would you? A. Well, we were tearing out those same mills and would have this one if it had been blown up.

Q. I will ask you now as the necessary actual expense, No. 3 wheel mill was blown up and you rebuilt it for that reason? A. No, we had to rebuild it, because it was blown up, but it was scheduled for rebuilding, irrespective of this.

Q. You scheduled it anyhow? A. Yes.

Q. All right; what is the next thing? A. The press was a defective press at the time we bought it. 6062

Q. You mean the hydraulic press? A. Yes.

Q. Was this one of the presses that was made by the Allentown people? A. Yes.

Q. And you think that that was not an efficient press? A. No, I should consider it an incompetent press.

Q. Well, how much about, did you pay for a new press to take the place of that one? A. The press and the pump were put in together in the new plant, and cost about $4,000 for the machinery, independent of the settings and fittings. 6063

Q. And the old press, the Allentown press, do you know whether that has been used in any other place? A. Yes, it is in use now.

Q. Whereabouts? A. In the same plant.

Q. I see. You have not thrown it away? A. No, sir.

Q. All right; now, what is the next thing? A. The Corning mill was rebuilt.

Q. The Corning mill blew up, didn't it? A. Yes, and no particular change was made at that time, but later we changed the construction of the mill somewhat.

Q. You mean after it blew up you changed the construction of the mill when you put in a new Corning mill? A. Yes, sir.

6064 Q. Now, what else did you change? A. Stripped out the foundations, and driving line of the glaze mills, made no material change in the barrels, except to repair them, and to stop the use of the light barrels, those with the light heads, and the packing house, which is the last in the line—we practically put in new outfit entirely.

Q. When did you make that change? A. Before we started in to manufacture powder at all.

6065 Q. How much did it cost you to make the change in the packing house? A. Not a great item, $600 or $800.

Q. Now, how long did it take you to install that? A. The packing house machinery?

Q. Yes. A. Perhaps thirty days.

Q. Now, you spoke about a new separating process. What did you do with that that was there, how much did that cost you? A. That is the packing house that I am speaking of, the separator.

Q. Now, as a matter of fact, was not that separator put in for the purpose of making rifle pow-

6066 der, so as to make smaller sizes? A. No, sir.

Q. It had nothing to do with rifle powder? A. That would make rifle powder, but the whole building was so weak and vibrated so, that it was not considered a satisfactory outfit. The entire building itself and mill would shake when the machine was running. The driving crank shaft was up on a wooden trestle, and it was changed from that to a solid foundation on the ground, so as to take the vibration out of the mill.

Q. Did you buy at any time any additional land? A. We bought some additional land.

Q. How much additional land did you buy? A. I think we bought between 60 and 80 acres at first, on the east side of the plant.

Q. How much did you pay for that? A. It is not in the amount that I stated.

Q. Now, you testified about a man by the name of Franks who worked for you, as a powder man for some time, I believe? A. Yes, sir.

Q. You stated that he had worked for you for a long time? A. Yes, sir.

Q. Do you know anything at all whether he had worked for the Buckeye Powder Company? A. I do not.

Q. Would you say he did not? A. I would not say, sir.

Q. Now you regarded him as a perfectly compe- 6068
tent man? A. Why, at times the fellow was troubled with drinking, and I should not consider him competent at those times.

Q. I will ask you to state whether or not, on a certain occasion, due to the incompetency of your foreman, you had about 25,000 kegs of powder that were defective and became solid, and caked in the kegs, so that you had practically to destroy and throw away this whole amount?

Q. I am speaking now about your foreman? A. The Buckeye plant.

Q. In the Western Powder Company's plant. A. 6069
I do not recall any such experience.

Q. Did you ever have any such experience? A. No, sir.

Q. Did you ever have such an experience at all in connection with your operation since you have taken over the Buckeye Powder Plant, where a large batch of your powder proved to be faulty, and caked in the kegs? A. I have had that experience, and it occurs at all plants.

Q. That happens at all plants? A. Yes, to some degree.

Q. Now, how much was it at this particular time, or can you recall any particular time? A. I do not recall the particular time to which you refer.

Q. Will you state how much powder there was

at any time, that you found in this condition. A. I cannot state that.

Q. It was a very large amount, was it not? A. I do not remember the circumstances.

Q. Do you know of a man by the name of Tinlin? A. Tinlin, I know a man of that name.

Q. Did he at any time work for you in the capacity of a foreman? A. He was a salesman.

Q. Did he at any time ever make any recommendation to you concerning powder, which recommendation you followed, and which proved to be a loss to you? A. We may have experimented with some ideas that he presented. I would not consider Mr. Tinlin versed in the manufacture of powder, but he may have brought something in—something about the powder that we may have tried.

Q. And did not you have considerable loss, on account of making powder which he had recommended to you? A. No very great loss.

Q. No very great loss. Now, did you at any time, from 1908 down to the present time, operate your mills at full capacity? A. Yes.

Q. When was that, what period? A. That statement that I supplied there shows the output to much better advantage than I can state it from memory.

Q. Can you state now when it was you say you did operate to the full capacity, I would like to have you state. A. Largely through the late fall and winter season we will be busy on blasting powder.

Q. Can you make as many kegs of rifle powder per day as you can make kegs of blasting powder? A. No, sir.

Q. So that when your mills were engaged in making rifle powder, your capacity as to number of kegs would be considerably less, would it not? A. Yes.

Q. And is it not a fact that the capacity as to

number of kegs of the Buckeye Company's plant was very much reduced when you installed the making of rifle powder, as to number of kegs? A. As to number of kegs, it would be reduced on rifle powder, yes, sir.

Q. Now you stated when you were asked by Mr. Button if you were willing to state something in regard to your net profits, and you did say, somewhat reluctantly, as I should judge, but you came with the figures, I will ask you to state at whose request you brought the figures here, upon which 6074
you gave the information? A. Nobody's.

Q. At nobody's request, you brought it on your own initiative? A. They were in the files that I asked for.

Q. If you were not forced to bring that information, why did you do it voluntarily? A. It was in the file that was given to me, when I asked for it at my office.

Q. And you did not do it at anybody's request? A. No, sir.

Q. Now, you gave a statement showing certain profits, which you had made over a certain period; 6075
were those profits gross or net? A. Net profits.

Q. Those were net profits. You also were interrogated about a salary that you paid to Mr. Waddell. Will you state whether or not at that time Mr. Waddell's two sons were in your employ? A. Yes, sir.

Q. And did they get their salary monthly? A. I think they did.

Q. You say this salary that was paid to Mr. Waddell was all of the same transaction with your purchase of the plant? A. I think it was all worked out in the same period of time.

Q. Now, as a matter of fact, did not Mr. Waddell make you a separate and distinct proposition in writing? A. It is separated from the proposition on the plant. Yes, sir.

Q. Now, was there anything in the fact that you gave him notes for the payment of his salary, that had anything to do with the making of that contract with you to employ him. Would you have employed him at the salary which you gave him, if you had to pay him cash? A. Well, I cannot say as to that. We were short of funds at that time.

Q. It was for your convenience, was it not? A. It might have been we were short of funds in purchasing and furnishing the working capital for that
6077 plant and paying for it, and we managed everything we could, to make our cash go as far as it would.

Q. Then it was for your convenience that the arrangement was made, so that you had time within which to pay him this salary? A. It might have been so.

Re-direct examination by Mr. Button:

Q. During the time that you were paying Mr. Waddell those $12,000 of notes, you were making
6078 about 100,000 kegs of blasting powder, were you not, in that year, according to this statement? A. Yes, sir.

Q. Now, did you find it necessary to fill Mr. Waddell's place at the end of the year? A. Why, that was the end of our contract with him.

Q. Did you hire somebody else to take his place? A. Yes, sir.

Q. Who did you hire? A. Mr. Walter H. Allen.

Q. Do you recollect the salary what you paid Mr. Allen? A. I am quite sure—it was $1500 a year.

Q. Now, at the same time that you made the arrangement for this $12,000 of notes, you made an arrangement to pay Mr. Waddell's two sons a salary for a year, do you recollect what those salaries were? A. I think M. C. Waddell, the son that was at the factory was $1500 a year. I think the other

son that was in the office was not more than that, and I am inclined to think a little less.

Q. And when the year was up, they all quit—did they or not remain? A. I am not sure that Mr. M. C. Waddell, who was serving us at the factory, quit at the same time as Mr. R. S. Waddell, Senior, but Mr. R. S. Waddell, Junior, that was in the office at Peoria terminated their employment.

Q. The $75,000 you paid for the property was a lump-sum price, there was no distinction between the land and buildings, I take it? A. No. A lump price. 6080

Q. Now, what was the general capacity of the mill for blasting powder? A. Well, that would vary according to the parties that were running the mill. You can have the capacity of the mill anything you see fit, if you put the powder through. It is a difficult matter to state capacity. Ordinarily, I should say, that mill was competent to make 800 kegs of powder.

Q. Is the Schaghticoke a very old mill? A. Yes, sir. 6081

Q. Now, you have no specific recollection of buying buckeye powder, I understand, from the Buckeye Powder Company? A. No, sir.

Q. You simply say you may have done so? A. Yes, sir.

Q. Was your Equitable mill built for the purpose of fighting the Phoenix Mill? A. No, sir.

Re-cross examination by Mr. Abbott:

Q. In making this arrangement with Mr. Waddell, which you say terminated after one year, was or was not that agreement made for just one year. Was not that the understanding? A. I think so.

Q. And you were not bound to employ him longer, nor was he bound to remain? A. Yes, sir, that is all.

6082 *John F. Pierce—Direct*

JOHN F. PIERCE, called as a witness for the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Button:

Q. Will you state to the jury what your relation to the powder business has been and when you began and what your experience is? A. I began in 1875, practically, working in mills. I worked for the Hazard Powder Company about two years and
6083 then went to the Austin Powder Company and worked 17 years.

Q. What was the capacity of the Austin? A. When I left them they had two plants. The two plants ran, I think, about 1,600 kegs a day.

Q. What was your position with the Austin Company? Manufacturing sporting powder.

Q. Did you have the actual charge of manufacture? A. No; there was a superintendent there but I had charge of the processes it went through.

Q. Were you familiar with the machinery used in that regard? A. Yes, sir.

6084 Q. Have you any experience with black blasting powder and the machinery to manufacture that powder? A. Yes, sir.

Q. Did you have charge of repairs to plants and machinery? A. Not at the Austin Company.

Q. Were you familiar enough with the machinery at the time to state whether or not it was in a good condition or not, or what it should be? A. During my 17 years' experience with the Austin, we had but one explosion in the rifle department.

Q. Where did you go after the 17 years? A. I went to the Equitable Powder Company.

Q. What year did you begin with that company? A. 1894.

Q. How long did you remain with the Equitable?

A. I have been with the Equitable up to a year ago last August, principally, most of the time.

Q. What were your duties during that period? A. I had charge of the East Alton plant.

Q. What kind of powder was manufactured there? A. Black blasting powder.

Q. Did you have anything to do with the building of that plant? A. All the construction work was under my supervision while there at East Alton.

Q. Did you have anything to do with the instal- 6086
lation of the machinery? A. I assembled all parts of the machinery that were put in.

Q. You did it all? A. Yes.

Q. When was that? A. From 1894, and I stopped assembling machinery a year ago last August.

Q. Did you have charge of this machinery during all that time? A. I was general superintendent about two or three years, going from plant to plant, assembling, inspecting, directing the manufacture of powder.

Q. What plants did you visit? A. I visited the 6087
Fort Smith plant——

Q. That is Fort Smith, Arkansas? A. Arkansas.

Q. Is that a plant owned by the Equitable Company? A. Yes.

Q. When was that built? A. I cannot tell you exactly just when it was built.

Q. Did you build that plant? A. I assembled every piece of machinery and every gear and started every mill.

Q. What other plants did the Equitable have that you visited? A. The Egyptian plant.

Q. When did you get interested in that? A. I was sent down to inspect it by Mr. Olin.

Q. About when? A. About 1906, I think.

Q. And you were familiar with that and its machinery, were you? A. I put in some improvements in there and operated the machinery for possibly two or three months.

Q. Are you familiar then with the operation of plants as well as their construction? A. Yes, sir, every part of them.

Q. Are you connected with any powder company at the present time? A. No.

6089 Q. At any time, Mr. Pierce, were you commissioned to examine the plant of the Buckeye Powder Company? A. In company with Mr. Olin, Mr. Lent and Mr. Waddell, I visited the plant in 1908, I think in the month of May.

Q. In May, 1908? A. I think it was that month, in the Spring.

Q. How long did you stay there on that trip? A. We stayed on the ground inspecting the mills one day.

6090 Q. How careful an inspection of that plant did you make at that time? A. The mills were not in operation when we arrived on the ground. With the assistance of Mr. N. C. Waddell, as a clerk, I visited all the mills and took measurements of the gear and motors and made as thorough an inspection as I could.

Q. Examined the condition of all the machinery and buildings? A. Yes, sir.

Q. And that was for the purpose of reporting to whom? A. Mr. Olin and Mr. Lent.

Q. And you made a report to them? A. I made a report that evening, and the next evening at the National Hotel in Peoria.

Q. What was the general condition of that plant at that time? A. Very poor.

Q. Fit to run? A. In my judgment; no, sir.

Q. It was not running at that time? A. It was not running.

Q. What is the first building in a powder plant so far as the progress of material from raw material to the finished product goes? A. The charcoal house was the first on the line there.

Q. What is a charcoal house—a place to store charcoal? A. A house for the storage of charcoal.

Q. Did they have one there? A. They had a sort of a corn crib for one and a shed that leaked for another.

Q. A corn crib, with openings in the side? A. Yes. 6092

Q. Is it necessary to keep charcoal dry in order to properly manufacture powder? A. It should be absolutely dry.

Q. Would these buildings keep the charcoal dry? A. No, sir.

Q. What is the result of having wet charcoal on the product? A. It would not work satisfactorily and it pulverizes—cakes on the cylinder, and consequently it cannot be used.

Q. Sticks to the sides of the cylinders? A. Sticks to the sides of the bands.

Q. In your opinion were those fit houses? A. No, sir. 6093

Q. The next is a smokestack. A. The smokestack is next on the line there.

Q. How was that? A. It was a very good stack.

Q. What came next? A. The powerhouse, the boiler house.

Q. How many boilers were there? A. There were two at that time.

Q. First, about the house; in what condition was the boiler house itself? A. The boiler house building was a satisfactory building. The wall was somewhat shaky under the boilers.

Q. What would be the effect of that, if any? A. There would be a settlement, and probably it would disturb your joints on your pipe line.

Q. What about the boilers themselves, as to their condition? A. As far as I could see, they were very good.

Q. How about their capacities, so far as whether they were big enough? A. They were large enough for the work they were doing, but if they were running night and day it would be almost absolutely necessary to install another boiler, which we did the next year.

Q. For what reason would it be necessary? A.
6095 To give us ample time to clean and scale a boiler.

Q. How much of an operation is it to clean a boiler; how long does it take? A. From three to four days, sometimes, to scale a boiler properly.

Q. For the boilers they had would it require a shut-down of a portion of the plant, to clean them? A. Well, I don't think one boiler would keep up the operations long.

Q. And you say that later you installed another one to supplement them? A. Yes, sir.

Q. You said something about the walls or foun-
6096 dations under this boiler being bad. Were those repaired later? A. Yes, they were reset.

Q. Next is the engine house down the line? A. The power house.

Q. What kind of an engine did they have? A. A Hamilton-Corliss engine, I think.

Q. What was its condition? A. The cylinder we found was cracked.

Q. Had it been repaired or patched? A. It had been patched; yes, sir.

Q. What effect did that have upon the efficiency of the boiler or of the engine? A. At that time the motive power was strong, although the cylinder was cracked.

Q. Was that repaired later? A. Not while I was there. There was a new cylinder there ready to go in.

Q. They had procured a new cylinder? A. They had bought a new cylinder, yes.

Q. That was later, next year. What is the next house or building? A. The soda mill.

Q. What purpose is that used for? A. It is for grinding the soda to a certain fineness.

Q. And is it used for the storage of the soda, too, raw material? A. Just for the output of the 24 hours.

Q. Did they have machines there known as soda beaters? A. Yes, sir. 6098

Q. How many did they have? A. Two.

Q. What is the purpose of those machines? A. The raw material is fed into the mill and comes out into what we call a dust room.

Q. In what condition was that? A. The beaters were in good condition, that is the machines.

Q. What can you say about the location and economy of that soda mill, the arrangement of that? A. Well, I could not call them modern. The soda, the raw material, was taken up the hill and then came out again in the basement. 6099

Q. That is, they put it up and shot it down the hill? A. Yes, from the cars, just hoist it up.

Q. What is the objection to that? A. It is not economy.

Q. Was it changed later? A. Yes, sir.

Q. In what way, what did you do? A. Built a soda house—a fire-proof building right on the ground.

Q. The same level? A. The same level as the beater.

Q. Is the pulverizing mill next down the line? A. The pulverizing mill, yes.

Q. What did you pulverize in that mill? A. Charcoal and sulphur.

Q. In grinders? A. They are cylinders.

Q. How many cylinders were there? A. I think there were twelve.

Q. How were they? A. Some of them were in very bad shape. They became loose on the head, the shaft went through; the bearings became loosened and caused considerable trouble.

Q. How was the power transmitted by belts. There was one belt outside the building and one inside.

6101 Q. How about that arrangement, as to its desirability? A. It was a very poor and dangerous arrangement.

Q. Why was it dangerous? A. The friction of the belt sometimes getting loose and the charcoal dust almost continuously around there, there was danger of fire.

Q. What should the arrangement be? A. It should be driven with the shaft line or a chain outside the building.

Q. That is something that could not cause friction? A. Yes.

6102 Q. Was that changed later? A. Yes.

Q. You know it was changed, do you? A. I have seen it after it was changed. I did not change it.

Q. Was there anything done to the cylinders themselves; that is, were they changed? A. New ones were put in, with no shaft protruding from the barrels. The chains were cast on to the heads of the bearings. Two of them did the work of the twelve.

Q. Did you put in two instead of the twelve? A. Two instead of the twelve.

Q. What effect would that have upon the amount of labor required? A. It would cut it in half.

Q. Where was the sulphur storehouse? A. Under the charcoal pulverizer.

Q. In this same building? A. Yes, sir.

Q. What about that arrangement? A. It was a very poor arrangement.

Q. Why? A. Well, in the case of fire, if sulphur gets afire it is a pretty hard matter to fight it, on account of the fumes.

Q. Was that changed? A. Yes. There is a fire wall between the storehouse.

Q. Now, next is the wheel mills, as you go down? How many were there? A. Four.

Q. How about their location? A. The location of No. 1 in my judgment was too close to the mill. 6104

Q. How close was it? A. I don't know, but I have seen fire originate there from the passenger locomotive, setting grass on fire, within 150 feet of No. 1 mill.

Q. The others were located all right? A. So far as distance was concerned, yes.

Q. Take No. 1; what was its condition? A. The wall, the foundation, was not heavy enough in my opinion; the I-beams were not deep enough; the bearings of the vertical shaft were too low.

Q. Too what? A. Too low.

Q. How was the power transmitted to that building? A. The power was transmitted from the motor almost direct to the mill, which caused a great many interruptions. 6105

Q. Why? A. It was necessary to shut the motor down to take the charge; and in starting up the mill quite frequently the belt would run off, as the motor was not up to speed, and it was necessary to get about four men to place the belt back on there again, to move those large wheels, weighing about eight tons each.

Q. Did that occur frequently to your knowledge? A. Quite frequently. And sometimes it would occur in the night when there would not be force enough to put on the belt; and it meant that we

would lose the production of that one mill at different times.

Q. You were there later for a considerable period, were you? A. I was there later for six months, at one time.

Q. Was that change finally made? A. Yes, sir.

Q. How about the gears; where were they in that building? A. In No. 1?

Q. Yes. A. They were underneath—underneath driven.

6107 Q. Were they properly arranged? A. I don't think the bridge trees were strong enough, but as the mill was not in operation I could not form an opinion until after I saw it operated.

Q. Were those later changed? A. They were all changed with the except of No. 1 wheel mill.

Q. No. 1 was left as it was, was it? A. It was in 1912, when I left there.

Q. How was the condition of No. 2? A. That was a duplicate of No. 1 with the exception that it was impossible to hold the stand that supports the

6108 cheeks—that is, the bearing on the vertical shaft.

Q. What effect has that? A. It allows the wheel to surge. It throws the vertical shaft out of plumb, the right angle shafts coming into the gears are not centered; there is danger of breaking the gears.

Q. Danger to the machinery, you mean? A. I do.

Q. Was that remedied later? A. After it was rebuilt, yes, sir.

Q. How about No. 3? A. No. 3 was a duplicate of the same thing, with the exception the bed was cracked.

Q. What is the bed, the bed plate? A. The bed plate that the wheels operate on.

Q. Is that a heavy construction, or should it be? A. It should be. I don't know the diameter of that

metal, because I could not measure those beds very well.

Q. What is the effect of that defect? A. A cracked bed is a dangerous proposition.

Q. Why? A. You are apt to get a piece of metal, if cracked, under a wheel and produce an explosion.

Q. Was that changed? A. Later on it was changed, and rebuilt.

Q. At that time was this building braced up with timbers or something of the sort? A. There was a 6110
reinforcing of it. Some of those I-beams had become twisted and warped.

Q. Was No. 4 a wheel mill of the same character? A. No, sir; the No. 4 wheel mill was put in very good workmanlike shape.

Q. What were the differences between that and the others? A. They had a good deal better bearings for the upright shaft. It was not necessary to slow the motor down, so that the motor was always up to speed. I never had in the year I was general superintendent over that plant—I never had an 6111
hour's trouble with that mill.

Q. How about the rate of speed of that mill as compared with the other three? A. It was higher than the other three, and consequently it gave us a little worry about watching it. It used up more water, in manufacturing the powder, that is keeping the powder in the condition it should be kept in, as compared with the other three mills.

Q. That was on account of the variation necessary in the treatment of that wheel? A. Yes.

Q. You could not treat them all alike? A. Yes.

Q. What was the next mill? A. The press mill.

Q. What was that used for? A. For pressing your powder in the sheets, into sheets about an inch and a half thick.

Q. Is that heavy machinery? A. It is supposed to be very heavy machinery.

Q. What kind of a press did he have? A. It is necessary to get a compression of 6,000 pounds to the square inch. That would be the maximum for cold weather.

Q. What was the condition of the building and that machinery? A. The cylinder was cracked. There was a fracture in it somewhere. Later on—I am giving this testimony as I saw it then—I sup-
6113 pose there was a fracture there.

Q. What did you discover later on? A. After the mill was operating?

Q. Yes; what effect did this crack have? A. At a certain pressure the water or oil would ooze out through this fracture.

Q. What effect would that have? A. It was a dangerous proposition with that amount of pressure on.

Q. Danger from what? A. Danger of breaking the press.

6114 Q. Was that changed? A. There was a new one installed later on for that purpose.

Q. What kind of a building was that? A. A very cheap affair; with a great many lean-tos and sheds to it.

Q. Wooden? A. Wooden.

Q. Did the Corning mill come next? A. Yes, the Corning mill came next.

Q. What can you say about that? The condition of that, what was the condition of that, both as to the building and the machinery? A. The Corning mill was a very good machine with the exception of the way it was driven. The rods communicating with the shaker box was attached to the frame of the mill, consequently there was considerable vibration, and it would throw some of the shafting lines out of alignment. A pier should have been built

with rods extended so as to throw all that strain off from the frame.

Q. Was that done? A. It was done later—after the mill was remodeled.

Q. There was just one Corning mill? A. That was all.

Q. How about the glaze mill; does that come next? A. That comes next.

Q. How many of them? A. Three buildings.

Q. Take No. 1. These are the mills in which you have the glazed barrels in which the powder is polished? A. Polished and dried. 6116

Q. No. 1. How many barrels were there? A. Six barrels, I think were in there.

Q. And four barrels in No. 2 and four in No. 3? A. Yes.

Q. Making fourteen altogether. What was the condition of No. 1? A. The objection I had to that was that the gear at the driving line of shafting that drove the barrels were all iron. That should have been filled wheels.

Q. What is the objection to have that kind of iron? A. Danger from fire. 6117

Q. Danger from an explosion? A. Yes, danger from an explosion.

Q. When the powder came to that state in the glaze mill, was it subject to explosion? A. Yes, just as much as it ever is.

Q. Then you considered that dangerous, you say? A. I considered those gears dangerous. The barrels were in good condition, good barrels.

Q. What about the condition of that in regard to the other two mills, Nos. 2 and No. 3? A. We reenforced Nos. 2 and 3 by building piers, for carrying that driving line.

Q. Why was that necessary ? A. The driving line was put upon brick on the side of the building and this constant shaking and vibration threw the shafts out of line.

Q. You say you reenforced that by putting in concrete piers? A. Concrete piers under the pillow blocks.

Q. How about the light heads? A. Some of them them were of a light pattern.

Q. What effect did that have? A. I have replaced some of the same patterns in another mill that were cracked. Consequently we were a little afraid of them.

6119 Q. Supposing they were cracked, what would be the result? A. I could not tell that. It would be a dangerous proposition.

Q. Were those replaced? A. No. We never replaced any there. We did not run those barrels.

Q. Did you abandon them? A. Some of them we reenforced the head and used them.

Q. The next is the packing house. The packing house is where the finished product is separated into different sized grains? A. Yes, sir.

Q. And packed into kegs? A. Yes, sir.

Q. Sort of a finishing house? A. Yes, sir.

6120 Q. Will you not describe in a general way what the machinery is by which this separating is done? A. There are two ways of separating the powder. One is a reel, and the other is what we call a shaker, which vibrates this way or that way. (Indicating end motion and side motion.)

Q. Which did he have there? A. He had the side motion shaker.

Q. Is it something like a threshing machine outfit? A. The same thing, a common shaker that keeps vibrating back and forth, either endways or side motion.

Q. Did these different grains drop down between different sized screens? A. The box is filled with four or five or any number of screens that you want to put in.

Q. With different sized meshes? A. Different sizes of meshes.

Q. For the purpose of separating the powder into different sizes? A. Yes.

Q. How many of those machines did he have? A. He had one shaker, and he had another one with reels in it.

Q. Was that in use? A. The reels I don't think had ever been practically used, from the looks of them. I cannot say as to that.

6122

Q. How about this other separator? What was its condition? A. Well, there was some trouble. They used to bring the screens—the steel springs which supported it quite frequently. And the crank shaft was connected with the building, and the building vibrated considerably, throwing the powder sometimes to one side and sometimes to the other, not distributing it all over the sieve. Consequently we could not get a good separation.

Q. Different sized grains in the same batch? A. Yes.

Q. Was that entirely changed? A. Oh, yes.

6123

Q. The building and all? A. The building was there, but it is not in use.

Q. You built a new building and a complete new outfit? A. No. We tore out his reel apparatus. That was there when we bought the plant and installed a separator of our own.

Q. In the same building? A. The two buildings were connected; a tramway ran between the two.

Q. Did these packing houses also have three floors? A. The old one had three floors. The powder came in on the upper floor, and went through the shaker on the next floor, to the packer below.

Q. Was there any objection to that? A. Oh, yes.

Q. What was the trouble with that? A. It is better to have it on one floor, so far as the shaker and the packing house is concerned, so far as the men

6124 are concerned. They should be in sight of their machines and could stop them at once.

Q. That is, they were shut off of a part of the operation could not be seen? A. The shaker could not be seen by the packers unless they went up a vertical ladder to the second floor.

Q. That was changed? A. When they installed the new shaker.

Q. How was the material carried from one building to another in this operation? A. Well, begin-
6125 ning with the raw material, all along the line until it got to the glazing it was carted from mill to mill with horses; that is, on the tramway.

Q. What was the condition or efficiency or otherwise of the tramway? A. It was a bad proposition. It was a cause of a good deal of foreign substance being carried into the mills, as there were no boards for the men to walk one.

Q. What difference does that make? A. Foreign substances coming into a powder mill is one of the greatest things we have to guard against and
6126 attend to.

Q. On account of possible explosions? A. Yes.

Q. What was the material of which the tramway was built? A. It is simply cordwood cut into different lengths and that is built or laid upon cinders.

Q. No plank? A. No plank at all.

Q. Why was there not a plank there? A. The gauge was so narrow that it was impossible to put a line plank there and work a horse on the same place.

Q. Your objection is that these cinders and so on were likely to be tramped into the building? A. Yes.

Q. And cause explosions, I suppose? A. There was danger of that, yes.

Q. Where the tramway was in that condition was that leading into the building where the powder was advanced enough so it could be exploded? A. Yes, it was the worst part of it from the raw material until you get to the glazing.

Q. Is it true that after the powder leaves the wheel mills it is subject to explosion from that time on? A. It is as strong as ever after it leaves the wheel mills.

Q. And this tramway was after that point? A. Yes, sir. 6128

Q. You said that you considered, to begin with, the condition of the whole outfit bad. What would you say as to the condition of it as to economical arrangement for the manufacture of powder? A. There could have been labor saving there by putting in modern devices.

Q. What was the period of six months you mentioned in which you operated the plant? A. From May, 1909, until November.

Q. During that period did you see Mr. R. S. Waddell around there at all? A. On the ground once or twice. 6129

Q. That is all during that entire six months? A. Yes.

Q. Who was the general superintendent there? A. I was the general superintendent.

Q. Was that plant in May, 1908, in a condition where it could be continuously run? A. I did not see the plant until November; after that it was operating.

Q. It was not in operation, then, in May? A. It was not in operation when I saw it.

Q. From your experience, can you give an estimate, Mr. Pierce, of what a fair percentage of depreciation of a powder mill such as this would be? A. It is about figured five per cent, I believe.

Q. Five per cent per annum? A. Yes.

Q. And would that increase or decrease during shutdowns of the mills? A. The depreciation would increase.

Q. For what reason? A. The nitrate of soda has a peculiar effect on metals, rusting metals; it eats into iron very extensively.

Cross-examination by Mr. Abbott:

Q. Mr. Pierce, what mills have you had experi-
6131 ence with outside of those that you named for Mr. Button? A. Hazard mill, the two Austin plants, one at East Alton, and the Equitable, and one at Fort Smith—

Q. I meant outside of those; you have mentioned those already. How was the Hazard plant constructed—to your satisfaction? A. It was an old time plant. That was a water power. It was altogether different from the late plants.

Q. When was it first constructed? A. The Hazard?

6132 Q. Yes. A. I cannot tell you.

Q. Was it not constructed back about as far as 1835? A. I cannot tell you that. I was born there, but I don't remember it.

Q. Then you did not make any investigation of the plant at the Hazard mills? A. No.

Q. After you left that plant, was the next plant you went to? A. The Austin.

Q. Where was that located? A. Cleveland, Ohio.

Q. Did you make an examination of that plant? A. No. I went to work in the mills.

Q. I mean did you make a critical examination of the construction of the plant? A. No.

Q. You do not know how it was constructed? A. Only from observation.

Q. Was that a plant that was up to date accord-

ing to your understanding of modern construction? A. No, not all of it; part of it was.

Q. They made powder there right along? A. Yes.

Q. And made a good grade of powder right along and continued to make it, did they not? A. So far as I know.

Q. Well, you were part of the organization and you assisted in making powder, so you knew something about that, did you not? Will you answer that? A. Yes, sir.

Q. What was their next plant? A. I went to 6134
their new plant that they installed about sixteen miles from there.

Q. Was that an up to date plant? A. That was at the time.

Q. When was it that that plant was installed? A. That plant was installed in 1890 I think.

Q. 1896? A. 1890, I think.

Q. Is that plant still in operation? A. Yes, sir.

Q. Still making powder? A. I suppose so. I have not seen it.

Q. How long since you have seen it? A. I in-
stalled a press for a corning mill there some six 6135
years ago.

Q. Was it running then? A. Yes; very well.

Q. Well, the plant was running and in pretty fair shape? A. I am speaking of the new plant now.

Q. I know. Was that built along the modern lines for a plant? A. Yes, I think so.

Q. And there was nothing in that that you would not like? A. Nothing defective about it.

Q. What was the general line of the machinery they had in that plant so far as the mills were concerned? A. Du Pont.

Q. Du Pont? A. Yes, sir.

Q. Were any of them Olin machines in that

plant? A. Not until later. I installed a corning mill in there.

Q. But that was the only thing they had in there at that time? A. The corning mill and the press.

Q. The next plant was the Equitable? A. Yes.

Q. And that plant you have been connected with practically down to date? A. Since 1894.

Q. That plant was constructed largely with machinery that was designed or worked out by Mr. Olin and his associates? A. Yes.

6137 Q. You considered that an up to date plant? A. For strength and durability, yes, sir.

Q. And it was as good a plant as could be made, was it not? A. For his purposes. It did not, perhaps, cost so much money as some other plants.

Q. The machinery you used in there, though, you thought was modern, up to date machinery? A. Good machinery, throughout, yes.

Q. How long have you been connected with Mr. Olin? A. I worked for him twelve years at one time.

6138 Q. Beginning when? A. In 1894.

Q. And you have been connected with him more or less from that time on down? A. Yes, until a year ago last August.

Q. Have you ever worked in any manufacturing plant where powder machinery is made? A. No, sir.

Q. You know nothing about that. Have you been connected with the sales end of any of those plants? A. No, sir.

Q. You have not been interested in that in any way? Who was the foreman of the Buckeye plant when you first went there, do you know? A. Henry Franks.

Q. I would like to take you over this plant again, if you can go with me on a little jaunt the same as you did with Mr. Button. Take this first building,

this charcoal crib, as you call it, and sort of a shed. Is that the first and only time you had seen one built that way? A. It is the first and only time I have seen one built that way for a powder mill.

Q. You have never seen a charcoal house built that way? A. Never.

Q. And when was that charcoal house changed? A. I could not tell. I was not on the ground when it was changed.

Q. Was it changed within a year? A. No.

Q. Two years? A. I could not say. I was there 6140
one year.

Q. Is it not a fact that it was not not changed until very recent times? A. I cannot tell.

Q. And you have continued to use the same charcoal house. This smokestack you said you thought was good? A. Yes, I think so.

Q. You did not make any change in it and would not do anything in regard to that? A. Nothing at all.

Q. The boiler-house you said was good but you thought it might have settled a little? A. The walls of the boiler had settled. 6141

Q. Had settled how much? A. Cracked, so that it was absolutely necessary to reset the boilers.

Q. How long did it take you to reset those boilers? A. I don't know. That was let by contract with Cody & Company of Peoria.

Q. When was that done? A. In 1909.

Q. What part of 1909? A. I think it was done in the summer time; but I will not be positive.

Q. Do you not know that it was not done until the spring of 1910? A. Resetting the boilers?

Q. Yes. A. I do not think I was there in 1910. I was there when I reset the boilers.

Q. Well, this was in the spring of 1910 when the boilers were reset. By resetting what do you mean;

what did you do? A. Tore down the brickwork and reset and rebuilt the wall.

Q. What was the expense of doing that work? A. In installing the new boiler, I think that included the resetting of the old ones. I forget what the expense was.

Q. Is it not the reason that you found it desirable to reset the old ones was that you were installing new ones and you thought you could make the old and the new conform better by resetting them
6143 all at the same time? A. Well, the walls were shaky. It was necessary to reset them.

Q. It was simply desirable rather than necessary, was it not? A. I think it was necessary—we thought that it was.

Q. But if you had not had this new boiler to install you would not have gone to the trouble of resetting the old ones? A. I don't know. They concluded it was necessary to reset the boilers and install new ones.

Q. And you do not know what the extra expense
6144 was in connection with that because it was worked in in connection with the new boilers? A. Yes.

Q. I see. You said that these boilers were good for the work which they were doing. What did you mean by that? I would like to have you make that a little clearer. A. To conform to the plan we had.

Q. I understand, but you said they were good for the work they were doing. They were not put in for any other purpose, were they—except the work they were doing? A. I don't know. I suppose they were not.

Q. But when you found it necessary for some reason of your own to add to the boiler capacity you made this change and put in this additional boiler. Is not that true? A. That would give us an opportunity to clean up the boilers in repair.

6145

Q. Now, as to this Corlis engine—you say the cylinder was cracked. What do you mean by that? I am not acquainted with the details of these machines. Tell me what you mean by that. A. The cylinder is the intake of the steam.

Q. You mean the cylinder is the part of the structure into which the piston rod works back and forth? A. Yes, sir.

Q. Where was that cracked? A. At the base and along the side.

6146

Q. How long had you used it in that form? A. It was used in the year I was there.

Q. And how much longer? A. I don't know. I was not there after that.

Q. Then when you say it was later installed, you do not know whether it was one, two, three or four years, do you? A. I did not say it was later installed. They had the cylinder there to install it.

Q. When was it you think it was installed? A. I don't know. It was there when I went there in 1912.

6147

Q. Oh, it was still there. I will ask you in that connection, is it not often the case, in fact is it not very generally the case, that machinery of this character will sometimes become more or less injured in a manner like that without injuring its efficiency? A. Well, when water comes from the cylinder there is something wrong somewhere.

Q. That may be; but is it not true that in a great many cases machinery of that character will continue to operate very satisfactorily even though there may be some little defect of that kind? A. If it was not overloaded I presume it would.

Q. Yes. Now, then, do you know of your own knowledge of any time when this particular Corliss engine did not operate satisfactorily? A. No, sir.

Q. It continued to operate satisfactorily? A. Yes.

Q. You spoke of this soda mill house. You said that it was not what you would call modern. You did not define that. I would like to have you state in what respect it was not modern. A. The soda mill?

Q. Yes, the soda mill house. A. The dust room —there were two of them; one for each beater. They could use them alternately if they wished. They were pretty low and they used to take the bags from the wheel mill that was covered with
6149 powder into the dust room, which I don't think was a very good proposition.

Q. Now you are speaking about the way in which the management there conducted its operations, and I want to know about this particular soda mill house, what there was about it that was not modern. A. The beaters were in the basement. They were not in sight of the men operating them.

Q. And that was the only thing? A. That was a very bad feature about it.

Q. You say that was changed later. What do
6150 you mean by that? A. A new building erected, and it was on the same floor as the men operating it.

Q. But you say it was changed later. When? A. I don't know. It was changed when I last there.

Q. When did you last see it? A. 1912.

Q. It was there when you left, was it not, in the same mill? A. Yes.

Q. And so far as you know, it continued up until 1912, when you say it was changed? A. It was changed in 1912, yes.

Q. My understanding of your objection to that millhouse is that it was not economically arranged. That was your main objection to that? A. One of the main objections, yes.

Q. But they continued to use it, nevertheless, for several years after Mr. Olin purchased it, so far

as you know? A. They operated it while I was there one year.

Q. You do not know anything about it after that, until 1912? A. No.

Q. Now these soda beaters, I believe you said, were in good condition? A. Yes.

Q. In that connection I will ask you whether or not a soda beater is in general use in powder mills? A. Yes, sir.

Q. In all powder mills? A. Yes, for blasting powder. 6152

Q. Is it not a fact that in a good many powder mills they do not have soda beaters at all? That is, they use simply the raw soda, and incorporate it in that way rather than beat it into a mixture? A. I have never been to one of those mills—yes, I have; the Fort Smith plant.

Q. Do you not know that is the customary practice in a good many mills? A. No.

Q. Then you think the mill where you saw that done was exceptional? A. Yes; it was exceptional to me.

Q. How many plants altogether have you visited 6153
in the United States? A. About eleven or twelve.

Q. The next one that Mr. Button asked you about was the pulverizing mill. As I understand it, you had very little to say against the character of that mill excepting that some of the cylinders were loose and caused a little trouble? A. Yes, they caused a little trouble.

Q. In what way were they loose? A. Because the shafts—they went through the barrel heads.

Q. Was that a matter that could be repaired from time to time? A. Oh, yes, you could drive the key after they got loose, but after they got to working on a shaft, the shaft would wear smaller, and you could not keep them tight.

Q. Once in a while you would have a man go and tighten up a bolt? A. Yes.

Q. And keep them tight? A. Yes.

Q. Was that unusual in machinery of that character? A. This was not a bolt; it was a key.

Q. Well, a key, then. And they were tightened up in that way from time to time? A. Yes.

Q. That was not unusual; is it not customary in a plant of that sort? A. They have no shafts in a modern barrels.

6155 Q. In a modern plant? A. No.

Q. But are not there shafts in a good many plants in this country? A. I presume so. I have not seen but very few. The most I have seen are modern cylinders.

Q. How long did that shaft continue in that form? A. Well, I saw it in use there when I was there, when I was last at the presses.

Q. Well, I know, but it was in use up to that time? A. Never any change made, it was a source of trouble just the same.

6156 Q. Never any change made though? A. Not while I was there.

Q. So far as you know up to the present time? A. 1912 it had been changed.

Q. Mr. Pierce, I believe the next criticism you made of the plant was that some machinery was operated by belts. Is that correct? A. Transmission of the power from the motor to the shaft line. I criticise that because there was no clutch between.

Q. You thought it was dangerous and that it ought to have been operated by some sort of a fixed attachment? A. The clutch should have been between the motor and the shaft line, so it would have been unnecessary to shut the motor down when we shut the mill down.

Q. How serious a matter was that so far as mak-

ing the change was concerned? A. It would be the cost of the clutch.

Q. And how much would that amount to? A. Well, I should say possibly three hundred dollars.

Q. About $300. Was it not customary in a good many plants operating in a similar way to use the belting method? A. Use the belting and the clutch?

Q. And the clutch? A. Yes.

Q. Do you know of any mills where the clutch is not used? A. Not until I saw this one.

Q. Then your judgment was that an expenditure 6158
of three hundred dollars was necessary in order to make that a practical method? A. Of starting the mill, yes.

Q. Was there any change made in that? A. Not while I was there.

Q. Do you know whether any change was made at all? A. Yes.

Q. When? A. I don't know when. They were there in 1912 installed with clutches.

Q. You saw them in 1912? A. Yes.

Q. But they had operated in that form until 6159
after you left the plant? A. Yes.

Q. Take the sulphur house. You spoke of the arrangement of that as being very bad. A. Yes, the sulphur was stored under the charcoal cylinder.

Q. And you say that since that time, since the plant was purchased, you have put up a fire wall? A. A new building and a fire wall between the charcoal and sulphur.

Q. When was that change made in the plant? A. I could not say.

Q. Can you approximate it? A. It was there in 1912, when I went there in the spring.

Q. But the other arrangement continued in use as long as you had anything to do with the plant? A. The year I was there it continued, yes.

Q. Take these wheel mills. The location of one of them you say was too close to the railroad? A. I think so.

Q. That was simply a matter of location. You thought it would be safer if it was somewhere else, on account of fire; is that right? A. Yes.

Q. Did you make any change in that regard? A. No, sir.

Q. It is still there, is it not? A. It was in 1912, but not in operation.

6161 Q. But, nevertheless, you did use it for some time in that form? A. We used it.

Q. When you left there? A. Yes, sir.

Q. You spoke about some of the beams being set a little too deep in that building. Is that right—the wheel mill No. 1—the wheels were not heavy enough and some of the I-beams were too deep? A. Too light.

Q. Well, that is the same thing. A. Light.

Q. And was any change made in that regard? A. No, sir; not while I was there.

6162 Q. And they are still there so far as you know? A. No. This No. 1 is still there but not in operation.

Q. And these bearings you say were too low. Was any change made in that regard? A. In the reconstruction of the mills, yes, all of them.

Q. Did your statement as to the bearings being too low apply to any other mill or just this one? A. The bearings were too low in Nos. 1, 2 and 3.

Q. In all the mills, then? A. No, I will except No. 4.

Q. Was any change made in that while you were there? A. No, sir.

Q. And as far as you know it is still that way? A. No, it is not that way now.

Q. Then when you saw it in 1912 some change had been made? A. Yes; it was reconstructed.

Q. And you do not know when? A. No, sir.

Q. And you do not know how much the cost was? A. No, sir.

Q. The power of the motor that was used to operate that mill you say was not sufficient, you say? A. No. That is plenty of power after you got the mill started.

Q. You have no complaint, then, to make of the power? A. Of the motors? No, sir.

Q. In that connection I will ask you whether or not the electrical machinery in the building was machinery which had come from the General Electric Company? A. I cannot remember whether that was the General Electric or the Westinghouse. 6164

Q. It came from one or the other? A. One or the other.

Q. You said that also that some of these bridge trees were not strong enough? A. They were not solid enough; they should have been concrete.

Q. How long did you use them in that form? A. All the time I was there.

Q. And you do not know whether any change has been made? A. There was in the reconstruction. 6165

Q. But you do not know anything about when that change was made or what the cost was? A. No, sir.

Q. No. 2 wheel mill was a duplicate of No. 1? A. Yes, sir.

Q. And Mr. Button made some inquiries there in regard to certain of the shortcomings in No. 1, and you said those were afterwards remedied. I would like to know when it was that that change was made. A. I don't know what you refer to.

Q. Well, was there anything wrong with No. 2? A. Yes; we could not hold the stand that holds the upright—the vertical shaft.

Q. What was done with reference to that matter, any change made in that? A. We put in some

new bolts and I think every day we had the mill in operation.

Q. And when did you put those new bolts in there? A. Some time in June, 1909, I think.

Q. What was the expense of putting in those new bolts? A. Oh, the expense was nothing comparatively—only two or three dollars.

Q. And that was made as an ordinary repair, was it not? A. Duplicates, yes.

6167 Q. Now, take No. 3 wheel mill. I believe you said the bed of that mill was cracked? A. Yes.

Q. In what way was it cracked? A. Across the face of the bed.

Q. How far? A. When I saw it I think it was all the way across.

Q. When was it you saw it? A. When I examined the plant in May, 1908.

Q. In 1908 it was all the way across? A. Yes.

Q. How thick is this bed-plate? A. I don't know the thickness of those bed plates.

Q. Is it not as a matter of fact about nine inches

6168 thick? A. I never installed plates as heavy as that.

Q. Well, do you not think that was an extra heavy bed plate? A. No, I do not.

Q. Then if you know anything about what that bed plate was, so far as its character was concerned, I would like to have you tell me how thick it was. A. I don't know how thick it was.

Q. As a matter of fact, was not the crack to which you refer, simply a very slight crack that only ran a short distance across the bed—a very short distance? A. It ran across from the center to the end of the bed; that is, they are circular in shape—these beds are.

Q. I understand that, but a very short distance, was it not? A. I think it was across the bed, if I remember correctly.

Q. Is it not a fact that the crack was not more than one-sixth of the diameter across that bed and that after the crack came a band was put around on the outside, which was heated red hot before it was put on, so that when it was cold it would contract it, and made it perfectly firm and perfectly safe? A. I did not know of that. Any cracked bed cannot be as good in a powder mill as a perfect bed.

Q. I did not catch that. A. A cracked bed is not as good in a powder mill as a perfect bed.

Q. Oh, no; we will admit that. How long did 6170
you use that bed in that way? A. We used that bed while I was there.

Q. And how long after that, do you know? A. No, sir.

Q. Was it there when you were there in 1912? A. No, sir.

Q. Then you know nothing about when the change took place? A. No, sir.

Q. Now, we come to this No. 4 wheel mill. You say that was good and in first class shape? A. That was in every respect strong enough and never gave
us any trouble. 6171

Q. Thoroughly workmanlike. You spoke something about the rate of speed at which these various mills operated and some of them you thought were operated at too high speed? A. No. 4 was a little higher than the rest.

Q. What kind of a machine was it, what kind of power did you use to operate that? A. A motor.

Q. An electrical motor? A. Yes, sir.

Q. Do you not know that an electrical motor is susceptible of being regulated so that it will run at higher or lower speed with very little adjustment? A. No; I didn't know it—to get the power out of it.

Q. If that is a fact, then you could have regulated that to have made it run a little faster or a little slower, could you not? A. I could not have done it.

Q. No, but electricians do those things very readily, do they not? A. I don't know.

Q. Now, this press mill you spoke of, I wish you would describe to the jury as near as you can, so they may understand just what that press mill is. I think it is an important point for you to get that clearly before the minds of the jury if you can. A. Well, there is a cylinder with a ram connection eighteen inches in diameter—the ram is. The powder is placed in a square box, with aluminum plates,
6173 probably an inch and a half apart, filled with powder. Pumps were started to pump the water into this cylinder, forcing the ram out. It is necessary at the same time to run up a pressure of 6,000 pounds to the square inch. That is in extremely cold weather—to get the consistency of the cake to enable us to grain it. At 4,000 pounds pressure the cylinder leaked.

Q. Do you know what the pressure was that was guaranteed? In the first place, I will ask you who it was that manufactured this press mill? A. I
6174 don't know that.

Q. Was it not the Allentown Company? A. I could not tell that.

Q. Do you know what kind of a design it was commonly known as? A. A horizontal hydraulic press.

Q. Was it not a mill that was in common use by what is known as the Laflin & Rand mills? A. That I would not know.

Q. In other words, was it not a mill that was generally regarded as being one of the best in the powder manufacturing trade? A. The style—the pattern of the press was all right, but they have increased the strength of the cylinders by substituting steel. I think that was a cast iron cylinder. I won't be positive, though.

Q. Do you not know, as a matter of fact, that it

not only was not cast iron but was a steel cylinder made by the Bethlehem Steel Works, which are supposed to be the best steelmakers in the world? A. I don't know it.

Q. The steelmakers that make the steel for the battleships? A. I did not know that.

Q. Now, do you not know also that that press mill had what was called a factor of safety of 7? Do you know what that means in connection with a press mill? A. No, sir.

6176 Q. A factor of safety in a case of this kind, to illustrate it, would be where the mill had a capacity of 400 to 500 tons, and the mill is made for the purpose of producing four or five hundred tons, but it is guaranteed to produce seven times that much if necessary and up to that point it is considered perfectly safe; is not that right? A. I do not consider that cylinder was safe under extreme pressure, owing to the fracture in it.

Q. Very well. Then will you state why you did not so consider it? Did you ever make a test of it beyond 6,000 pounds? A. No.

6177 Q. Then it was merely your judgment? A. Yes.

Q. If the Allentown Machinery Company gave a guarantee on that, guaranteeing it to stand seven times that pressure, your judgment might be wrong in that, might it not? A. Possibly, yes, sir.

Q. Was any change made in that press mill? A. Nothing while I was there, only just ordinary repairs.

Q. But you said it in answer to a question of Mr. Button that it was changed later on, but you do not know when that was? A. No, sir.

Q. You saw some change there in 1912? A. There was a new press installed for that work.

Q. You said that there was a crack in that press mill? Where was that crack? A. I could not locate the crack.

Q. Why did you say there was one then? A. Because the water came through when the pressure was on.

Q. Could you not locate the place where the water came through? A. No, sir.

Q. You cannot conceive of it being possible that the water might be squeezed through? A. It was undoubtedly the pressure, where it would throw it out five or six feet.

Q. When you stated that there was a crack you
6179 said that simply as a supposition. You were not able to find the crack. A. We never found the crack.

Q. Then that was a guess. Now, this corning mill, I believe you stated, was a good machine? A. A good machine.

Q. You said that there was something the matter with the shaker box? A. The connecting rods were attached to the frame of the machine, which caused a vibration of the building and the room itself, which would have a tendency to throw some
6180 of the shafting out of alignment.

Q. You stated that later on some of it was changed. When was it changed? A. After an explosion, after a blow out.

Q. When was that? A. I think that was in October, 1909.

Q. Then up to that time it was used without any change being made? A. Yes.

Q. Now, we come to your glaze mill. You had three buildings there and one of those buildings, if I am not mistaken, No. 1, which contained six barrels, you thought was good; is that right? A. With the exception of the gears, yes.

Q. What about those gears was wrong? A. I should have substituted a filled wheel instead of iron.

Q. Was that substituted while you were there? A. No; they were not changed while I was there.

Q. Were any of these wheel mills changed while you were there? A. Not while I was on the ground.

Q. And did you notice at any time when they were changed? When you were there in 1912 did you see them changed? A. I never noticed them in 1912. I installed some new another glazed and put in some filled wheels.

Q. That was in addition? A. Yes.

Q. No change so far as the old ones were con- 6182
cerned? A. Yes.

Q. This packing-house was a place where you separated your powder? A. Yes.

Q. That is where these so-called separators were installed. Your judgment was that there was a different kind of a separator that was desirable; is that right? A. Yes.

Q. And you installed a different kind of a separator? A. Yes, sir.

Q. When was that installed? A. In 1909.

Q. And that was installed, was it not, for the purpose of making a finer grain of powder, such as 6183
rifle powder? A. It was installed for the purpose of all grades.

Q. It took in everything? A. Everything.

Q. But originally your purpose was to make rifle powder, which required a very much finer shaker? A. The principle is the same; the cloth is a little finer mesh.

Q. I understand the principle is the same, but your purpose in making the change was so you could make rifle powder, was it not, and at the same time making this other change you thought was desirable in the way of attachment? A. We made the change, thinking the other did not answer the purpose.

Q. But was it not one of the essential things

which Mr. Olin had in mind when he bought the Buckeye plant to make rifle powder? A. Yes.

Q. For which the plant had not been equipped before? A. Yes, sir.

Q. In order to make rifle powder was it not necessary that there should be a change made in this shaker for the purpose of getting a finer grain? A. There should have been a change in the shaker, yes.

Q. So you would have had to make that change anyhow, and when he made the change he attached
6185 it in that way? A. That was our system of attaching it with a pier on the outside. It was all done at once. I have installed three different plants with that same style.

Q. That was the style you preferred? A. Yes, sir.

Q. And what was the cost of that particular change? A. I would not know that. I had nothing to do with the cost.

Q. Can't you tell me, as a practical man, in connection with the building of a plant of that kind,
6186 what the cost might be? A. It might be a thousand dollars.

Q. Do you believe it was a thousand dollars in that case? A. It was necessary to tear out a good deal of machinery that cost us a little more there.

Q. You think a thousand dollars would be a reasonable and fair estimate of that? A. That would be a maximum amount.

Q. You spoke about there being something wrong about the track which was constructed, or the walkway along by the tramway. Have I got you correct on that? A. Yes, sir.

Q. My understanding of it was that this walkway was made of cinders; is that right? A. Between the rails, yes.

Q. And you considered that rather dangerous? A. I did.

Q. Did you substitute some other method for that? A. No, sir.

Q. Was there anything ever substituted to your knowledge? A. In 1912 I substituted a new line.

Q. In 1912? A. Foot-boards, so that the men would not have to walk on the cinders.

Q. Oh, in 1912 you substituted that? A. Yes.

Q. So you did something in the way of change when you went there in 1912? A. I installed some new work there, yes.

Q. Do you know anything about whether this 6188
walk-way had been changed before you made this change in 1912? That is to say, whether the board walk-way had been substituted for the cinder path previous to this time? A. No, sir, not that I know of.

Q. As a matter of fact, was it not changed once before this? A. Not while I was there.

Q. Do you not know that the cinder path has long been used about powder mills and very generally for the reason that it is very much safer on account of the fact that the powder dust that is carried
from place to place does not lie in a consecutive 6189
trail, so that it might be touched off at one point or another and run, it would not have that same connection, as it might on a board-walk? A. That is the first plant I have had any operations with that did not have what we call foot-boards to walk on.

Q. Do you not know that explosions have been occasioned by the fact that the constant walking of the men back and forth on these board-walks has left a little trail of powder and that sometimes a match is dropped so that it touches off the powder in one of these places and it runs to some point and causes an explosion? A. I never knew of it.

Q. You never knew that to happen? A. No.

6190

Q. Do you not know that that very thing happened in the Buckeye Powder plant one time? A. Not while I was there.

Q. You do not know that was the reason why they preferred the cinder trail? A. No.

Q. You spoke about some of these devices which you have suggested that were changed from time to time, or rather, where changes were made in 1912, which, you say, were more modern or better labor saving in one way or another. Now, I will ask you

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whether or not your judgment in that regard is not influenced by the fact that you yourself have used a certain particular grade of powder-making machinery from time to time? A. That certainly has some effect.

Q. Yes, and is not that particular grade of machinery which you have used from time to time and these various devices you speak of, machinery which is manufactured by Mr. Olin or manufacturing concerns in which he has some interest? A. Yes, most of this machinery that I have installed was manu-

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factured by Mr. Olin.

Q. And is it not a fact that the desire on his part, so far as you have knowledge of his desire, for the making of certain of these changes at the Buckeye Powder plant, was for the purpose of installing the kind of machinery that he had used in his other plants and which he himself had manufactured? A. The inspiring influence for the change was he undoubtedly thought it was a safer proposition.

Q. And he, as he thought changes were necessary, either for the purpose of making repairs, or wherever changes became necessary, for instance on account of explosions, would substitute such machinery that he himself manufactured? A. Yes, sir.

Re-direct examination by Mr. Button:

Q. At the present time you are not an employee of the Equitable or the du Pont Powder Company? A. I am not employed by any of them.

Thereafter the following persons were called and duly sworn as witnesses for the defendants and the depositions of each of said persons was taken, returned and read to the jury:

Daniel Taylor, a coal operator, operating under the firm name of Howarth & Taylor, of Edwards, 6194
Illinois.

Olive Taylor, wife of Daniel Taylor, an associate with her husband as a coal operator under the firm name of Howarth & Taylor, of Edwards, Illinois.

Samuel P. Winters, Manager, Salesman and Treasurer of the Winters Coal Company, of Peoria, Illinois.

Harvey L. Byers, a Director and Manager of the Morgan Valley Coal Company during the year 1903 to 1909 at Morgan Valley, Iowa. 6195

George M. Boyd, a member of D. M. Boyd Brick & Tile Company of Knobsnoster, Missouri.

Cassius C. Thomas, President of the Thomas Coal Company of Evansville, Indiana.

John Galbraith, Manager of the Brady Coal Company, Pontiac, Illinois.

Samuel F. Pascoe, Secretary of the Southeastern Iowa Coal Company of Hamilton, Iowa.

Robert Woods, a member of the Brady Coal Company, a partnership, of Pontiac, Illinois.

Oscar Boetticher, Vice-President of Boetticher & Kellogg of Evansville, Illinois.

William A. Linn, Assistant Purchasing Agent of the Chicago, Milwaukee and St. Paul Railway Company, at Chicago.

Edward Shirkie, President and Treasurer of the Indiana Fuel Company of Terra Haute, Indiana.

William M. Carter, Vice-President of the Sexton Building Material Company of Jolia, Illinois.

Glen W. Traer, President of the Illinois Collieries Company, of Chicago.

Gordon Buchanan, President of the Wilmington Star Mining Company of Coal City, Illinois.

Isaac Waltling of Peoria, Illinois.

6197 Samuel V. Sholl, Secretary of Sholl Brothers Coal Company of Peoria, Illinois.

James D. Findley, Superintendent of the Monarch Coal Company of Farmington, Illinois.

David Z. Thrush, Manager of the Monarch Mining Company of Farmington, Illinois.

Warren Pye, Manager of the Colyer Co-operative Coal Company of Peoria, Illinois.

Charles L. FcCoy, Purchasing Agent for James McCoy Company of Peoria, Illinois.

Archibald T. McMaster, Manager of the Olympia Coal Mining Company of Edwards Station, and

6198 Manhattan Fuel Company of East Peoria, Illinois.

Herman Koeppel, Manager of Colyer Co-operative Coal Company of Bartonville, Illinois.

Lawrence C. Higbee, Overseer of Wyoming Coal Company, of Wyoming, Illinois.

Frank Jack, Secretary and Treasurer of Isaac Walter Hardware Company.

Jacob Giebelhausen of Peoria, Illinois.

Patrick Martin of Limestone, Illinois.

Walter B. Ballentine of Wyoming, Illinois.

Frederick C. Carter of Peoria, Illinois.

James Pendergast of Galesburg, Ill.

Henry Seffer, Manager of Bell Coal Company, of Peoria, Illinois.

Stephen A. Drake, President of the Canton Coal Company, of Canton, Illinois.

George A. Hibbard, member of Hibbard Snedden & Company, of Peoria, Ill.

George A. Marshall, of Cuba, Illinois.

Louis Hefeld, operator of clay pits for F. R. Carter Brick Company, of East Peoria, Illinois.

Benheart Heintzman, of Heintzman Brothers Coal Company, a partnership, of Bartonville, Illinois.

Edward Mohn, of Mohn Coal Company, a partnership.

George W. Hatch, President of Green View Coal 6200
& Mining Company.

Louis Blank, of Fisher & Blank, a partnership, of Limestone, Illinois.

Edward Marston, of Fair Oaks Coal Company, a partnership of Peoria, Illinois.

Albert E. Whitehead, Purchasing Agent of Norris Coal Mining Company, of Canton, Illinois.

James Dalton, of Elmwood, Illinois.

George Westerby, of Peoria, Illinois.

Samuel Taylor, of Taylor & Son, Princeville, Ill.

Will V. Willis, Assistant Secretary of Norvell- 6201
Shapleigh Hardware Company, of East St. Louis, Ill.

Alexander Hamilton, President of Gartside Coal Company, of St. Louis, Mo.

William Reidelberger, Jr., Secretary of Joseph Taylor Coal Company, of Ofalon, Illinois.

Thomas Meek, President of F. M. Meek Coal Company, of Marissa, Illinois.

William Boehmer, Secretary of Boehmer Coal Company, St. Louis, Mo.

Marion T. Raumbauer, of Novinger, Mo.

Frank W. Miles, Manager of Hydraulic Pressed Brick Company, of St. Louis, Mo.

William S. Scott, President of Missouri and Illinois Coal Company, of Ferguson, Mo.

6202 *Defendants' Depositions.*

John J. Ward, Superintendent of Kansas City, Midland Coal & Mining Company, of Novinger, Mo.

Ivan B. Grant, Manager Great Northern Fuel Company, of Novinger, Mo.

John Alexander, Manager Chicago-Herron Coal Company, of Murphysboro, Ill.

Edmund C. Donk, President of Donk Brothers Coal & Coke Company, of St. Louis.

George W. Soloman, President of Black Diamond Coal Company, of Springfield, Illinois.

6203 Edward H. Buckley, Secretary Sangamon Coal Company, Springfield,Ill .

Patrick Murphy, President Capital Coal Company, of Springfield, Illinois.

David A. Watson, Manager Lincoln Park Coal & Brick Company, Springfield, Illinois.

Thomas Axford, Superintendent of South Mountain Coal Company, of Petersburgh, Illinois.

Otto F. Lenz, Vice-President and President of Petersburgh Coal Mining Company, of Petersburgh, Illinois.

6204 Silas A. Shafer, President and General Manager of Assumption Gold Mining Company.

August Reents of Reents and Brothers, a partnership, of Krann, Illinois.

George C. Kanne, member of East Peoria Brick Company, a partnership of Peoria, Illinois.

David T. Sanders, of Peoria, Illinois.

George R. Hess, of Peoria, Illinois.

Alexander Furst, Manager of Jobst-Bethard Company, Peoria, Illinois.

Timothy E. Gapen, Manager of T. E. Gapen and Company, a partnership of Sparland, Illinois.

Fred G. Bader, President Astoria Woodland Coal Company, of Astoria, Illinois.

Erasmus G. White, of the Lincoln Coal Company and Lincoln Mining Company, of Lincoln, Illinois.

Thomas Simmons, of Canton Union Coal Company, a partnership, and President Simmons Coal Company, of Canton, Illinois.

John Gallaway, of Reeves & Gallaway, Glasburn, Ill.

August F. Metzler, of Mackinaw, Illinois.

Henry Vonach, Cuba, Illinois.

Frank O. Pittman, of Cuba, Illinois.

James F. McElwee, Secretary and Treasurer of Maplewood Coal Company, of Peoria, Illinois.

6206

Deposition of OLIVE TAYLOR, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mrs. Taylor, what relation do you bear to Mr. Daniel Taylor, of Edwards, Illinois? A. He is my husband.

Q. How long have you lived at Edwards? A. More than 30 years. 6207

Q. Between the years 1903 and 1908, what business was your husband engaged in? A. The coal business.

Q. Was he an operator? A. Yes, sir.

Q. Of coal mines? A. Yes, sir.

Q. Under what name was the coal mine operated? A. Howarth and Taylor.

Q. Did you in any way assist Mr. Taylor in the conduct of his business? A. Yes, sir.

Q. You assisted him? A. Yes.

Q. In what capacity did you render assistance? A. As secretary.

Q. As secretary of the company, did you have anything to do with the keeping of the books? A. I kept them all.

6208 *Olive Taylor—Direct*

Q. Among the documents of the coal company, were there any documents kept by you which recorded the number of tons of coal mined by keg of powder? A. Yes, sir.

Q. What would you call that; was there any technical name given to those records, that you know of? A. No, I don't think so.

Q. No special name given to them? A. I don't think so; but we had to give a report every year to the State.

6209 Q. Then those records were kept by you in order to transmit a report to the State Government? A. Yes.

Q. Where was the office of Howart and Taylor with reference to the mines? A. Well, all the book work was done in our home; we had a weigh office, where the coal was weighed at the mines.

Q. Do you recall at any time, whether there was used in the mine a powder known as Buckeye powder, made by the Buckeye Powder Company? A. Yes, sir.

6210 Q. Will you state whether you know, of your own knowledge, whether there was a test of that powder made in the mine of your husband? A. Yes, sir.

Q. Who kept the records of that test? A. I did.

Q. Can you state the year that that test was made? A. No, sir, I wouldn't swear to it; I know it was 1904, but I wouldn't—

Q. Well, in swearing, Mrs. Taylor, you have to give the best of your recollection, and I am only asking you for your best recollection of when the test was made. A. It was made in the late spring of 1904, to the best of my recollection.

Q. How long a test was that? A. About three months.

Q. Do you know how that test happened to be

made; what was the reason of making the test? A. Yes, sir.

Q. What was it?

Q. If you have a reason, state the facts upon which you base that reason. A. The men wanted Buckeye.

Q. Now, what powder had you been using in the mine before that? A. I couldn't say, just immediately before, as we had used the Hazard and the Laflin and Rand and the du Pont, but which one we used just before, I don't recall. 6212

Q. During this test of the Buckeye powder in the mines, was there any other powder than Buckeye used? A. No, sir.

Q. Do you know where the records of this test are? A. We burned them.

Q. What was the occasion of your burning them, and when did you burn them? A. We went out of business in September, 1908, and we burned them. Let me see; well, I couldn't tell just when it was we burned them. We leased the mine the first of September, and we left Illinois the 8th of September; it might have been during that time or a little previous, but it was before the 8th of September. 6213

Q. Will you state, to the best of your recollection, what the records of this test show as to the tonnage obtained by each miner per keg of Buckeye powder? A. With the powder we had used previously—

Q. I am asking you about the Buckeye now. A. I don't know how to answer that.

Q. Just what did the test of Buckeye powder show? A. Between 13 and 14 tons to the keg.

By Mr. Abbott:

Q. You were asked to state what it showed as to each miner. A. I couldn't, not without our records.

By Mr. Katzenbach:

Q. Can you state the average per keg you got from your miners? A. Our test was with all the miners.

Q. What was the average? A. Between 13 and 14 per keg.

Q. Did you make any comparison of this test with a test for a corresponding three months of any other powder? A. Yes.

Q. With what powder? A. That I couldn't say.

6215 Q. What did that average show? A. Between 21 and 22 tons per keg.

Q. After this test of Buckeye powder was made, did you ever have any conversation with any person connected with the Buckeye Powder Company with reference to it? A. We made the test in the presence of a representative of the Buckeye Powder Company, that is, we figured the test out.

Q. In the presence of a representative of the Buckeye? A. Yes.

Q. Who was that? A. I wouldn't say.

6216 Q. Do you know what position he held with the Buckeye Powder Company? A. He was a representative of the Buckeye Powder Company.

Q. You don't recall his name at this time? A. Not positively.

Q. Was this a man? A. Yes, sir, I can describe the man.

Q. Just describe him. A. He was a very nice, clean looking man, not an old man, and I think he was fair complexioned, and a clean looking man, and the gentleman—

Q. Where did you make this comparison; where did you do this figuring? A. In our home.

Q. Who were present? A. Mr. Taylor, myself, and this gentleman.

Q. What was said by this gentleman and by Mr. Taylor and yourself with reference to it at that

interview, to the best of your recollection? A. He couldn't believe that it would show such a difference, but, of course, he had to accept the proof of the figures.

Q. Just state his words, to the best of your recollection. A. That is as near as I can remember.

Q. Just state what he said, as near as you can remember. A. "I wouldn't have believed there was such a difference."

Q. Have you any knowledge yourself as to what happened after this test was made, as to this demand of the miners for Buckeye powder? A. I don't know as I understand; you see, they refused to use it. 6218

Q. After the test, what did the miners do? A. We didn't use it then; not until they made a better grade.

Q. After the test, what powder did the miners want, if you know? A. Well, I don't know; I know we used the du Pont, and I suppose that is what they wanted, or we wouldn't have gotten it.

Q. You know— A. I know we used the du Pont. 6219

Q. Did you receive the bills and make the payments? A. Yes, sir.

Q. After this test, how many kegs of Buckeye powder, to the best of your recollection, was used by the miners in your husband's mines during the year 1905? A. I couldn't answer for 1905.

Q. You don't know that? A. No.

Q. Do you know for 1906? A. Yes, sir.

Q. How much? A. (Looking at paper.) 51 kegs.

By Mr. Abbott:

Q. Of Buckeye powder? A. Yes, sir, for 1906.

By Mr. Katzenbach:

Q. And during that same period, how many kegs

of any other powder, and what powder was it? A. 2,038 of du Pont.

Q. So you are using a paper; are those the figures you made yourself?

Q. From what did you take it? A. From our bills.

Q. Those were the bills in Mr. Taylor's possession? A. Yes, sir.

Q. Do you know whether or not you kept for your miners Buckeye powder up to the time you
6221 went out of business? A. Yes, sir.

Q. Could the miners obtain it if they desired to use it in the mines? A. Oh, yes.

Q. Did you ever do any of the purchasing of the supplies for the mines? A. I did it all.

Q. After you commenced to use Buckeye powder in your mines in the year 1904, did you have any conversation or communication with any agent of the E. I. du Pont de Nemours Powder Company, with reference to Buckeye powder, to your knowledge? A. No, I don't think I did.

6222 Q. Have you the records of any other year of Buckeye powder used in the mines, and of du Pont powder, as used in the mines? A. 1907.

Q. What was that? A. 820 kegs of Buckeye.

Q. How much of the du Pont? A. 2,600.

Q. Now, Mrs. Taylor, in a suit instituted in the United States District Court for the District of New Jersey, by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company and two other companies, known as the International Smokeless Powder and Chemical Company and the Eastern Dynamite Company, the Buckeye Powder Company, in answer to a demnad for the names of customers of the Buckeye Powder Company induced by the defendants, or by the other persons or corporations I will name to you, the Buckeye Powder Company has given the name

of Howarth and Taylor as one of the customers of the Buckeye Powder Company which was induced by these defendants and persons which I will name, to abandon the purchase of powder from the Buckeye Powder Company. The names of these persons are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Mozham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskell; and the following corporations: International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin and Rand Powder Company, Fairmont Powder Company and Judson Dynamite and Powder Company. Will you now state whether or not any of the persons that I have mentioned here, or any of the corporations which I have mentioned in the question, or any agent or representative of those persons or corporations, ever induced you, as purchasing agent for your husband, Daniel Taylor, trading as Howarth and Taylor, not to purchase powder of the Buckeye Powder Company?

Mr. Abbott: The question is objected to on the ground it is irrelevant and immaterial, that it calls for a conclusion of the witness and not for a statement of fact and gives no opportunity for cross-examination of the witness concerning the fact, if any exists, upon which she bases her opinion. It is also leading, in that it suggests the an-

6226 *Olive Taylor—Direct*

swer. We also object because it is incompetent, in that it usurps the prerogative of the Court and jury and calls for the mental attitude of the witness. Also because it calls for an expert opinion and the witness has not been qualified as an expert; and even if so qualified, the facts and circumstances involved in the issue are not stated so as to form an intelligent basis for the hypothesis. It also calls for a declaration favoring
6227 the defendants, and the answer of the witness necessarily constitutes a self-serving declaration by the defendant.

Said objection was overruled to which ruling the plaintiff by its counsel then and there excepted and said exception was allowed.

John Sellstab,
Judge

A. They never tried to induce us not to buy it.

Q. Now, you keep the books, I believe, and you went over the bills that were submitted? A. Yes,
6228 sir.

Q. I show you a number of bills which have been marked "Exhibit D. 10," and I will ask you to glance over those, and state whether or not they were bills received by you or by your husband in the course of his business, to your knowledge? A. Yes, sir.

Q. They were? A. Yes.

Q. When Buckeye powder was delivered to the mine, was there any additional charge for freight or cartage, or anything of that kind? A. No, sir.

Q. No such charge? A. No.

Q. I show you a number of other bills, which have been marked for the purpose of identifying them, "D. 11," and I ask you whether or not, to your knowledge, you know those bills were received

by your husband in the course of business? A. Yes, sir, that is my writing; that is mine, and that is mine (indicating), yes, sir.

Q. Will you state whether those bills show the purchase of powder— A. They do; this is my deduction of the freight, 2 per cent.

Q. And your handwriting? A. Yes, sir.

Cross-examination by Mr. Abbott:

Q. This gentleman you speak of, who was representing the Buckeye Powder Company, you stated he was present during the trial? A. During the figuring of the test; the trial was made in the mine. 6230

Q. He wasn't present at the trial; he didn't see the powder used in the so-called trial or test, did he, to your knowledge? A. I don't know that he did.

Q. He did not? A. I suppose not.

Q. All that you wanted the Court to understand was, that he was present at the time when you and your husband went over certain figures? A. Yes. 6231

Q. Were you, yourself, acquainted with the method of conducting that trial or test; did you know anything about it yourself, personally? You are not a miner yourself, are you? A. No, sir.

Q. All that you know about the result of the test is what you saw in the figures that were given you? A. The Miners' Bulletin showed it.

Q. You don't know about how that test was conducted, and how they made up their bulletins, personally? A. I don't hardly know how to explain. The powder went into the mine and they used it.

Q. Did you send it in yourself? A. No, but I saw it sent in several times.

Q. And you kept track of the coal when it came out? A. Yes.

6232 Q. You checked it up? A. Yes, sir, I checked up the bulletins.

Q. You didn't go out in the mines and make the bulletins and weigh the coal? A. I weighed the shipped coal, not the mined coal.

Q. You took the miners' bulletins and checked it up? A. Yes, sir; we copied them into the book, and we took each man's tonnage for this length of time and made our test in that way, with this gentleman.

6233 Q. But you yourself do not know anything about how this coal was produced, excepting as the returns were made to you by the men in this bulletin? A. No, I didn't see them fire the shots. I saw the sheets.

Q. And you didn't keep account of it in any way, only as a statement was made by somebody, and then you entered it on your regular books? A. Yes, sir.

Q. This trial that you speak of, you say was held in the spring of 1904? A. That's my recollection; that figuring was done in the warmer weather.

6234 Q. And the total amount of kegs of Buckeye powder and du Pont powder, which you gave in answer to questions of counsel, you made up from your papers which had been introduced here in evidence? A. Yes, sir.

Q. Other than that, you have no information upon that subject? A. No, sir.

Q. Is that right? A. Yes, but those are not quite complete; there are several other bills that we found afterwards, both of the Buckeye and the du Pont.

Q. Are those papers you say you have found since, similar to these? A. Yes, just bills like that.

Redirect examination by Mr. Katzenbach:

Q. Are they among those? A. No; it would just increase the number of kegs we got from each company, that's all.

Q. Mrs. Taylor, will you state just what sheets you meant when you stated that you took the miners' sheets or papers and entered them upon the books, and what they showed? A. The daily output of each miner.

Q. Who handed those to you? A. The weighman. 6236

Q. In whose handwriting would they be? A. The man that weighed the coal.

Q. In his handwriting? A. Yes.

Q. In the weighing of coal, would the miner superintend the weighing of his coal with the weighman? A. It was simply the work of the weighman.

Q. The miners weren't there? A. They had a check weighman.

Q. So that there were, in fact, two weighmasters, one for the miner and the other for the operator? A. Yes, sir. 6237

Q. Those sheets or memoranda, were they handed to you by the weighmaster? A. Sometimes I went and got them.

Q. Did they find their way to you? A. Yes, sir.

Q. What did you enter them on? A. On small books.

Q. And after entering them on the small books, did you enter them anywhere else in any larger books? A. The payrolls were all based on those.

Q. After the payrolls were made, were these entered into other books by you at all? A. No.

Q. They were not? A. No.

Q. Those small books that you entered them on on the sheets, those which the weighmaster either

gave you or delivered to you, where are they? A. Burned.

Q. And those from which you figured this test, are they burned? A. Yes, sir.

Recross-examination by Mr. Abbott:

Q. Do you know whether, during the period of this so-called trial or test, what the conditions were in the mine as to any special difficulties which the
6239 miners could have encountered in the use of the powder; do you know of any difficulties, of your own knowledge? A. The conditions were the same.

Q. Do you know that, of your own knowledge? A. Yes, sir.

Q. Did you go into the mines? A. No, only the tonnage showed.

Q. You only knew from what came up out of the mines the conditions inside? A. Yes, sir.

Q. And you only know that what was done in the mine, by reason of what was told you by miners who did that work? A. No, I had the sheets to
6240 show me.

Q. But you didn't see how the work was done in the mine yourself; you didn't go down to see them loading the shots and fire them? A. No.

Q. You didn't follow them up? A. No, sir.

Q. You simply took the returns as they were made to you? A. Yes, sir.

Q. Well, now, do those sheets all show the same results per miner; didn't some miners get a little more or less coal than others? A. Yes.

Q. Well, how do you account for that difference; you say the conditions were the same? A. Some men stay in and work longer than others.

Q. Longer hours? A. Yes.

Q. And will you swear that the only difference between those sheets was due to the fact that some

men stayed in and worked longer than others? A. Some men would get better shots; they would be more particular in placing those shots. 6241

Q. Isn't that true of all miners? A. Yes, sir, some are better miners.

Q. Some are better mechanics? A. Yes.

Q. Did those best miners make mistakes in the way they placed their shots? A. Yes, I guess so.

Q. And that is with any grade of powder you will get a less tonnage upon some occasions per keg of powder, than you will on other occasions with the same grade of powder? A. Yes, sir. 6242

Q. That is absolutely true? A. Yes, but I think when you take a three months' test, that ought to prove which is the better powder.

Q. Answer the question.

(Stenographer repeats question.)

A. Yes, sir.

Q. Awhile ago, on direct examination, you were asked a question with reference to whether you were induced or influenced to abandon the use of Buckeye powder by a certain large number of persons, associations and corporations, whose names were read to you by counsel; do you recall the question? A. Yes, sir. 6243

Q. Do you know all of those persons whose names were read to you? A. No, sir.

Q. And all of those corporations and associations? A. No, sir.

Q. Then, how were you able to answer so promptly that question in the negative as you did? A. Had a gentleman come to influence us not to buy Buckeye powder, I should certainly have known it.

Q. You are basing your statement that no one influenced you, upon the fact that no person came

6244 *Daniel Taylor—Direct*

to you personally and asked you to abandon Buckeye powder in so many words? A. They didn't.

Q. And that is the reason you made that statement? A. Yes, sir.

Deposition of DANIEL TAYLOR, a witness produced on behalf of the defendants, being duly sworn, was as follows:

6245

Direct examination by Mr. Katzenbach:

Q. Mr. Taylor, where do you live? A. Edwards, Illinois.

Q. About what distance is that from Peoria? A. Thirteen miles.

Q. How long have you lived at Edwards? A. About 30 years, or 31.

Q. Between the years 1903 and 1908, what business were you engaged in? A. A coal operator.

Q. Where were your mines located? A. At Ed-

6246 wards.

Q. How long were you an operator; when did you commence and when did you cease? A. I think I commenced about 1896; in 1894 or 1896.

Q. Are you still engaged in the business? A. I lease the mine.

Q. You are not actively operating at the present time? A. No, sir.

Q. When did you cease active operations? A. In 1908.

Q. Prior to the year 1906, had you ever had any connection with coal mines? A. I was a mine foreman.

Q. Where were you a mine foreman? A. At this same mine.

Q. Prior to being a mine foreman, had you ever

had any practical experience in working in mines? A. I was in among the miners.

Q. How many years of practical work as a miner did you have? A. Before that time?

Q. Yes, before you became a mine manager or foreman? A. About three years.

Q. After you became a mine foreman, did you do any work in the mines yourself? A. Yes, sir.

Q. You did work yourself? A. Yes.

Q. In the mines in which you worked as a miner or mine foreman, was any black blasting powder 6248 used? A. Yes, sir.

Q. Have you had any experience personally in the use of black blasting powder? A. Yes.

Q. State how you have used it? A. I have used it in blasting coal. I have used it loose and used it in cartridges.

Q. In the work of blasting coal, state exactly what you have done personally in the use of the powder from the beginning of the operation to the end of it? A. I have done all there was, drilled the holes, placed the powder in the holes and fired it off.

Q. How do you place the powder in the holes, in 6249 what way? A. When you put it in loose, they have what you call a charger.

Q. When you don't put it in loose, how do you put it in? A. In cartridges made with paper.

Q. State whether or not you have made cartridges of paper and charged them? A. Yes.

Q. What steps have you next taken? A. Used a fuse and lit the fuse after tamping the holes up with dirt or whatever material you would use.

Q. You used a fuse? A. Yes.

Q. After the fuse has been connected, what is the next step? A. Light it and get out of the road.

Q. Between the years 1903 and 1909, under what name did you operate? A. Howarth and Taylor.

6250 Q. Did Mr. Howarth have any connection with the company between the year 1903 and 1908? A. No, sir.

Q. Who owned the mine? A. Myself.

Q. And who operated it? A. I did.

Q. You had no associate or partner in business? A. No, sir.

Q. Who made the purchases of supplies for your coal mining operations? A. I myself, and my wife; my wife sometimes ordered.

6251 Q. Between the years 1903 and 1909, did you purchase any powder known as Buckeye powder? A. Yes, sir.

Q. From whom did you purchase it? A. From the Buckeye Powder Company that Mr. Waddell is at the head of it.

Q. What was the name of the company, if you know? A. The Buckeye Powder Company.

Q. And where were the works of the Buckeye Powder Company? A. Nearly a mile from our place.

6252 Q. With the Buckeye powder that you purchased, did you make any trial of that powder? A. Yes.

Q. How many miners did you employ, approximately, in the year 1904? A. From 75 to 100, I don't know exactly, it varied.

Q. Why did you purchase Buckeye Powder for use in your mines? State any facts which led you to purchase Buckeye powder. A. The miners asked for it.

Q. The miners did? A. Yes.

Q. You stated that after the purchase of Buckeye powder, you made a trial of it in the mines? A. Yes.

Q. Will you state just how that trial was made?

Mr. Abbott: I would like to have the witness be specific as to the time.

Q. Will you state, Mr. Taylor, when this trial was made? A. I don't believe I can tell you the month, but I am pretty positive it was 1904.

Q. You say you are not able to tell the month? A. No.

Q. How long did the trial last? A. About three months.

Q. During that time, what other powders were used in the mine other than Buckeye powder, any at all? A. I think not.

Q. None? A. No. 6254

Q. For a period of approximately three months you exclusively used Buckeye powder? A. Yes, sir.

Q. I will ask you to state in detail, as fully as you can, what was done with the Buckeye powder in your mine, and what was the result of that trial, first stating what was done with the powder, to your knowledge? A. I was in at several different times, but I can't tell just the dates I was in the mine, but in several different times I saw it used, and then we sent it in just as we had other powder, every day, as it was ordered by the men, and they 6255
used it just as they did other powder. There wasn't any particular committee or anyone going there to watch the powder used, because we just sent it in as we had other powder, and used it all together, and then, at the end of this time the miners complained that they were not satisfied with the powder. I called their manager at the works, and told him that it was not giving satisfaction.

Q. You told their manager that? A. Yes.

Q. Will you state, if you know, who the manager of the Buckeye Powder Company was? A. I believe his name was Justice.

Q. Justice? A. I think it was Justice; I am not positive of that name.

Q. In this trial, were there any records kept by you as to the tonnage produced from Buckeye powder? A. Yes, sir.

6256 Q. You have stated that you had a conversation with Mr. Justice; where did this conversation take place? A. Over the 'phone from the mill to my house.

By Mr. Abbott:

Q. And furthermore, I would like to ask the witness who Mr. Justice was? A. I don't know; I just met him there as a foreman of the works, or manager, or some position of that kind.

6257 *By Mr. Katzenbach:*

Q. You don't know what position it was? A. No.

Q. Do you know his voice? A. No, but he said that was his name, and I invited him down to my house, and he stated he was the one; that is all I know about it.

Q. When did Mr. Justice—did he accept the invitation to come to your house? A. Yes.

Q. Who was present when he came? A. Mrs. Taylor and I.

Q. Now, what did you say to Mr. Justice in that
6258 interview, and what did he say to you? (Objection overruled.) A. I said the men were becoming dissatisfied with the powder, and that it had reduced our output, and he made the statement that he thought the powder was all right, and that the men were just prejudiced against the powder, and I told him if he wished, we would produce the books and he could with us go over the accounts, and then to pick out any three months that we had used any other powder that he wished, and that we would compare it so as to satisfy him, and we did so.

Q. State fully what you did at that interview? A. We went over the bulletins for the time stated, and compared how much coal each man had loaded, with the amount of powder that he used, and we compared them with the other powder that had been used, with what we had found; the result was, that the men had been getting about—

By Mr. Abbott:

Q. Have you got those bulletins now? A. No, sir.

Q. Have you got any of the data you used at that time? A. No, sir, I think we burned it up. We tried to find it.

Q. You are testifying wholly according to your memory? A. Yes, sir; I think the records were burned up, because I leased the mine in 1908, and all those things, I think, were destroyed.

By Mr. Katzenbach: 6260

Q. State what the records show? A. The records show, that the men with other powder had been getting from 21 to 22 tons per keg, and the Buckeye they had averaged from 13 to 14 tons per keg.

Q. What did Mr. Justice say, if anything, regarding this? A. I don't believe I can give what he said; he was very much surprised, but what expressions he used, I can't give; but he seemed very much surprised, because he didn't think it could show out that way; but it was done to his 6261
own satisfaction.

Q. After this trial of Buckeye powder in your mines, what kind of powder did you keep on hand for the use of your miners? A. Hazard and du Pont.

Q. What powder had you been using prior to this trial of Buckeye powder? A. Laflin and Rand, du Pont and Hazard.

Q. After the trial of which the results you have given, did you or did you not, continue to supply any miners with Buckeye powder who desired it? A. Yes, sir.

Q. They could have it if they wanted it? A. Yes.

Q. From whom did you purchase Buckeye powder? A. We just 'phoned up to the mill, and whoever took the order, sent it up.

6262 *Daniel Taylor—Direct*

Q. Mr. Taylor, between January, 1905, and January 1st, 1908, which I think was the time you discontinued business was it not? A. In September, 1908.

Q. In September? A. Yes.

Q. Did you purchase powder from any other company or companies than the Buckeye Powder Company? A. Between what time?

Q. Between January, 1905, and September, 1908, other than the Buckeye Powder Company? A.
6263 The du Pont.

Q. Any purchases from the Buckeye Powder Company, will you state whether or not the Buckeye Powder Company delivered the powder to your mines? A. Yes, sir.

Q. Will you state, in purchasing du Pont powder, whether or not the du Pont powder was delivered to your mine? A. Yes, sir.

Q. After the purchase of Buckeye powder, did you ever have any conversation or communication with any agent of the E. I. du Pont de Nemours
6264 Powder Company with reference to Buckeye powder? A. I don't call to mind any.

A. No, sir.

Q. Do you know approximately how many kegs of Buckeye powder were used in your mines during the year 1906, by the miners? A. No, I don't.

Q. You don't know that? A. No.

Q. Do you know how many kegs of du Pont powder were used? A. No.

Q. You don't know how much of either? A. No, sir.

Q. How many kegs per year did you use in your mines at Edwards? A. Of du Pont?

Q. Of powder? A. When the mine was running every day, we used about 400 kegs every five or six weeks.

Q. 400? A. Yes, sir; it varied; it depended upon

how the work in that mine was; what we did for the full year, I can't tell you.

Q. How far is Edwards from Peoria? A. Thirteen miles.

Q. That is Edwards' Station? A. Yes, sir.

Q. Have you any telephone connection between your residence and Peoria? A. Yes, sir.

Q. You are connected with Peoria? A. Yes, sir.

Q. Will you state whether or not, to your own knowledge, that wire could be used during Monday, Tuesday, Wednesday or Thursday of this 6266
week? A. No, I think not; I know my 'phone was out of order, and the Central, I believe, was out.

Cross-examination by Mr. Abbott:

Q. Mr. Taylor, referring to the last question of the series of questions which were asked, first, I would like to inquire whether or not anyone, within the past few weeks, has presented to you any written paper for your information containing a similar question to that proposed to you by counsel? A. Yes.

Q. Who? A. Mr. Moffatt came out with a paper 6267
with four questions for me to answer.

Q. You examined the paper? A. Yes, sir.

Q. And signed the paper? A. Yes, sir, I answered the questions.

Q. And you gave the paper back to him? A. Yes, sir.

Q. And haven't seen it since? A. No, sir.

Q. Now, in your answer to that statement, do you wish it understood that you know all of the persons and associations and corporations whose names were read to you there? A. Individually?

Q. Yes. A. No, sir.

Q. Do you wish it understood that you know all the persons who might be representatives or agents of those persons and associations whose names were

read to you? A. To answer that, I might state I have never met any of those except those that came from the du Ponts.

Q. Who are they? A. Mr. Dooley, and I met Mr. Moffatt and Mr. Donnelly.

Q. Is that all you have met, whom you have known to be agents or representatives—— A. And Mr. Off.

Q. Anyone else? A. Well, the Peoria Fuel Company—I bought the Laflin and Rand from at one
6269 time.

Q. Anyone else? A. I have never met Mr. Rice, of Chicago; I only know him by letter; I think that's about all that I can bring to mind.

Q. Were you, at any time, under contract with any person, association or corporation to purchase powder? A. Yes, sir.

Q. With whom was that contract made? A. I made a contract with Mr. Rice.

Q. Who is Mr. Rice? A. The agent in Chicago of the du Pont Powder Company.

6270 Q. When was that contract made? A. Well, I made several with him; I can't give the dates; I believe I have one in my pocket that will give you one date at least.

Q. Did you have any contract at any time with the du Pont Powder Company, or anyone representing it, previous to this date? A. Yes, but that is about the only one I could find.

Q. And did you have any contract with the parties mentioned in this agreement, since the date of this contract? A. No; they changed it over to Dooley Brothers.

Q. After this contract was made with Dooley Brothers? A. Yes.

Q. I observe that this contract is dated November 1st, 1904, and there is annexed to it an assignment dated February 20, 1905; state how that as-

signment came to be made assigning this contract back to the du Pont Powder Company, and they releasing and discharging you from the obligations thereof; what was the purpose of that assignment? A. I don't know just whether I can give it correctly or not; but we had a powder house there that would hold 400 kegs, and they wished us to purchase the powder in 800 kegs, and I didn't have room for it, and I told them I couldn't take 800 keg lots; and I don't know whether that is in connection with that or not; but we had a few letters back 6272 and forth with reference to that.

Q. Isn't it a fact, that after you assigned this contract, you began to deal with Dooley Brothers? A. Yes, sir.

Q. And they would furnish you powder in smaller quantities, 400 at a time? A. At a stated price, but there was a difference in the price.

Q. Have you that contract? A. Yes, sir.

Q. Produce it. A. (Witness produces contract.)

Q. Have you any other contract with the Dooley Brothers, prior to the date of the one you have just 6273 handed me? The date of this contract of Dooley Brothers, appears to be November 25, 1907; do you understand the question? A. Yes, whether there was an earlier contract than that?

Q. Yes. A. I was just trying to bring it to mind; I don't just remember. It might be possible to find one, if there was any, but I don't remember whether there was or not.

Mr. Abbott: I offer in evidence the two papers.

Said papers are marked "Exhibits P-36 and P-37."

Q. Did you ever buy any powder of the du Pont Powder Company at any time when you were not

under contract with the du Pont Powder Company? A. Yes, sir.

Q. Do you know what you paid for powder you purchased at that time? A. $1.35.

Q. When was it that you bought powder of the du Pont Powder Company when you were not under contract? A. I really can't give you the dates.

Q. Can you approximate the date? A. It was between the time that I used the Laflin and Rand, and when the men called for du Pont; but I can't
6275 give the dates, but it was earlier than any one of these contracts, before the Buckeye Company commenced.

Q. It was before these? A. Yes .

Q. Did you buy any powder of the du Pont Company not under contract, from 1903 to 1908? I will say for your information, that as you say you didn't buy any du Pont powder previous to when the Buckeye Company began business, that it began business in 1903. A. I bought du Pont powder before that.

6276 Q. But none after that, when you were not under contract? A. No.

Q. That is right? A. Yes.

Q. In other words, as I now understand you, you were under contract with the du Pont Company all the time from 1903 to 1908, and that you bought powder of the du Pont Company during that time, in pursuance of your contract or contracts? A. Yes, there was a time that I bought a few loads without the contract, from a party in Peoria.

Q. Can you state when that was? A. I am not so positive, unless I got the records, but I believe it was between 1903 and 1905, sometime in between that time.

Q. Now, I will ask you if you have any recollection of having purchased powder of the du Pont

Powder Company sometime during the early part of 1905, and from that time until about the latter part of 1906, when you didn't buy from them under contract? A. (Witness examines contract.) I don't remember buying, except under contract.

Q. Do you know whether you got any rebate or special prices other than set forth in this contract? A. $1.00 is the lowest price I ever got from the du Pont Company, and that is in one of those receipts, and I never got any rebates to bring it lower. I find I have just one receipt. 6278

Q. You stated you had about 75 to 100 miners in your mine? A. Yes, sir.

Q. You also stated that you used about four or five hundred kegs every five or six weeks? A. About 400 kegs.

Q. How many kegs of powder would one miner use; how long would it take a miner to use a keg of powder? A. A great deal depends on the miner.

Q. Take your average miner. A. Two to three days; some of them will last a little longer, but I have seen some of them use one keg in a day. 6279

Q. I observe from our records, which I assume will correspond with your bills very nearly, that you bought powder from July 1st, 1904, to the total number of 220 kegs Buckeye powder; on July 29th, you bought 300 kegs Buckeye powder. I observe, looking over a longer period, that in February, 1907, you bought 280 kegs, and in March, you bought 115 kegs, and in April, you bought 125 kegs. Now, I will ask you to state how it happened, that so large a proportion of powder that you purchased and used in your operations, was Buckeye powder? A. That is 1907, is it not?

Q. The first inquiry I made related to 1904; the latter inquiry, to 1907. A. I suppose the time when we were using the most, in 1904, was when we were using it altogether.

Q. How about the latter part? A. We were using it altogether.

Q. In both times? A. If a man wanted du Pont, we would give him du Pont, and if he wanted Buckeye, we would give him Buckeye.

Q. Then, isn't it a fact, that a very large part of your miners were demanding Buckeye powder? A. That was when we started to make the test.

Q. When was this test? A. Sometime in 1904.

6281 Q. Our records show you made a purchase in March, two purchases in July, September, October and December, 1904. Now, I would like to have you state definitely when this trial you speak of occurred. At any rate, it was in 1904? A. Yes.

Q. Our records show that you made purchases in 1905; during almost every month of 1906; during almost every month of 1907. I will ask you to state why it was, that after you made this trial which you have testified to in 1904, and had this conversation with Mr. Justice regarding the matter, you continued constantly to make large

6282 purchases of Buckeye powder? A. After the test, there were some few that desired the Buckeye powder, but the majority wanted the other. A committee came to me and asked me to make the change from Buckeye to du Pont.

Q. You said a committee came to you; what was that committee? A. The Mine Committee.

Q. What is it technically known as? A. The Mine Committee.

Q. Is it sometimes known as the Pit Committee? A. It's the same thing.

Q. What power or authority does that committee have, so far as the body of miners are concerned? A. They have the voice of the miners.

Q. A demand from the Pit Committee would be a demand from the miners as a body? A. Yes, sir.

Q. Such a demand must be observed by the operators under the agreement which exists between the operators and the miners? A. Not necessarily.

Q. Why, not necessarily? A. They have a means of carrying forward any disagreement between the Mine Committee and the foreman of the mine, to higher authority in the organization of the miners.

Q. But coal operators, as a rule, do observe the request of the Pit Committee, do they not, rather than enter in a dispute with them? A. No, sir.

6284

Q. They do not? A. No.

Q. Is that the rule? A. No, sir; it wasn't in my place.

Q. Insofar as the powder is concerned, isn't that the rule? A. I will give you just what I did; that's all I can give you.

Q. I want to get at the rule, then you can explain it. Under the contract which exists between the operators and the miners, the miners have a right to name the kind of powder they desire? A. Yes.

Q. Through the Mine Committee? A. Yes.

Q. Was it not customary that when that request is made from the miners, the operators observe it and try to conform to the request or demand of the miners?

6285

By Mr. Katzenbach:

Q. Are these rules you have spoken of, reduced to a written agreement? A. Yes, sir.

Q. Do you know the custom generally prevailing among the operators, or only what you yourself did? A. Only what I did.

A. My reference is all back to 1908; I don't know what they are doing now, but what we did at that time.

Q. This agreement that you speak of, that exists between the Coal Operators and the Miners, is not

an agreement which was executed individually by the Coal Operators? A. No, sir.

Q. It is an agreement made by the Coal Operators' Association as a body, through their chosen officers? A. Yes, sir.

Q. And the United Mine Workers, through its chosen officers? A. Yes, sir.

Q. You were a member of the Coal Operators' Association of the State of Illinois? A. Yes, sir.

Q. And you operated under that agreement? A.
6287 Yes, sir.

Q. Now, do you recall that sometime during the early part of 1905, a special price was made you and to other operators, if you know, making a very considerable cut in the price that had theretofore prevailed for du Pont powder? A. Yes, sir.

Q. There was a cut? A. When I bought not under contract I never got any reduction that way.

Q. You didn't get any reduction from the price which you paid? A. I had to pay more than I did under contract; that's what I mean.

6288 Q. My question related to a special price that was made to you about the time which I have stated? A. You will find in the contract it has reference to certain articles being at a certain price, and then, if that was reduced, we were to have our rebate.

Q. I was asking you about the purchases you made, not under contract? A. I never got any rebate when I purchased not under contract.

Q. Can you say just what you paid for du Pont powder when not under contract? A. $1.35.

Q. I thought I understood it was previous to 1903 when you paid the $1.35 rate? A. In between 1903 and 1905.

Q. Did you pay $1.35 for du Pont from 1903 to 1905? A. I am not positive, but I believe that is what I paid.

Q. But you stated you were always under contract with the du Pont Company, except a short period? A. Yes, sir.

Q. You stated you bought some powder of the du Pont Company from 1903 to 1905, when you were not under contract? A. I say, I think I did; I think I bought a load or two; I don't know the amount nor the date.

Q. Do you mean a wagonload or a carload? A. A wagonload. 6290

Q. How many would there be in that? A. About 50 to 100.

Q. I don't want to misquote you, Mr. Taylor, because I think you are trying to tell the straight truth; my recollection of your testimony was, that a while ago you stated that the only du Pont powder you bought, when not under contract, was before the Buckeye Company went out of business? A. No, I didn't make that statement.

Q. And it was—— A. I believe the statement I made was, I used Laflin and Rand before.

Q. But you didn't use any du Pont before 1903? 6291
A. Yes, we used du Pont——

Q. Did you buy that under contract? A. I am sure we did, but I can't bring it to mind.

Q. You were under contract with the du Pont Company before 1903? A. Yes, sir.

Q. Now, you stated that during the period of this trial you had with the Buckeye powder, covering nearly three months, that you bought no other powder but Buckeye powder, on your direct examination? A. I am very sure that I didn't; I don't remember buying any during that time; I probably had in the powder house, powder at that time, but I don't think I bought any; I am not positive of that, but we used that altogether.

Q. Now, have you any other bills or books of

reference that would refresh your recollection regarding any purchase made of either Buckeye or du Pont powder, except those presented here today? A. I think not. After I leased the mine, I burned up a whole lot, and I went away for a while, and I think we found about all we could.

Q. I observe that the contract which you executed with the Dooley Brothers, dated November 25th, 1907, is signed by Edward A. Moffatt, on behalf of Dooley Brothers. Is that the Mr. Moffatt
6293 who is in the room at the present time? A. Yes, sir.

Q. And he is the Mr. Moffatt to whom you referred a while ago in your testimony? A. Yes, sir.

Q. Can you recall at this time who the members of the Mine Committee were that made this demand upon you at this time? A. I can't recall; one I know who it is.

Q. Who was the one? A. Thomas Fahey.

Q. The others you don't know? A. No, but he could find out.

6294 Q. Where is Mr. Fahey now? A. At Edwards.

Re-direct examination by Mr. Katzenbach:

Q. Mr. Taylor, who was it that asked you to make this trial of Buckeye powder? A. The miners.

Q. After the trial had been had, as you have testified, who was it that asked for du Pont powder? A. The miners.

Q. After the miners asked for du Pont powder, state whether or not it was impossible for a miner who desired to use Buckeye powder, to secure Buckeye powder from you? A. No, sir; I kept it all the time, whenever they called for it.

Re-cross examination by Mr. Abbott:

Q. Isn't it a fact, that after you made this trial, that a very considerable number of your miners called for Buckeye powder? A. No, sir, the Miners' Committee came to me and demanded the du Pont.

Q. I am asking you if a very considerable portion did not continue to demand Buckeye powder? A. Some did, yes.

Q. If they didn't, why did you keep buying so 6296
much Buckeye powder? A. I think if you would compare the two, you would not think it was what you stated.

Q. That being so, you have evidently refreshed your memory since the last time I inquired about it, because I wanted you to tell me just how much powder you used per month, and what proportion was Buckeye and what was du Pont. You were unable to do that a while ago? A. I thought these receipts would give us that during that time.

Q. I asked you whether you had not made cer- 6297
tain considerable purchases of Buckeye powder at certain times? A. I can give you very well the amount of each one, if that would answer the question, from the receipts.

Q. But you are now testifying according to the fact, as you have recalled it, and I would like to have you continue your statement which counsel drew out. My point is, Mr. Taylor, that our records show that you made very large purchases of Buckeye powder constantly after this trial, and from your own statement that the men could use only a certain quantity of powder per day, the conclusion is irresistible that a large portion of them used the powder, unless you must have stored it in your warehouse and didn't use it, at all? A. Imme-

diately after the test, there wasn't so much used for a considerable time, and then they asked for it again?

Q. Why? A. They claimed they had gotten the powder in better shape, the company did, and I suppose those who used it occasionally got better results; I don't know that; I am making a supposition; but before the last, we were using considerable of it, but there was no time, I think, between the trial and the time I gave up, but what some was
6299 used, but immediately after the test, I think there isn't a very large quantity.

Q. Will you state again that fact, a very important matter, just when this test or trial occurred? A. I cannot tell you the month, but between the time.

Q. State again, please. A. Between 1903 and 1905, sometime in 1904, I think.

Q. Was it in the spring or fall? A. It would be late in the winter, I think, or getting towards spring.

6300 Q. Was there any record made of it by any committee or yourself, as to when that test was made? A. Yes, we went over the full time; we made the trial; we went over the bulletins, the amount of coal they loaded, the amount of powder used, and figured it all up, and compared how much it was per keg, and then went over the other powder we had been using for the same length of time, and compared the two.

Q. Was this an official test under the rules and regulations which existed between the coal operators and the miners, or was it merely a trial which you inaugurated or instituted for your own benefit or information? A. As I said in the first place, it was a demand from the miners. They took the test.

Q. They took the test? A. Yes, they demanded a test.

6301

Q. That they should have a test? A. That they should have that powder.

Q. They demanded that they should have the powder. This is an official test. For your information, I will state that this agreement between the operators and miners provides a formal way in which an official test shall be got at. As I understand you now, this change from Buckeye to du Pont powder was in answer to a demand made by the miners? A. Yes, sir, and also from that to the du Pont was from the miners.

6302

Q. I don't understand your last answer. A. I mean from the Buckeye to the du Pont, after this length of time they said, "We ain't getting the amount of coal we ought to per keg, and we want to go back to the du Pont."

Q. Was there ever any demand made by the miners after that for a change from du Pont back to Buckeye? A. No, not a demand; there would be individuals, but not a demand from the committee or the men as a whole, and we always provided it whenever there was a call for it.

6303

Q. And that call for a time was comparatively small, but later on it increased? A. Yes, sir.

Q. That is right? A. Yes.

Q. And do you remember when this particular increase you have in mind occurred? A. No, I couldn't tell you.

Q. In other words, after they had ceased to use Buckeye powder for some time, and continued to use du Pont powder, they found they had made a mistake, and they wanted to go back to Buckeye; wouldn't that be the natural conclusion from your statement? A. Not a mistake; if you want to use that word—

Q. In other words, there was a considerable difference of opinion among the miners about the merits of the powder? A. Not at that time.

Q. Immediately after you had your test, or before, which? A. They nearly all wanted to change at that time; there would be a few that didn't.

Deposition of SAMUEL P. WINTERS, a witness produced on behalf of the defendants, being duly sworn, read as follows:

6305 *Direct examination by Mr. Katzenbach:*

Q. Mr. Winters, where do you live? A. I live in Peoria, the South end.

Q. What business are you engaged in? A. The mining business.

Q. What is the name of your company? A. The Winters Coal Company.

Q. Is it an incorporated company? A. Yes, sir.

Q. It is incorporated? A. Yes.

Q. What office do you hold? A. Manager and salesman and treasurer, and all the whole thing;
6306 I run it myself.

Q. You own the company, do you? A. Yes.

Q. How long have you been engaged in the mining business? A. All my life, about 30 years or better.

Q. About what age did you commence to work in the business? A. About 16, or along there.

Q. What have you done in the mines? A. Dug coal, until I ran a mine for myself; I have acted as manager in mining coal, and all around.

Q. In the digging of coal, have you, as a miner, used black blasting powder? A. Yes.

Q. State what use you have put it to. A. Used it for blasting out coal and shooting rock—

Q. In blasting out coal, will you state fully what is the operation with reference to the use of black

blasting powder, how you do it? A. You drill in holes, fill in the amount of powder you judge would blow it out, and light it and let her go.

Q. How do you put the powder in, in what way? A. You generally put it in in paper cartridges.

Q. How many years of your life have you spent in blowing out coal and shooting coal? A. Well, let's see, possibly—let's see, between 19 and 20 years.

Q. Where are the mines of the Winters' Coal Company located? A. About four miles South of the Court House. 6308

Q. The Court House in Peoria? A. Yes, sir, straight out on Adams Street.

Q. Near any village? A. Yes.

Q. What? A. Bartonville.

Q. At Bartonville? A. Near Bartonville.

Q. How long have you been operating and working in that mine at Bartonville? A. I have been there since 1885.

Q. Between the years 1903 and 1909, who made the purchases of black blasting powder for the Winters Coal Company? A. I did. 6309

Q. Between the years 1903 and 1909, did you purchase any powder known as Buckeye powder? A. I did.

Q. Of whom did you purchase it? A. The Buckeye Powder Company.

Q. What powder had you been using prior to the purchase of Buckeye powder? A. I used various powders, but principally the du Pont.

Q. Do you recall about the time you made any purchase of Buckeye powder of the Buckeye Powder Company? A. Yes.

Q. You do? A. I do, very close.

Q. What time was it? A. About 1905 or 1906, along there, I think.

Q. How many kegs did you purchase? A. I think it was 640 some odd kegs, or somewhere in there.

Q. After you made these purchases of Buckeye powder, state whether or not, to your knowledge, it was used in your mines? A. Yes, sir, it was used there, some of it was.

Q. Some of it was? A. Yes; some of it was returned.

6311 Q. State any fact that led you to purchase Buckeye powder? A. Because it was offered cheaper to me than du Pont at that time.

Q. How much cheaper? A. I think I was paying $1.10 for du Pont, and I think the Buckeye was offered to me for $1.00 by a fellow named Pepperd, and Jones, afterwards.

Q. Now, Mr. Winters, will you state whether or not you yourself ever used any Buckeye powder in the mines of the Winters Coal Company? A. I used it just to try it; I didn't mine coal at the time; I used it to try it, to see if the miners were right in their idea of the powder.

6312 Q. You tried it yourself? A. Yes, sir.

Q. State why you tried it out personally. A. Well, I had some of the Buckeye powder, and the first seemed to give about the same satisfaction as the du Pont, and I thought—I forget—I got 100 kegs or something like that for a trial, and it worked fairly well; it worked practically the same as the du Pont, and I ordered more, because it was cheaper, and I tried the other, and we used some of that, and they kept complaining and said the powder wasn't up to what it ought to be, and then for several days the coal didn't come out as it ought to, and I needed the coal, and it was in the winter time, and I asked some of the good miners what was the matter—

Q. Just state what you did. A. They sent for me to go down and experiment myself with it. I went down and they had some holes drilled. I know what that ought to take, because I went down and worked myself, sometimes, and it didn't work—

Q. State what you did with these holes that were drilled. A. They didn't work, and I went to work, and after the shots went off, watched them, and I gave them more powder—

Q. State what you did with these holes. A. I tamped them up myself. 6314

Q. Was that— A. Buckeye powder.

Q. What then? A. I lit the shot and let them go.

Q. Then, did you return afterwards? A. Yes, sir.

Q. What did you see? A. No coal loose.

Q. Then, what did you do? A. I went to work and cleaned the holes out and filled them up with du Pont powder and fired them over; then I went to several other places and tried it, with the same results.

Q. You tried it in several places? A. Yes, sir. 6315

Q. And got the same results? A. Yes, sir.

Q. And what was the results you got? A. Bad; it wasn't up to what it ought to have been.

Q. Mr. Winters, we will go back now, and will you state just what you did to try out Buckeye powder, stating exactly what you first did with Buckeye powder with your own hands? A. I just repeated what I done.

Q. Just repeat it again. A. That there was not a sufficient amount of coal coming out, and I didn't understand why it didn't; the men claimed the powder wasn't what it ought to have been.

Q. State what you yourself did when you went down in the mines, with the use of Buckeye powder. A. I went and used it just as I explained.

6316 *Samuel P. Winters—Direct*

Q. Will you please explain? A. They had these holes drilled, and I filled them with powder and I lit the two shots and came away, in one room; then I went in two or three other rooms and tried the same thing.

Q. After you lit the shots did you make any examination to see what the results of the shots were? A. I certainly did; I went back in this one room and reamed the hole out—

6317 Q. What did you see with reference to the coal, where you had used this Buckeye powder; what did you see with your own eyes? A. It didn't work.

Q. How didn't it work? A. It was weak; it didn't blow any coal loose.

Q. After you had used the Buckeye powder in these holes that you have referred to, did you subsequently use in the same holes, any other powder? A. Yes sir, I did.

Q. State what powder you used and how you used it, and what results you got. A. I went and filled it up with du Pont powder, these same holes,

6318 and lit the shots over again, and I blew the coal out, and I had good shots, because I had used it so many years, and I know just about how much those holes ought to take.

Q. Now, what quantity of Buckeye powder had you used in those same holes, as compared with the quantity of du Pont powder? A. Well, the holes, probably, were about seven feet, and I filled them about half full the first time, of the Buckeye powder; the results were bad, and I filled them half full the second time with du Pont powder, and I blew the coal out.

Q. You blew it out? A. Yes; it was weak.

Q. What was weak? A. The Buckeye.

Q. Did you try the powder in any other places in the mines? A. In two or three other rooms.

Q. State what you saw from the trials you made in the other places. A. The result was the same.

Q. After you had tried out this Buckeye powder, what did you do? A. Went around the mine to see how the shots worked; I am mine manager; and I seen these failures all around; that's where the miners kicked on the powder.

Q. After this, did you or did you not, use all of the Buckeye powder which you had bought? A. I did not.

Q. What did you do with the balance of it? A. 6320
Sent it back to the factory.

Q. What factory? A. The Buckeye Powder Company.

Q. Did you ever subsequently use any more Buckeye powder? A. After that, yes, 50 kegs.

Q. How did you happen to get the 50 kegs? A. Well, I'll explain, if you'll let me. The Buckeye powder we had there, we had got a bunch of it there; I sent back 315 kegs, and how much more previous to this time, I don't know; the du Pont people come there and wanted to know if I would 6321
allow them to put powder in the other half to compare, and I said I didn't care, and they all ordered du Pont powder, and the Buckeye Powder Company sent me a bill.

By Mr. Abbott:

Q. Did you write? A. No; I telephoned to the folks up here on Main Street.

Q. Are you sure you did? A. Yes.

Q. Who notified them? A. I called them up and told them I couldn't use this powder, and we had it out several times over the 'phone.

Q. You didn't write about it? A. I don't remember writing; the 'phone was much quicker work. I told them to take this powder back, and it laid there for quite a while, and they insisted upon my

paying for the powder, and I wouldn't do it; so finally, I hauled it back to the factory. They said they could make a better powder, and I said, "I am willing to try it," and they sent me 50 kegs more.

Q. You ordered this over the 'phone? A. I think so, or whether it was from the agent.

By Mr. Katzenbach:

Q. State what— A. I tried this powder and it
6323 didn't work; it worked a little bit better than the other, so I thought it was no use fooling around with an inferior grade of powder, so I mailed the, a check for this 50 kegs, and that's the last dealings I had with the Buckeye Powder Company.

Q. After you purchased Buckeye powder, as you have testified to, did you have any conversation with any agent or representative of the du Pont Powder Company with reference to Buckeye powder? A. No, I can't say I did; I might possibly have mentioned a word or two or something; I don't think I did; I can't remember. I ordered this
6324 du Pont powder ever since.

Q. Did any agent of the du Pont Powder Company talk to you about du Pont powder? A. I can't recall that they did, or condemned it in any way, or anything of that kind.

Q. Mr. Winters, in a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company, more commonly known as the du Pont Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, the Buckeye Powder Company, in answer to a demand for the names of customers that were induced by these defendants which I have mentioned, and by certain other persons and corporations whose

names I will give you, have stated that the Winters Coal Company was a customer of the Buckeye Powder Company which these defendants and the other persons and corporations induced to abandon or stop the purchase of powder from the Buckeye Powder Company. Now, these persons that are mentioned in this suit are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Irenee du Pont, Henry F. du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton 6326
M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskell, and the corporations are: International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company, of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin & Rand Powder Company, Fairmont Powder Company, Judson Dynamite and Powder Company. I now ask you to 6327
state whether or not any of the persons or corporations which I have named to you in this question, or any agent or representative of those persons, have induced you to cease the purchase of powder of the Buckeye Powder Company, or ever did? (Objection overruled, exception allowed.)

A. No, they did not.

Cross-examination by Mr. Abbott:

Q. Now, Mr. Winters, in regard to the last question which was just propounded to you, do you know all the persons, associations and corporations whose names were read to you personally? A. I do not.

Q. Did you catch all of them as they were read over? A. I know the brand of powder, that is all.

Q. What is that? A. Du Pont, Laflin and Rand, Hazard. I know that; I used the du Pont; I don't know any of the people.

Q. The rest of them you don't remember? A. I don't know anything about it.

Q. What agents of any of the persons—or what agents or representatives—whose names have just been read to you, do you recall you have ever met
6329 for any purpose? A. I used Laflin and Rand; I got that of a man by the name of Barnewolt, and I also used Hazard powder, and I bought that off Oakford and Fahnestock wholesale house down here; and finally, it seemed that the Hazard powder, or du Pont, took the place of the Hazard in some way, and instead of getting the Hazard, I got the du Pont powder.

Q. Whom did you get it of? A. The du Pont.

Q. Yes. A. If I am not mistaken, I first, I think, but I ain't sure, but I think, of the Oakford and
6330 Fahnestock people, and we substituted the du Pont powder, and it seems to me I got in that way.

Q. Any other persons? A. The du Pont powder?

Q. Yes. A. The Dooleys are agents now for this powder.

Q. Anybody else? A. I believe I got some off C. J. Off at one time.

Q. Anybody else? A. I think I got some off Off; I am not really positive, but I think so, that's all.

Q. Those persons whom you have named are the only agents or representatives of any of the persons or representatives of the corporations whose names have been read to you by counsel which you had in mind when you answered that question? A. Well, before I answered this question I understood him to say, was I induced by any of the agents of the du Pont Powder Company to buy this du Pont

powder when I was a customer of the Buckeye people, and I said "No"; I just drifted in this business, and I got some off Off and Oakford and Fahnestock, and finally these people drifted in and handled the du Pont, and I bought off them.

Q. None of those persons whose names you have given as agents or representatives ever asked you to abandon Buckeye powder? A. I say no.

Q. Now, you gave testimony, did you not— A. I want to say they come to sell their powder, but they never asked me to abandon any powder. 6332

Q. You were under contract with the du Pont Powder Company, were you not, to buy du Pont powder? A. I have lately,—I signed a contract, I think, the last two or three years.

Q. Were you ever before under contract with them? A. I don't think so; it has been, probably, three of four years, and they said if I would be a steady customer, they would make me a wholesale price, the same as larger mines.

Q. How much powder do you use per year in your mine? A. I don't know; probably 2500 kegs, or something like that; I would have to figure that up; I used— 6333

Q. How many kegs did you use at any time during the years 1903 to 1909? A. I couldn't answer that I would have to look over my books.

Q. Can you approximate it? A. Possibly a couple of thousand kegs; I wouldn't give that as a definite answer.

Q. Isn't it a fact, that you were under contract with the du Pont Powder Company to buy powder of them, previous to the time you have stated? A. Previous to the time—

Q. That you have now stated in your answer you have just given? A. I can't exactly give that; I had various contracts from year to year.

6334

Q. You have? A. Yes.

Q. Have you not been under contract with the du Pont Company, or one of its agencies, to buy du Pont Powder all the time? Were you not under contract all the time from 1903 to 1909? A. No, no, I don't think so.

Q. What years were you not under contract? A. I can't exactly say; I was free to buy in 1903, '04, '05 and '06, or I would not have bought the Buckeye.

6335

Q. Isn't it a fact that you had a contract with the du Pont Powder Company, and that they supplied you Hazard powder through Oakford and Fahnestock; that that contract was dated August 1, 1903, and ran for five years? A. Ran from 1903 for five years?

Q. Yes, it ran for five years. A. For three years.

Q. With whom? A. I have for three years back from now.

Q. (Stenographer repeats the question as follows): Isn't it a fact that you had a contract with

6336

the du Pont Powder Company, and that they supplied you Hazard powder through Oakford and Fahnestock; that that contract was dated August 1, 1903, and ran for five years? A. I don't think so.

Q. Will you say it is not a fact? A. I don't know; it is not a fact.

Q. You don't know it is not a fact? A. I don't think it is. I will explain the matter. Now, then, I was furnishing coal, Oakford and Fahnestock, and we just continued doing business from one year to another; sometimes the powder would probably be up or down 5 cents a keg, and I think the price then was about $1.35, and I kept furnishing coal, and there was no contract made; there was an agreement made some years ago when I first started in, and continued right along.

Q. Isn't it a fact, that as early as April 9, 1901, you made a contract with the Hazard Powder Company for a period of three years from that date to furnish you with Hazard powder? A. No, I don't think I had any contract, I don't think so.

Q. You used Hazard? A. Yes.

Q. Hazard? A. I can't recall such a contract.

Q. You testified, did you not, in the case of the United States of America, Petitioner, against E. I. du Pont de Nemours and Company, and others, 6338 defendants, an action brought in the United States Circuit Court for the District of Delaware; do you remember the cause or action I have stated to you? A. Yes, in Chicago.

Q. And it was in that action that you were a witness? A. Yes, sir.

Q. Have you got any records or any data from which you have refreshed your memory to give your testimony here to-day, or any portion of your testimony? A. Have I got any records?

Q. Yes; or books or papers? A. No records whatever. 6339

Q. Then, what you have testified here to-day, you have depended entirely upon your memory? A. I recall it very distinctly, yes, when I come to refresh my memory.

Q. Have you recently read or looked over the testimony in the other case which I— A. Yes, to-day; I wanted to see if I wouldn't get my dates mixed, but I remember them very distinctly now.

Q. Did you read over your testimony that you gave? A. Not particularly; I had my bookkeeper to go over the accounts and look things over.

Q. Have you got books and accounts relating to this matter? A. No; but I had an idea that I might refresh my memory about the dates.

Q. I hold in my hand a small green book; have

you ever seen a book like this? A. I have seen a great many books in my time, but I don't know—

Q. Have you, in the last day or two, seen a book similar to this? A. No; I never looked inside of a book like that.

Q. Have you looked over your former testimony which you say you gave in the case at Chicago, since you gave it? A. I tell you I refreshed my memory on that to-day.

6341 Q. Where did you get that testimony from? A. I refreshed it by looking over my accounts to see what transactions took place.

Q. Have you got a copy? A. No.

Q. How can you refresh your recollection by looking over your testimony given several years ago, unless you had that testimony in some form? A. I have not got any.

Q. You didn't refresh your memory by looking over the testimony? A. By my own books.

Q. I asked you if you had any books that gave you this information, and you said "No?" A. I

6342 refreshed it when we got this powder.

Q. Have you got any books that give you any facts concerning which you have testified here to-day? A. No.

Q. Then, why do you persist in saying you looked over some books before you came here? A. I looked over the books I have in my office.

Q. Where are they? A. They are in my own books I keep for the mine.

Q. How far back do they run? A. Back to 1893.

Q. Then, you have got some books in your possession that you have examined to refresh your memory concerning what you testified here to, to-day? A. No, only my coal accounts and powder accounts, and the powder transactions I had with various powder companies.

Q. You have got those? A. Yes.

Q. And what did you look at those books for? A. To refresh my memory to be sure I would have the dates right. I had no copy of any proceedings, understand.

Q. Do I understand that you could not have told the story as you have told it to-day, unless you had refreshed your memory from those books? A. Yes, I could; I only wanted to get the dates straight.

Q. You could not have remembered the dates? A. 6344
Not so clearly; I looked over my check book and my coal accounts and the business I done at the mines, and I recall that to my memory, I recall the facts.

Q. How did you get the information that you bought 640 kegs of Buckeye powder? A. I got an account of it in my books.

Q. You got it from your books? A. Yes; I wanted to be sure about the dates. .

Q. How did you get the number of kegs, then? A. I got a record of it.

Q. Then, you refreshed your memory as to the 6345
number of kegs, didn't you? A. Yes, sir.

Q. Where did you get the information concerning any price you paid for powder you bought of the Buckeye Powder Company and the du Pont Powder Company? A. I looked over the books; I looked over the 1903, '06, '07 and '08, along in there, and they stated when I bought the powder, and the amount, and the date.

Q. Are you your own bookkeper? A. No.

Q. Did you make the entries? A. No, my bookkeeper did.

Q. Give me the date that you purchased 100 kegs, as you stated of Buckeye powder, first? A. I can't recall the date.

Q. How many kegs definitely, did you buy at that time? A. I think I got an amount to try it first; I think so.

Q. I am asking you the number of kegs you got, as you have looked over your books? A. I said we got 640 kegs.

Q. Was that the first purchase? A. I can't recall; I think we had some on—

Q. Didn't you say you bought 100 kegs or so of Buckeye powder, and that you tried that, and that
6347 you made another purchase later? A. I think there was a batch of powder got first; I can't state whether it was 50 or 100 or 200.

Q. Why can't you state that fact just as well as any other fact, after having examined your books? A. The books show 640 kegs of powder.

Q. Then, didn't they show 100 kegs? A. They didn't show it.

Q. You don't recall that 100 kegs? A. I think so; I think we had a trial, and afterwards we got some more I think so; I am not positive. I don't know
6348 whether they had come down or not I kind of think so.

Q. Isn't it a matter of fact now, that what you have testified to about the use of the Buckeye powder and the reason for your change, is altogether what you think, and not actually what occurred? A. It is just what occurred.

Q. You don't have to look on your books to find that out, do you. A. I should say not.

Q. What kind of a company was this that you were connected with; was it an incorporation? A. Yes, an incorporated company.

Q. Who were the other stockholders in that company? A. I don't know all of them now; I can't recall them.

Q. State who they are. A. I remember about

that time a man named Rickerts was a partner, and a man named Guppy, and William Doe, and I remember a man— A. I can't remember them all.

Q. What office did you hold in that company? A. President.

Q. Who was Vice-President? A. I can't recall now.

Q. Who was Treasurer? A. I was Treasurer.

Q. Who was Secretary? A. A man by the name of J. F. Noel.

Q. Who were the Board of Directors? A. At that 6350
time, I think this man Guppy was there, and Rickerts, and the man Doe, and a man named George Blank, and I think there were five.

Q. Was this Blank, of the firm of Blank and— A. No, this was a coal miner.

Q. Do you know anything about the sized grain powder you bought of the Buckeye Powder Company? A. I do not.

Q. Do you know anything about what sized grain powder you bought of the du Pont Powder Company? A. I don't know. 6351

Q. What price did you pay for du Pont powder? A. When?

Q. At any time? A. I paid various prices for it; I paid at that time $1.10, I think.

Q. There was a considerable dispute, was there not, between you and the Buckeye Powder Company, when it came to their endeavoring to collect their bill against you for this powder? A. Yes, they wanted me to keep the powder and use it.

Q. Was there any agreement between you and the Buckeye Powder Company at the time you bought it, or any portion of it? A. They guaranteed the powder to be good.

Q. Did they agree to take it back if it were not satisfactory? A. Yes.

Q. In writing? A. No, I think it was a verbal agreement.

Q. The agreement was not in writing? A. No.

Q. Whom did you make that agreement with? A. I think with the agents. A man by the name of Pepperd came there, and a man by the name of Jones, and they said if the powder was not good I should return it.

Q. Which one was the agent—? A. Pepperd at first.

6353 Q. How many did you buy powder of? A. I can't recall.

Q. Why did you say "Pepperd at first"? A. He was the first agent.

Q. How much did you buy of Pepperd? A. I don't know.

Q. How much of Jones? A. I don't know.

Q. You don't know how much? A. No.

Q. How much did you buy of either one of them? A. I can't tell.

Q. How do you know they were the agents of the
6354 Buckeye Powder Company? A. They came there and sold it to me, and the powder was delivered.

Q. You stated that you bought 640 kegs of Buckeye powder? A. 640 some odd, possibly.

Q. Was that all in one batch? A. That was the total amount.

Q. How many different batches of powder did you buy? A. I can't recall, it has been—

Q. How is it you know so definitely you bought 640 kegs, and you don't know when you bought it, or in how many different batches? A. I had that entry on my book, the total amount, but I got no record of those amounts.

Q. Is it all entered on your book as one item? A. Yes; I am not positive if the 50 kegs that came was included in that or not.

Q. When did you buy the first batch of Buckeye powder? A. The first one?

Q. Yes. A. I think in 1905?

Q. What month? A. I don't recall.

Q. Don't your books show that? A. Yes, they would show it, I think; I only wanted to—

Q. You said you wanted to know the date you made these purchases; what do your books show? A. My books just show I paid so much for powder in such a month, so many kegs of powder.

6356

Q. At what date does it show you made the payment? A. I could tell if I looked at my check book; I ain't got that.

Q. Then, what was the use of looking at your books, if you don't know? A. Just looked at 1906 when I got this powder.

Q. That's all you wanted to know? A. That's all.

Q. Did anybody tell you to look at your books to refresh your memory? A. No.

Q. You did it of your own accord? A. Yes, so as to be sure what I said here was true.

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Q. When did you first make this experiment, as you call it, with Buckeye powder? A. I think it was 1905, I think.

Q. What month? A. I don't recall.

Q. You don't know when it was? A. No.

Q. Was it at the time you bought the first batch of Buckeye powder; was it at that time you made the test? A. No; it was the last; I think there was a pretty large batch from the last time; I am pretty near positive, as I said before. This was two different deliveries—

Q. You said that before, and you said it was one batch. (Stenographer repeats the question.)

A. I couldn't use it.

Q. The powder you have bought before, then, you

6358 *Samuel P. Winters—Cross*

didn't test in any way? A. No, the first powder seemed to be fairly good.

Q. Now, you stated on your direct examination, something about the manner in which you undertook to make this test yourself? A. Yes, sir.

Q. And you told about how you went in there and found some holes bored? A. Yes.

Q. That's as I understood you? A. Yes.

Q. And you put some powder in there? A. Yes.

6359 Q. That hole was how long? A. About seven feet, or along there.

Q. And how much powder did you put in? A. I think I filled it about half-full.

Q. Three feet and a half? A. Three feet and a half.

Q. And then, after that, after it was fired, it didn't bring any results, and you filled up that same hole with du Pont powder? A. Yes.

Q. The same hole that you had filled with Buckeye? A. Yes.

Q. And you fired that and it brought good results? A. Yes.

6360

Q. You told something about another shot you fired? A. In the same room, yes.

Q. And in the same way? A. Yes.

Q. And with the same results? A. Yes.

Q. And you put in the same amount of powder? A. Yes, and I said something about going in two or three other rooms; I wasn't skeptical about this powder; I wanted to give it a fair chance, and I took powder from another keg.

Q. I want to ask you about this matter first: in your testimony in the case to which I called your attention a while ago, that is The United States of America, Petitioner, against E. I. du Pont de Nemours and Company, et als., Defendants, I will ask you whether you recall what you said at that

time; do you recall what you said at that time? A. In Chicago?

Q. Yes, do you recall what you said? A. Oh, possibly a few words; I can't recall all of it; I can't remember those questions.

Q. I will ask you whether you didn't testify at that time, as follows; in answer to a question which was put to you by the attorney for the defendants in that action, which question was as follows: "Tell us what experiment you made with the Buckeye Powder Company yourself, and with the du Pont, to 6362
test it," and in answer to that you are reported as having said: "I knew what the du Pont was, because I had used it, and when the coal didn't come down as it ought to, I asked the miners what was the matter; they said the powder wouldn't work, and I says, 'It looks like strong powder; it looks good; it's cheaper than the other; what's the matter; can't you use it?' and they said, 'No, we can't use it;' I said, 'I would like to go down and try it myself and see;' so I went down and tried it, and there were two places that we tried it in, and that was not quite sufficient, so I tried it in another place, and 6363
fired a blast, and put in some powder, and it didn't do anything. The men said to me, 'You can't do it; you can't tell how much powder to put in.' I says, 'Why, how much would you put in that seven feet to tear it clean up?' He said, 'We did put in about 6 feet 6 inches, and after tamping, filled it up full;' I said, 'I never saw such a thing in my life; half-full ought to knock that.' They said, 'Well, go and try it, if you know more than we do, go and try it;' I said, 'I will, I will try it;' I filled it with the Buckeye powder as much as I thought would knock it, and it didn't do anything; so I went back and charged the hole over again, and filled it with the du Pont powder. Afterwards I went back inside of

6364 thirty minutes, and filled the same hole up again. Q. The first shot was with the Buckeye? A. Yes, and it didn't do anything, and then I went to work and filled it the second time, after the gases was gone away from this first shot, but it didn't do anything; it made a little gas. Then we tamped it up for three or four minutes, and then we put the du Pont powder in, and then we fired that, and that was all right. So I just wrote Mr. Waddell that the powder was not good, that I was having some
6365 trouble with it. At first, they didn't want to take it back, but finally they did, and I returned 315 kegs." A. Everything is in there very straight, any more than I didn't fill the same hole with Buckeye powder. I only tried it once in the one hole.

Q. You are sure of that? A. I tell you that is pretty close to it, to what I possibly said there; that's pretty close.

Q. Which do you want to have understood to-day: that the testimony you gave to-day is correct, or the testimony as you gave it in the suit to which
6366 I have called your attention? A. Just as you please about that. Those are straight facts there, but I don't recall charging the same hole over twice with Buckeye powder.

Q. Do you know Mr. R. S. Waddell, the President of the Buckeye Powder Company? A. I think that is the gentleman there.

Q. You see him present in the room? A. I think that is the gentleman.

Q. Did you ever give any reason to him for desiring to return the powder which you say you returned to him? A. I think so.

Q. What was that reason? A. I thought it wasn't good; I couldn't use the powder, and the men—

Q. Did you ever give him any other reason? A. No, I had none.

Q. Did you ever tell him that the size of the powder wasn't satisfactory to you, the size of the grain? A. I don't think I did, because I am not an expert on powder.

Q. Did you ever tell him you were under contract with the du Pont Powder Company and that you couldn't keep this powder without violating your contract, or words to that effect? A. I don't know that I did or not; I don't recall that we had a contract; I got the powder off them just the same.

6368 Q. Did you ever give another reason for returning that powder that Mr. Pepperd, whom you say sold you that powder, had gone to some of your men and attempted to sell Buckeye powder to them direct, and you wouldn't do business with a firm that would do that, and wouldn't have their powder? A. No, I didn't like the idea of them going to the men when I was there to buy the powder; I think I said something about that. He went to each man individually.

Q. You didn't like that, did you? A. I didn't care, in fact.

6369 Q. You didn't like that; you had the powder on hand and you wanted to sell it yourself? A. I would rather he would come to me. I gave him permission to go down.

Q. Didn't you make a complaint to Mr. Waddell that that was the cause of your refusing to pay for the powder—on that account? A. No, I wouldn't refuse to pay for anything, if it was all right.

Q. Didn't you give that as your reason to Mr. Waddell? A. I don't think so; I probably mentioned to him that the fellow took the wrong end of the business to sell powder, but outside of that, I think that was all.

Q. Have you any means of refreshing your recollection as to the date when you returned the 315

kegs of powder you say you returned? A. I don't hardly think I have; it was a long while after it was bought.

Q. You haven't any means? A. I think not.

Q. Isn't it a fact, that after you refused to pay for that powder, and wanted Mr. Waddell to take it back because you didn't like the way this man was doing by going around to the men direct to sell the powder to the miners, that he threatened to sue you for that debt? A. I say no; it was rather
6371 the contrary; I would rather deal with Waddell than the other people.

Q. You didn't make any such statement as that to him? A. No, sir.

Q. You said, however, that you did have difficulty in getting him to take that back? A. Yes, sir.

Q. That much is true? A. It is.

Q. And how long a time after you began to try to get him to take it back was it before you got him to take it back? A. Quite a while, from one to three months.

6372 Q. You know Mr. Waddell pretty well, don't you? A. Not very well.

Q. Didn't he tell you finally, that he would take the powder back simply because he didn't care to indulge in a lawsuit to recover the amount due him? A. He mentioned something to that effect.

Deposition of JAMES F. MCELWEE, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. McElwee, where do you live? A. Peoria, Illinois.

Q. How long have you lived here? A. Since in 74.

Q. What business are you engaged in ? A. The coal mining business.

Q. Are you connected with any company engaged in that business? A. Yes, sir.

Q. What is the name of your company? A. At the present time?

Q. Yes. A. I am connected with three companies, the Wolschlag Co-operative Coal Company, the Maplewood Colliery Company and the Maplewood Coal Company.

Q. Between the years 1903 and 1909, did you 6374
have any connection with the Maplewood Coal Company, which you have named? A. Yes.

Q. What connection did you have with that company? A. Secretary and Treasurer of the company.

Q. Were you a stockholder in the company? A. Yes, sir.

Q. Who was the President of that company? A. George A. Ditewig.

Q. Where are the mines of the Maplewood Coal Company located? A. Farmington, Illinois, Fulton County. 6375

Q. Between the years 1903 and 1909, did the Maplewood Coal Company use any black blasting powder in its mining operations? A. Yes, sir.

Q. Who, for your company, made the purchases of black blasting powder? A. Myself and Mr. Ditewig.

Q. Between the years 1903 and 1909, did you make any purchase of black blasting powder from the Buckeye Powder Company? A. Yes, sir.

Q. You purchased some Buckeye powder? A. Yes, sir.

Q. Can you state approximately about the date of those purchases? A. Well, there was powder purchased along in January, February and March,

1905, that I am sure of; there might have been some previous to along in there.

Q. Will you state whether or not you had any interest in the Buckeye Powder Company? A. Yes, sir.

Q. What interest did you have? A. I think I had 50 shares of stock.

Q. Did the President, Mr. Ditewig, of your company, have any shares of stock? A. He had a like amount.

6377 Q. Do you recall what was the first amount of Buckeye powder used in your mine at the Maplewood Coal Company? A. I think the first amount used was some kegs that were sent out there by Mr. Tom Reynolds, who was with the Buckeye Powder Company at that time, for free distribution among the miners.

Q. Did you have any conversation with this agent of the Buckeye Powder Company that you have mentioned, with reference to the purchase of Buckeye powder? A. Yes, sir.

6378 Q. State what that conversation was? A. Mr. Reynolds was a former president of the United Mine Workers, and after he left the United Mine Workers, he came to me one day and wanted to know what powder we were using, and I told him du Pont, and he said he was figuring upon a position with the Buckeye Powder Company, and wanted to know, in case that he secured the position, if we would do business with him, and I told him that we were more than anxious to do it, on account of having some financial interest in it, and being able to purchase powder cheaper than the du Pont. He wanted to know if I would speak to Mr. Waddell about getting him the position, or recommend him to Mr. Waddell. Then, after he went to work for the Buckeye Powder Company he called on us. I

went to the mine with him one day, and I introduced him to the mine manager, who took him through the mine, and he spent the day there, or a portion of the day, rather, interviewing the miners, and after he came out, he told me that he had arranged to send a number of kegs of powder there, I don't remember how many now, for free distribution to different miners; that the mine manager would select the miners whom he thought were good practical men, and were well versed in the handling of powder, and wanted permission to make 6380
the free shipment, which was granted him.

Q. Do you know or not, whether this Buckeye powder was used in your mine at Maplewood? A. Yes.

Q. It was used there? A. Yes.

Q. After that did you make any purchase of powder of the Buckeye Powder Company? A. We did.

Q. How many kegs did you purchase? A. I am not clear how many was purchased first, but there was some purchased and used by the men; I am 6381
not clear, but then I know it was used and gave very good satisfaction. Then we ordered a minimum car of 400 kegs.

Q. You then ordered 400 kegs? A. Yes, sir.

Q. State whether or not this car of 400 kegs was, to your knowledge, used in the mine? A. It was.

Q. With what results? A. With excellent results. The men pronounced it one of the best powders they had ever used.

Q. After this was used, did you order any further powder of the Buckeye Powder Company? A. Yes, sir.

Q. How much did you then order? A. I think another car, to the best of my knowledge.

Q. State whether or not this last order that you

6382 *James F. McElwee—Direct*

have referred to, was used in the mine? A. Yes, sir.

Q. With what results? A. The powder gave no results whatever; it was not screened; I think the powder we ordered was a single "C", and the powder graded from a single "C" down to the size of "BB" shot.

Q. State whether or not you personally made an examination of the powder? A. I did.

6383 Q. After that examination, did you have any conversation with any officer of the Buckeye Powder Company with reference to this powder? A. Yes.

Q. With whom? A. I referred it to Mr. Waddell.

Q. State fully what conversation you had with Mr. Waddell regarding it. A. I showed him a sample of the powder, and Mr. Waddell said there was something the matter with their screens, there had been some change made in their screening arrangement, and as a result, the powder was not properly screened.

6384 Q. Did Mr. Waddell say anything with reference to any other powder that he would furnish? A. Well, he said he would send out some other powder that would be properly screened, in the place of it.

Q. Mr. Waddell said that? A. Yes, sir.

Q. State whether that was done? A. Yes, sir.

Q. Was this substituted powder used, or attempted to be used, in your mine? A. Yes.

Q. With what results? A. The miners claimed that it was not the same quality of powder as the first car, and said they couldn't use it, and refused to use it.

Q. They refused to use it? A. Yes, sir.

Q. What, if anything, was done by the Buckeye Powder Company with reference to this powder; did they send anyone to you? A. Yes.

Q. Who? A. They sent a man by the name of Lettsome, out to the mine.

Q. State whether or not he made any examination of the powder. A. He put in a day in the mine, interviewing the miners, and I was at the mine that day. Mr. Lettsome and I had a talk in the office afterwards.

Q. State what that conversation was. A. I asked him what he found, and he said that in his investigation he found out that the men were dissatis- 6386
fied with the powder.

Q. The miners? A. Yes; that it was not giving results; that the first powder they used was very satisfactory powder, and in case he could get the same grade of powder, it would be satisfactory.

Q. What did you say? A. I told him I hoped he would keep in very close touch with the thing, that we were anxious to use the Buckeye powder, on account of being able to purchase it cheaper, and, besides, Mr. Ditewig and I had some interest in the Buckeye Powder Company, and we naturally were very anxious to use the powder of that mill. 6387

Q. You said this to Mr. Lettsome? A. Yes. He said he would have an interview with Mr. Waddell, and he was confident powder could be sent out that would be satisfactory. We later made another test of some other powder, under the direction of Mr. Lettsome.

Q. The test was made under his direction? A. Yes, and it didn't give results. The men objected to it, and refused to use it. I then took the matter up with Mr. Waddell, and he claimed that the powder hadn't been made—

Q. What did he say? A. I asked him why we couldn't get powder the same as the first shipment, and he claimed the formula had been changed, but he would make some powder under the old formula.

6388 *James F. McElwee—Direct*

He claimed his powder was better than the du Pont; that the ingredients that went into it were better, but if it didn't give the results, he would make some the same as the shipment that did give satisfaction. We made a trial of that, and it gave no better results than the other, and the miners made a demand on us to furnish them du Pont powder, and under our contract with the United Mine Workers, we were compelled to furnish powder satisfactory to
6389 the miners, so we discontinued further use of the Buckeye powder.

Q. State, after this trial of Buckeye powder that you have spoken of, what powder was used in your mine. A. The du Pont.

Q. You used du Pont powder after that? A. Yes, sir.

Q. State how the price of du Pont powder compared with the price of Buckeye powder. (Objection overruled.) A. I think the du Pont was about 15 cents a keg dearer than the Buckeye.

Q. Fifteen cents, did you say? A. Fifteen.

6390 Q. After you made these purchases of Buckeye powder, will you state whether or not you had any communication or conversation with any agent of the E. I. du Pont de Nemours Powder Company, more commonly known as the du Pont Powder Company, with reference to Buckeye powder? A. No, sir.

Q. You didn't have? A. No.

Q. In a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pone de Nemours Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company as defendants, the Buckeye Powder Company has given the name of the Maplewood Coal Company as a customer of

the Buckeye Powder Company induced by these defendants to abandon the purchase of powder from the Buckeye Powder Company. Will you state whether or not any of these defendants, or any agent or representative of them, or any other person or corporation, ever induced the Maplewood Coal Company to abandon the purchase of powder from the Buckeye Powder Company? (Objection overruled; exception allowed.)

A. No, sir.

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Cross-examination by Mr. Abbott:

Q. What do you understand by the word "induced," in giving your answer to the last question propounded to you? A. What do I understand by it?

Q. Yes. A. To ask us to discontinue the use of it, or use other influence to us not to use it.

Q. You mean any one individual coming to you as an agent or otherwise, and making that request of you? A. In any shape, yes.

6393

Q. Who were the agents of the du Pont Powder Company at that time? A. The only man at that time, that I had ever met, connected with the du Pont Powder Company was Mr. Donnelly, and their local representative here, Mr. Off; I guess he was selling agent for them.

Q. Mr. Off? A. Yes.

Q. You were under contract with the du Pont Powder Company at the time that you stated, were you not? A. Yes, sir.

Q. When was the first contract you made with them; when was it dated? A. I couldn't tell.

Q. You don't know? A. No; we used du Pont powder for 14 years, and I couldn't tell.

Q. Have you any of those contracts? A. No.

Q. Have you any of those contracts with you? A. No, sir.

Q. Have you been under contract all the time? A. Yes.

Q. You have, have you not? A. Yes, sir.

Q. Since you first began? A. Yes, sir, for 14 years. Our contracts, some of them, were made with Mr. Off.

Q. Do you know where those contracts are? A. Why, no, I don't; we probably have them in our
6395 files some place; I don't know whether they have been destroyed. It's not customary to keep stuff for 14 years.

Q. Will you see if you can find them? A. Yes, I will.

Q. And send them to the Commissioner? A. Yes, if I can find them I will; we are limited to storage room.

Q. If you don't find them, will you write him to the effect that you can't find them? A. Yes. During what period?

6396 Q. From the time you first began making contracts down to 1909.

Q. You stated a while ago that you were interested in the Wolschlag? A. Yes, sir.

Q. Is that a corporation? A. Yes, organized under the State of Illinois.

Q. What is the technical name? A. Wolschlag Co-operative Coal Company.

Q. Is that the same as S. Wolschlag Brothers? A. I never heard of that.

Q. You don't know? A. No.

Q. Do you know anything about whether that company is under contract with the du Pont Company, or any of the parties in this action? A. It probably refers to the same thing. I think when S. Wolschlag was President of the Wolschlag Co-

operative Company, it is possible that he, probably, bought the powder himself; I don't know as to that, that's just my opinion of the matter.

Q. You haven't any knowledge yourself of any contract that Wolschlag Brothers have? A. I have only been interested in the Wolschlag Company from April 15, 1912.

Q. You are not interested in this suit in any way? A. No, sir.

Q. Not at all? A. No.

6398 Q. Your interest in the Buckeye Powder Company, when did that cease? A. Well, I can't give the date; I know I sold my stock for 50 cents on the dollar; I turned it over in blank to Mr. Waddell, at the time he made the transfer; he got, probably, all of it. I think it was about four years last fall.

Q. Do you know what disposition your partner made of the stock? A. The same as mine.

Q. Do you remember any conversation or transaction that you had with Mr. Waddell at the time when he negotiated the sale of the Buckeye Powder plant, for the sale of your stock? A. Yes, sir.

6399 Q. I will ask you if Mr. Waddell didn't ask you to join with the company and give your consent to the sale of the Buckeye Company's plant, and that you refused to do so? A. No, sir.

Q. That didn't happen? A. No, sir.

Q. Until after he agreed to purchase your stock? A. No, sir, absolutely no, sir.

Q. And isn't it a fact, that at that time when he told you that the dividends would be 25 cents on the dollar, you refused to join until he agreed to pay you 25 cents premium over and above what other stock was getting in the distribution? A. No, sir. I can tell you the conversation.

Q. Tell it. A. We told him we would not sell our stock at that price; that we had lost on it all the

way through, and that on account of the way the thing had been mismanaged and handled, that we were sick of the whole thing, and we would prefer selling to losing the whole lot, and we gave Mr. Waddell an option on it then for a certain time at 50 cents on the dollar, which he exercised later.

Q. And he exercised that because it was necessary to have your consent to join in the sale— A. He didn't say anything of the kind.

Q. Because it was necessary to give your con-
6401 sent, in order to be able to make the sale at all?

Q. Do you know whether Mr. Waddell bought anybody else's stock but yours and your partner's? A. No, I don't.

Q. Don't you know as a matter of fact, that he did not? A. Only what Mr. Waddell told me, that he had bought Mr. Clark's stock and other stock at 25 cents, and Mr. Clark also told me he sold his for 25 cents. That was after the deal was over.

Q. Don't you know that none of the stockholders of the Buckeye Powder Company sold their stock
6402 except you, and that all the rest of them simply took their dividends, and, so far as you know, didn't they all own their stock then? A. Then, Mr. Waddell lied to me, if that is not the case. I am taking Mr. Waddell's word for it.

Q. You and Mr. Waddell are not on friendly terms? A. Mr. Waddell and I never had a word in the world, never an unkind word passed between us; we done everything in our power to make the thing go, and used that powder. I don't think there is a mine in Illinois that tried harder to use the powder than we did.

Q. Who was the manager of your mine at the time when you say you were using Buckeye powder? A. When these tests were made?

Q. Just answer the question, please. A. We had

different managers, and if you will tell me what you want, I will answer it.

Q. What I asked you, or what I had in mind to ask you was, who were your managers or manager at the time when you used Buckeye powder? A. Charles Whennen.

Q. Did you have any other manager? A. I had other managers at other mines.

Q. Where you used Buckeye Powder? A. No; Mr. Whennen was the manager during the time 6404
the test was made of Buckeye powder.

Q. What date was that? A. Well, off hand I can't give the date, but to the best of my recollection, it was along in January, February and March.

Q. What year? A. 1905.

Q. How much Buckeye powder did you use before you made this so-called test? A. Just a few odd lots that were sent out as a test. I think it was a donation from Mr. Waddell for free distribution.

Q. Do you know when you made the first purchase of Buckeye powder? A. No, I don't; I didn't keep a memorandum. 6405

Q. Why was it that you didn't make a test of this powder until 1905, if you were so anxious to do business with the Buckeye Powder Company? You had been interested in it for some time before that? A. The reason was, that the use of powder at a mine is governed by the contract between the Illinois Coal Operators' Association and the United Mine Workers, and the United Mine Workers have as much to say about the use of powder as we had, and we had to work into the thing; if you want to make a radical change in powder at any mine, you will have trouble on your hands with your miners, and you have to use a great deal of precaution in making the change.

Q. And you were two years in all before you

made up your mind that you would change or try to make use of Buckeye powder? A. No, we were trying to work into the thing all along.

Q. According to your own statement, you say you didn't make this test until some time in 1905, the Buckeye mills started in 1903? A. I think so, I don't know.

Q. That was two years. A. It was up to the Buckeye people to help us on that, and after Reynolds came in; the reason Reynolds was hired was
6407 to use his influence on the United Mine Workers to get them to use it. We had conferred about the use of it with Mr. Waddell a number of times.

Q. I want the real reason why you didn't use Buckeye powder, or attempt to use Buckeye powder until some time in 1905, when you say you made this test; wasn't it because you were under contract with the du Pont Powder Company, and required to purchase powder of them? A. No, sir, we were under contract with the du Pont people when we made the test.

Q. But your contract was about to expire at that
6408 time? A. I couldn't say; there never was a time when we didn't have a contract with the du Pont Powder Company since we have been doing business, either with them or with Mr. Off; most of them were with Mr. Off.

Q. You got ready to make a demonstration or test, and had Mr. Reynolds come there a little while before your contract with the du Pont Powder Company, which was made in 1903, was to expire? A. I can't say when our contract was to expire; we discussed the thing with Mr. Waddell—

Q. I will ask you the question. If you will answer the question, then you can explain it. I want to confine you to my question and I don't want you to go into any rambling speech.

(Stenographer repeats the question).

A. No, sir, we took up the question with Mr. Waddell about having a contract with the du Pont Powder Company, and using his powder while we were under contract, and he remarked that the du Pont contract was a cut-throat contract, and there wasn't a court in the country that would sustain it, and we wouldn't have any harm in breaking the contract.

Q. That, however, didn't impress you? A. It certainly did. After that, we helped him to make this test. 6410

Q. Then, it was about the time your contract was to expire, and because it was to expire, or because you thought it could be broken, that you undertook to make this test? A. I have answered before, that I can't tell from memory whether our contract at that time was about to expire or not; I know we consulted with Mr. Waddell about the feasibility of buying his powder, and Mr. Waddell said it was a cut-throat contract, and he didn't think any court—

Q. I say, when your contract was about to expire, or when you thought it could be broken? A. Yes; we acted on his advice and made the test. 6411

Q. Now, you stated, if I have correctly noted you, that the miners claimed that it was not the same quality of powder? A. Yes, sir.

Q. Did you yourself do any handling of the powder, or are you a practical miner? A. During that period I was giving the mines personal supervision, and was at the mines almost every day.

Q. You stated that the powder didn't appear to be of the same grade— A. Yes, of my personal knowledge. I saw the powder and showed samples of it to Mr. Waddell.

Q. What grade was it that you wanted? A. I think our order called for single "C" powder; that is what we used.

Q. And what kind did you get? A. This powder would be what we term in the coal business, "Mine run;" it was not screened at all; it was graded down to pieces the size of "BB" shot, you know, up to "CC" size.

Q. Have you ever had any experience with other powders besides the Buckeye powder? A. The du Pont.

Q. Did you ever get any different grades of du Pont powder at different times? A. No, and we never had a complaint of du Pont powder in all the powder we purchased from them.

6413

Q. Did you ever ship back any du Pont powder? A. No, sir.

Q. Didn't you ship back a car of du Pont powder a short time before the Buckeye mills went into business? A. No. Yes, we did.

Q. Now, didn't you ship back two cars of du Pont powder about that time? A. Not to my knowledge, no, sir.

Q. What did you ship it back for? A. I think that was during the period, if my memory serves me right, it was during the period of the anthracite strike, and we had always got our powder from the Mooar mills, and that mill was crowded with orders, and they shipped our powder from the Brandywine, the Brandywine mill. The miners made a complaint on it and we took the matter up with the powder company, and they claimed that on account of the anthracite strike they couldn't supply it from the Mooar mill and they had been shipping from the Brandywine mills, and for us to return it, and hereafter they would ship it from the Mooar mill.

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Q. Those cars contained a thousand kegs? A. I don't know whether it was eight hundred or a thousand. I think we generally bought one thousand kegs in a car.

Q. You knew that the Buckeye Powder Company was constantly manufacturing powder and sending it out in very large quantities to consumers of powder in various parts of the country, and it was being used? A. Yes, sir.

Q. You knew that some concerns had used thirty or forty thousand kegs of it and it had proved to be satisfactory to them, didn't you? A. No, I didn't.

Q. You didn't know that? A. No.

Q. You were a stockholder in the company and 6416
you could have found that out if you had made an investigation? A. I suppose I could if I had made an investigation, but I didn't make an investigation.

Q. You were not very much interested in making the company a success? A. Yes.

Q. Why didn't you make an investigation? A. I didn't.

Q. What did you do to make it a success? A. Tried to use their powder; that was one of the things.

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Q. Did you try to help extend their business? A. Mr. Waddell advised us to—

Q. Answer my question, yes or no, then you can explain it. A. No. Mr. Waddell advised us to keep the matter quiet, that we were stockholders in the company and in case the miners knew we were financially interested in it they would not want to use the powder. He said they would think we wanted to use his powder.

Q. Mr. Waddell said that? A. That's what he told us.

Q. Did you deem it necessary to post a notice or send out a circular to the miners telling them you were interested in the mills, and for them to use their powder? A. No, we knew that would be the worst way to do it.

Q. Then you realized what Mr. Waddell had told you was good—you realized that his advice was good? A. Yes.

Q. Then there is no criticism with Mr. Waddell for that? A. I am not attempting to criticize Mr. Waddell at all. I intended to explain, if you allowed me, but you didn't allow me to do it.

Q. I have no desire to restrict you in any way to make it clear. Explain it. A. That is what I attempted to do with you. I wanted to explain—

6419 you wanted to know why we didn't try to use the powder earlier than what we did.

Q. If you didn't explain it satisfactorily, do so; you can do so now. A. What I wanted to say you wanted to know if it was because we were afraid of breaking our contract. The thing was that we wasn't afraid of breaking our contract with the du Pont Powder Company, but we were afraid of having labor trouble with our men, and we wanted to work the matter diplomatically so we wouldn't have a strike, because the coal business was a very

6420 peculiar thing. You couldn't tell what the miners were going to do, and in many ways it was a financial loss to us to have a day off. It was a question of producing coal.

Q. Isn't it a fact that the miners are somewhat dictatorial about the kind of powder they will use? A. They are pretty particular about it.

Q. Isn't it a fact that they are dictatorial, and sometimes unreasonable in making their demands upon the operators? A. No, I wouldn't say that.

Q. Why wouldn't you? A. I don't think I would say that.

Q. Isn't it a fact, within your knowledge, that a great deal of the disturbance which is created between the miners or which exists between the men and the operators, relating to the use of powder, is created and worked up by powder salesmen and

dealers in powder for the purpose? A. I don't think so.

Q. Don't you know it to be a fact that certain influential miners have been employed by powder companies and their representatives for the purpose of creating a disturbance and particularly for the purpose of keeping Buckeye powder from being used in certain mines? A. No, sir.

Q. You say you don't know it? A. I never heard of it.

Q. Don't you know that it is a fact that in mines 6422
very close to you and in the neighborhood of the mine where you were attempting to use the powder that very thing was done? A. No, I don't know.

Q. Did you ever hear of any such thing being done? A. No, sir.

Q. Are you a member of the Coal Operators' Association of the State of Illinois? A. Not at the present time.

Q. Were you a member during 1903 to 1909? A. I was a member of the Illinois Coal Operators' Association from the organization of it until the 6423
close of the strike, after the strike was settled, the strike of 1910, I think.

Q. Were you ever an officer of that association? A. No, sir.

Deposition of GEORGE M. BOYD, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Where do you live? A. At Knobnoster, Missouri.

Q. How long have you lived there? A. 24 years.

Q. Have you any connection with the D. M. Boyd Brick and Tile Company, during any time? A. Yes, sir.

Q. Is that a corporation? A. No, a co-operative company until 1912, in May; it was up until that time, and then it was incorporated.

Q. What business is that company engaged in? A. In the manufacturing of all clay products, such as brick, tile, and also miners and shippers of coal and clay, fire clay.

6425 Q. Was that company in business between the years 1903 and 1909? A. Yes, sir.

Q. Between those years did you use any black blasting powder in that business? A. Yes, sir.

Q. Who purchased the supplies for the G. M. Boyd Brick and Tile Company? A. G. M. Boyd purchased all the explosives.

Q. You are the head of the company? A. Yes, sir.

Q. And you purchased all the explosives? A. Yes.

Q. Between those years, did you purchase any 6426 black blasting powder known as Buckeye powder? A. Yes.

Q. Do you recall about what time you purchased that powder? A. I couldn't exactly tell you as to just what date; I think it was in 1903 and '04; possibly some in 1904; I wouldn't say positive what year it was that we bought powder from those people.

Q. You don't know exactly? A. No.

Q. To the best of your recollection, it was in the years 1903 and 1904, then? A. I think so.

Q. Will you state whether or not you continued to purchase powder of the Buckeye Powder Company? A. No, sir.

Q. You did not? A. No.

Q. Will you state the facts or circumstances which led up to your ceasing the purchase of Buck-

eye powder and purchasing from some one else? A. The only reason we quit buying Buckeye powder was, that we could get the powder a little quicker from Kansas City, from where they shipped it from, and powder cost just the same shipped from Kansas City as when we bought off them, and it was only a matter of being convenient for us; that was the reason for us changing.

Q. After you began the purchase of Buckeye powder from the Buckeye Powder Company, did you have any conversation or communication with any agent or representative of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. No, sir. 6428

Q. In a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company, against the E. I. du Pont de Nemours Powder Company, the International Smokeless Powder and Chemical Company, and the Eastern Dynamite Company, as defendants, the Buckeye Powder Company, in answer to a demand of the defendants for the names of customers which the Buckeye Powder Company alleged ceased to become customers of the Buckeye Powder Company, or abandoned the purchase of powder from the Buckeye Powder Company by the inducements of the defendants or certain other persons and companies mentioned in the suit as co-conspirators, whose names I will give you later in this question, the Buckeye Powder Company, in answer to the above demand, gave the name of G. M. Boyd Brick and Tile Company as a customer of the Buckeye Powder Company, which was induced by these defendants or other persons and companies which I will name, as one of the parties induced to abandon the purchase of powder from the Buckeye Powder Company. The names of the persons in the suit alleged to be co-conspira- 6429

tors of the defendants that I have mentioned, are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable and Jonathan A. Haskell, and the companies are: The International Smokeless Powder and Chemical Company, E. I.
6431 du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin and Rand Powder Company, Fairmont Powder Company and Judson Dynamite and Powder Company. I will now ask you whether any of these defendants which I have named, or any of the persons or companies which I have named, and alleged to be co-conspirators of the defendants, either all or any, or the agents or representatives of
6432 all or any, ever induced the G. M. Boyd Brick and Powder Company to abandon the purchase of powder from the Buckeye Powder Company? (Objection overruled. Exception allowed.) A. No, sir.

Cross-examination by Mr. Abbott:

Q. Do you know all of the names of the various persons just read to you? A. No, sir.

Q. You do not? A. No; I don't believe I do; I have heard several of the names, but all of them I possibly never did—

Q. Have you had a written document presented to you, suggesting such a question as this, recently? A. No, sir.

Q. Have you had a written statement presented to you, asking you to give your views concerning

a similar statement as that propounded here? A. I believe I had a letter from them.

Q. Did it enclose a typewritten statement similar to that which Mr. Katzenbach made to you? A. No, sir.

Q. Were you asked to sign anything? A. No, sir.

Q. You didn't sign anything? A. No, sir.

Q. You are sure of that? A. Yes.

Q. What impression do you gather from the reading of those names over to you; you answered "No?" 6434
A. Yes.

Q. How do you know that some person representing some of those persons has not called on you and discussed powder matters with you? A. I know, because no one at the works ever had any authority to purchase anything, because if they went there to any one, they would send them to me, because they all worked around the brick works.

Q. You have had people call on you, have you not, from 1903 to 1909 with reference to powder matters? A. Possibly did; I possibly did. 6435

Q. Do you recall who they were and who they represented at that time? A. No, sir.

Q. You don't know but what they might have represented some of these persons whose names were read over to you? A. They might have had, but I don't think there was ever an agent come there that ever discussed the price of powder; I told them I was getting it at a certain price, and they never said they could get it any less; I always bought in small quantities, and it was no use of them talking to me.

Q. How much powder did you use per year? A. About 25 kegs per month, possibly; that would be 12 months in a year, that would be 25,—300 kegs.

Q. Did you use that much during the years 1903 to 1909? A. About that much.

Q. You used about that much. A. Yes, sir.

Q. About 300 kegs? A. I wouldn't say positive; we might use that much and might use less; I couldn't say exactly. There are some of those years, possibly, that we would use 40 or 50 kegs more than the preceding year.

6437 Deposition of JOHN BOHLANDER, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Bohlander, where do you live? A. Pekin, Illinois.

Q. How long have you lived there? A. About 50 years.

Q. What business are you engaged in? A. At the present time?

Q. Yes. A. None.

6438 Q. Between the years 1903 and 1909, what business were you engaged in? A. I owned and operated a coal mine.

Q. Where was that coal mine located? A. Pekin.

Q. Did you conduct the business yourself, or as a member of a firm? A. As a member of the firm.

Q. What was the name of the firm? A. Bohlander Brothers.

Q. Who was that firm composed of? A. Well, the four brothers started it in the beginning, for a short time; but most of the time, it was John and Edward.

Q. Have you had any experience in the mining of coal yourself? A. I was a miner all my life; I started when I was eleven years old.

Q. State whether you have used any black blasting powder in your mining operations? A. Yes.

Q. State how you used black blasting powder. A. How do you use it?

Q. Yes; what is the operation, from the start to the end of it? A. It is used by boring holes in the coal and blasting it out.

Q. After you bore the hole, what do you do? A. You make a cartridge, whatever your judgment is, 10 or 12 or 14 inches, and tamp it up and just start it with a fuse.

Q. Between the years 1903 and 1909, did you use black blasting powder in your mining operations? 6440
A. Yes.

Q. State whether or not, between those years, you made any purchase of blasting powder, known as Buckeye powder, of the Buckeye Powder Company? A. Yes.

Q. Who made those purchases? A. I did.

Q. How many purchases of Buckeye powder were made, to your knowledge? A. Three, I think; not more than three.

Q. Will you state whether or not you continued the purchase of Buckeye powder after these three purchases? A. We did not. 6441

Q. Will you state whether or not you personally used any of this powder known as the Buckeye powder? A. Yes, sir.

Q. State what results you secured from it, and what you did with it. A. Well, the story is this: that we could save the freight rates on powder from Peoria down, by sending our teams directly over to the Buckeye mill and hauling it; therefore, we saved about 15 cents a keg by using it that way, and we got, I don't know how many kegs, as a trial order, but the amount of the bill come to $76.50; I looked that up the other day; but the miners were not satisfied with it, so we got in the place of "CC," we got single "F," or at least a grade lower, quicker, and I sent the team over to the Buckeye mills; I

went along with them myself, just for the ride, and got 100 kegs, but the miners couldn't mine as much coal with that as with du Pont or Hazard, that we were using before, so I wouldn't take the miners' word for it, and I went down and tried a keg myself and found out we couldn't mine as many tons per keg with Buckeye as with the other, so we had to abandon it.

Q. State, Mr. Bohlander, how many kegs you first got, to your recollection? A. I don't remem-
6443 ber.

Q. Approximately? A. Well, the bill amounted to $76.50; it was probably 50 or 60 kegs.

Q. Do you know, of your own knowledge, whether that was used in the mines? A. Yes.

Q. It was used? A. Yes, sir.

Q. Do you know the results of the use of it? A. Yes, sir.

Q. What were the results? A. The results was, that the miners couldn't mine as much coal with that per keg as with the du Pont or Hazard.

6444 Q. Did you subsequently try any other grade of Buckeye powder? A. Yes, sir.

Q. What kind or grade of powder was that? A. Well, I don't remember; we were using "C" and double "C" of the du Pont, and then we thought by using a quicker single "F," for instance, we would get the same results, but we didn't.

Q. Who purchased this second order? A. I did; I done all the business of the firm.

Q. Who went and got the powder and brought it to your mines? A. The last order?

Q. Yes. A. Our coal hauler and coal team, and I went with him.

Q. Did you use any of this second batch of powder yourself? A. Yes.

Q. State how you used it. A. I used it the same

as any miner would, simply to give it a good trial. I wouldn't take the miners' word for it.

Q. What steps did you take in the use of it? A. I went down and got a keg and bored holes the same as any coal miner would.

Q. What was the results of your trial? A. The result was, that you couldn't mine as much coal with the Buckeye powder by about 25%, as with the other.

Q. After you purchased this Buckeye powder, did you have any conversation or communication with 6446
any agent of the Buckeye Powder Company with reference to Buckeye powder? A. No, sir.

Cross-examination by Mr. Abbott:

Q. How many purchases of Buckeye powder did you say you had made? A. Well, we made two payments, but I think we got three lots.

Q. What was the total amount of your purchases? A. September 2nd, we paid him—I don't remember the date we got the powder, but a short 6447
time before that. September 2, $76.50; October 16, 1905, 100 kegs, at $120.00.

Q. You said you had looked up the matter; you are giving your testimony from some data you have examined recently? A. Yes, that part of it I looked up, yes, but—

Q. When? A. About two weeks ago.

Q. At whose request did you make that examination? A. Nobody's.

Q. At whose request did you come here to testify? A. Mr. Moffatt telephoned for me.

Q. Who is Mr. Moffatt? A. Ed Moffatt; you know as much about it as I do about it; I have known him for twenty years or more.

Q. Won't you tell me? A. He has been an agent

for Dooley Brothers for a long time in the powder and oil business.

Q. Do you know who Dooley Brothers are? A. Yes.

Q. What relation have they to this case, if you know? A. None, only we bought powder off Dooley Brothers.

Q. What kind did you buy off them? A. Du Pont.

Q. Did you ever sell them any coal? A. Dooley
6449 Brothers?

Q. Yes. A. I think not.

Q. You never did? A. I guess not.

Q. What kind of du Pont powder were you using at the time you began buying Buckeye powder which you testified to? A. I don't remember—"C" and double "C."

Q. What kind of powder did you buy of the Buckeye Powder Company? A. We started at the same; the first shipment was "C," and I think the last was single "F."

6450 Q. You stated you didn't get as good results as with the du Pont powder; did you mean results as to tonnage of coal? A. Yes.

Q. And you yourself handled the powder? A. Yes, sir.

Q. And drilled the holes and put in the shots? A. Yes.

Q. And kept track of the results? A. Yes, sir; we give it a good, fair trial.

Q. How thick a vein of coal is yours? A. It's called five feet; it would average a little less.

Q. Five feet? A. Yes, sir.

Q. Were you under contract with the du Pont Powder Company, or any other company to buy black blasting powder at any time between 1903 and 1909? A. No, never with anybody.

John Bohlander—Redirect—Recross 6451
Daniel T. Sanders—Direct

Re-direct examination by Mr. Katzenbach:

Q. When you ceased the purchase of Buckeye and went back to the purchase of powder of the du Pont Powder Company, state how the price of the du Pont powder compared with that of Buckeye? A. It cost us a little more because we didn't have to—

Q. Which cost you a little more? A. The du Pont. 6452

Re-cross examination by Mr. Abbott:

Q. What did you pay for du Pont powder? A. I think $1.35.

Q. What did you pay for Buckeye powder? A. $1.20 over at the mills.

Q. Was there any rebate on either of those figures? A. No.

Q. In how large quantities did you buy? A. In 100 keg lots. 6453

Deposition of DANIEL T. SANDERS, a witness produced for the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Sanders, where do you live? A. I live three-quarters of a mile West of Glassford, Peoria County.

Q. Between 1903 and 1909, what business were you engaged in? A. I was engaged in farming and running a coal mine too.

Q. Where were your coal mines located? A. On Section 27, Timber Township, Peoria County.

6454 *Daniel T. Sanders—Direct*

Q. Are you still engaged in the coal mining business? A. No, sir.

Q. When did you cease the coal mining operations? A. In 1905.

Q. Have you been engaged in any coal mining operations since the year 1905? A. Only drawing a royalty.

Q. You lease your mines? A. Yes.

Q. And you no longer continue to be an operator? A. No, sir.

6455 Q. After 1905, did you use any black blasting powder in your mines? A. No, sir.

Q. Between the years 1903 and 1905, did you use any black blasting powder in your mines? A. Yes.

Q. Who made the purchases of it. A. I did.

Q. Will you state whether or not, between the years 1903 and 1905, you made any purchases of black blasting powder, from the Buckeye Powder Company, known as the Buckeye powder? A. Yes, sir.

Q. How many purchases did you make? A. Well, two or three different times I don't know exactly 6456 how many times, but it was about three times.

Q. Do you recall the times of purchase? A. No, sir.

Q. Can you state approximately what they were? A. No, I can't.

Q. State why you purchased Buckeye powder? A. Why, I could buy it cheaper than the other.

Q. Do you, of your own knowledge, know whether the Buckeye powder was used in your mine? A. Yes, sir,

Q. With what results? A. Not very good results.

Q. State whether or not you employed miners to operate in your mines? A. Yes, sir.

Q. Did or did not these miners—or state what the attitude of the miners was towards Buckeye powder. A. They didn't like the powder.

Q. State in what manner they showed a dislike for the powder. A. It didn't work as good as the other powder did.

Q. State whether or not they would use the powder. A. They would not.

Q. After these trials of Buckeye powder in the mines, state whether or not you continued to purchase Buckeye powder.

Q. Will you state whether or not this powder was tried in your mines, the Buckeye powder? A. Yes, sir. 6458

Q. After the trials of Buckeye powder in the mines, will you state whether or not you continued to purchase Buckeye powder? A. No, sir.

Q. Why didn't you continue to purchase it? A. The miners refused to use it.

Q. After the purchase of Buckeye powder, will you state whether or not you had any conversation or communication relating to Buckeye powder, with any agent or representative of the E. I. du Pont de Nemours Powder Company? A. No, sir.

Q. You didn't? A. No.

6459

Q. In a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pont de Nemours, the Buckeye Powder Company has given your name as one of their customers which was induced to abandon or stop the purchase of powder by the E. I. du Pont de Nemours Powder Company. Will you state whether or not these companies, or any agent or representative, or any other person or corporation, induced you to stop the purchase of powder from the Buckeye Powder Company? (Objection overruled. Exception allowed.) A. No, sir.

Cross-examination by Mr. Abbott:

Q. What agent or agents of the E. I. du Pont de Nemours Powder Company do you know? A. Dooley Brothers down here.

Q. Did you ever know any other agent or representative of that company? A. No.

Q. No other? A. No.

Q. Did you ever have any business with any other agent or representative of that company? A. No,
6461 sir. Well, I don't know; Newsam Brothers had that powder; I got powder from them. I don't know whether that would be that question or not.

Q. Do you know Mr. Moffatt? A. Moffatt?

Q. Yes. A. No, sir. I may know him to see him.

Q. At whose request did you come here to testify? A. The Dooleys down here.

Q. Were the Dooley Brothers agents of the E. I. du Pont Powder Company at the time you made these purchases of Buckeye powder that you have testified to? A. Yes, sir.

6462 Q. How do you know that the miners in your mine were not agents of the E. I. du Pont de Nemours Powder Company; these miners that objected to the use of the powder? A. I don't know, only for the reason that they were supposed to work for day's work for a living, and I didn't think they would be agents for any company.

Q. That is your reason? A. Yes; they lived in my house and they were in my employ, and I didn't think they were agents.

Q. How many purchases did you make of Buckeye powder? A. I don't think I made over three.

Q. Will you say you didn't make more than that? A. No, I won't say I didn't; I don't think I made over three purchases.

Q. But you won't say you didn't? A. No.

Q. How many kegs did you get the first time? A. I think ten kegs.

Q. And how many the second time? A. I think ten kegs.

Q. And the third time? A. Probably I got twenty kegs, I don't know exactly, but I bought in ten keg lots.

Q. What year did you make these purchases? A. I think in 1904.

Q. And how far apart were they? A. I couldn't tell that. 6464

Q. How much powder did you use in your mine at that time per month? A. Not very much; I wasn't running very much; I worked from three to eight men.

Q. How many kegs of powder did you consume per month? A. I couldn't say.

Q. Can you give any estimate? A. No, sir.

Q. Was it more than 35 kegs? A. No, it wasn't that many.

Q. Was it 20 kegs? A. It might have been 20 kegs, it might have been. 6465

Q. How many months did you operate during the years? A. Twelve months.

Q. Did you have any other powder during the time that you were using Buckeye powder? A. No, not while I was using Buckeye powder. After I quit Buckeye, I bought du Pont.

Q. After you quit Buckeye, you bought du Pont? A. I bought du Pont powder between times; when I got out of Buckeye, I got some du Pont and tried that.

Q. What did you pay for your du Pont powder at that time? A. I don't know; I think about $1.60, $1.45 or $1.60,—different prices.

Q. Did you testify as to the price you paid for Buckeye powder? A. No, sir.

6466 *Ambrose Cummings—Direct*

Q. Have you any way of refreshing your memory as to the price you paid for du Pont powder? A. Du Pont powder?

Q. Yes. A. No, sir.

Q. Have you any bills? A. No, I just went up and gave them the cash for it and walked off; I didn't have any agents or make any accounts or anything of that kind; I just give them the money and I got the powder.

6467 Q. You stated that you leased your mines; when did you lease them? A. In 1905.

Q. Whom did you lease it to? A. The Lancaster Landing Coal Company.

Q. Do you know anything about the operation of the mine after you leased it? A. The operation of it?

Q. Yes. A. Not much.

Q. Do you know what powder was used there? A. Du Pont powder.

Q. Do you know whether any Buckeye powder was used there? A. No.

6468 Q. Sure of that? A. Yes.

Q. None was used at all? A. No, sir.

Deposition of AMBROSE CUMMING, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Cumming, where do you live? A. I live in East Peoria.

Q. Between the years 1903 and 1909, what business were you engaged in? A. In the coal business, mining coal.

Q. Were you engaged in it individually, or as a member of a firm or corporation? A. Part of the time I was in partnership, and the balance of the time I was alone.

Q. Under what name did you operate? A. The Standard Coal Company.

Q. Whereabouts were your mines located? A. In East Peoria.

Q. Did you use any black blasting powder in the mining operations in your mines? A. Yes, sir.

Q. Did you purchase the black blasting powder 6470
for your mines? A. I did.

Q. Yourself? A. Yes.

Q. Between the years 1903 and 1909, did you purchase any powder known as Buckeye powder of the Buckeye Powder Company? A. Yes, sir.

Q. State the circumstances of that purchase. A. Well, the Buckeye Powder Company sent a representative and tried to induce us to buy powder from them, and they offered us the powder cheaper than we were buying it of the du Pont Powder Company, and I took ten kegs on trial.

Q. Do you know or not, whether these ten kegs 6471
of powder were used in your mine? A. Well, part of them were used.

Q. Why was not all of them used? A. The miners refused to use them kegs because they said it wasn't as strong as the other powder.

Q. After this purchase, did you make any further purchases of Buckeye powder? A. No, not from the Buckeye Powder Company.

Q. After you purchased powder of the Buckeye Powder Company, did any agent or representative of the E. I. du Pont de Nemours Powder Company ever have any conversation or communication with you with reference to Buckeye powder? A. No, sir.

Cross-examination by Mr. Abbott:

Q. Do you know who the agents and representatives of the E. I. du Pont Powder Company are? A. Yes.

Q. Who are they? A. That is the parties that sold me the powder; that was Mr. Moffatt, for Dooley Brothers.

Q. Who asked you to come here to testify? A. Mr. Moffatt, I think.

6473 Q. The same Mr. Moffatt that sold you the powder. Now, you say you only made one purchase of Buckeye powder? A. Yes.

Q. What time was it that you made that purchase? A. In 1906, I don't remember the day.

Q. Are you the only, or were you the only person operating during the years 1905 and 1906 in East Peoria, as the Standard Coal Company? A. Yes.

Q. That was a trade name? A. Yes, sir.

Q. It was not a corporation? A. No.

Q. How many miners did you have in your
6474 mines? A. I don't remember at that time; we run from 20 to 45 men.

Q. How many kegs of powder did you consume per month? A. I couldn't tell you without looking over my books.

Q. Will you state approximately? A. Well, it would depend on the amount of men we had working.

Q. I am asking you for an approximate statement. A. Yes, that would be about six or seven kegs per man per month.

Q. Per man? A. Yes, sir.

Q. Were you at any time under contract with Dooley Brothers or anyone else for the purchase of black blasting powder? A. No, sir.

Q. Did you purchase it in the open market? A. Yes.

Deposition of CHARLES MARTIN, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Where do you live? A. East Peoria, Tazewell County.

Q. Between the years 1903 and 1905, what was your business? A. Mine manager.

Q. For whom? A. Part of it for the B. and B. 6476
Coal Company.

Q. By "B. and B. Coal Company," do you mean Bontges and Bontges Coal Company? A. Yes, sir.

Q. Where were the mines located? A. Tazewell County.

Q. At what point? A. Groveland Township.

Q. What position did you hold with Bontges and Bontges at their mine? A. Superintendent.

Q. In that mine, did you use black blasting powder? A. There was black blasting powder used; I didn't use it.

Q. No, but state whether or not you superin- 6477
tended the use of black blasting powder in the mines. A. Yes, as mine manager, I did.

Q. Do you know or not, whether in this mine in which you were superintendent, any black blasting powder, known as Buckeye powder, was used? A. Yes, sir.

Q. There was? A. Yes.

Q. When was that used? A. Along the latter part of 1904 or '05; now, I wouldn't be sure of that.

Q. Do you know or not, how many kegs of Buckeye powder was sent to the mines? A. I think there was a sample lot of 25 kegs, I think.

Q. State whether or not that was all used in the mines. A. No, sir.

Q. Have you any personal knowledge, that is,

6478 *Charles Martin—Direct*

knowledge with your own eyes, that any Buckeye powder was used in the mines? A. Yes, sir.

Q. How much Buckeye powder was used? A. Between five and six kegs.

Q. What became of the balance of the powder? A. It was sent back.

Q. It was returned? A. Yes, sir.

Q. To whom? A. B. and B. Coal Company.

6479 Q. State whether or not, with your own eyes you saw the results of the use of the Buckeye powder in the mines. A. I saw the results, yes.

Q. State what those results were? A. That I lost about six rooms.

Q. What do you mean by losing about six rooms? A. Six places; the slate was shot in.

Q. What effect did it have upon the coal? A. The effect it had upon the coal, the force of the powder—the powder, in my estimation, was slow, and it had an effect on the roof, and didn't have any effect on the coal at all.

6480 Q. After this Buckeye powder came to the mines of Bontges and Bontges, did you have any conversation or communication with any agent of the du Pont Powder Company with reference to Buckeye powder? A. No, sir.

Q. In a suit instituted in the United States District Court for the District of New Jersey, the Buckeye Powder Company has stated that the du Pont Powder Company induced the return of powder to the Buckeye Powder Company; will you state or not, whether or not, this powder which you state was returned, was returned as the result of any inducement by anybody on the part of the du Pont Powder Company? A. It was not.

Q. What business are you engaged in at present? A. County Mine Inspector.

Q. A State official? A. A County official.

Cross-examination by Mr. Abbott:

Q. Mr. Martin, when did you say you used this twenty-five kegs? A. Between 1904 and 1905—not the whole 25 kegs wasn't used.

Q. Whom were you representing at that time? A. B. and B. Coal Company.

Q. Who was the B. and B. Coal Company? A. Bontges.

Q. Did Bontges and Bontges have any other mine at any other place you know of, except that 6482
one? A. It had one at Petersburg.

Q. Where is that? A. South of Peoria.

Q. Near what station? A. Close to Springfield.

Q. How far was the mine in which you worked, or which you were located, or which you managed, from Krann Station, Illinois? A. Krann Station is in Peoria County, and I was in Tazewell County.

Q. Do you know anything about the business of Bontges and Bontges at Krann Station? A. No, sir.

Q. You had nothing to do with their business at 6483
that point? A. No, sir.

Q. You stated a moment ago that you had had no conversation with any agent or representative of the du Pont Powder Company? A. I never did.

Q. Do you know who the agents or representatives of the du Pont Powder Company were during this period of 1905? A. No, sir; I didn't know them at all.

Q. Didn't know anyone? A. No, sir; I was a stranger.

Q. Did you know Mr. Moffatt? A. I didn't know him at all.

Q. Do you know him now? A. Yes.

Q. How long have you known him? A. Two or three years.

Q. At whose request did you come here to testify to-day? A. I was requested to come here.

Q. By whom? A. Mr. Moffatt.

Q. The gentleman sitting here? A. Yes, sir.

Q. Do you know the firm of Dooley Brothers in Peoria, Illinois? A. Yes, sir, I ought to.

Q. Do you know them pretty well? A. Yes, sir, I know the firm; I visit the mine in East Peoria; I go sometimes three times a month to the mine.

6485 Q. How long have you known Dooley Brothers? A. Ever since I have been County Mine Inspector —six years.

Q. Did you know them before that? A. No, sir.

Q. They have a mine adjoining the mine that you were operating for Bontges and Bontges? A. No, it's about a mile and a half difference, or two miles.

Q. By whom are you employed as Mine Inspector? A. Tazewell County.

Q. You are paid by the County? A. Yes, sir.

Q. Did you handle the loading and charging and firing of the shots of Buckeye powder which you

6486 saw used in the mine? A. I should say not.

Q. Who did? A. The miners.

Q. Then, what did they say to you about it? A. They complained about it.

Q. Complained about it? A. Yes, sir.

Q. You sent this powder back because the miners told you it wasn't satisfactory? A. Yes. Wait a minute, now; I didn't send it back just on their making complaint; I made an investigation myself.

Q. Then, tell us just what you did in making the investigation. A. I went in the mines, the places they showed me and told me about, and they said, "Here, Charlie, just look at this shot here; here it's up in the roof and we can't use it;" and they were all good friends of mine, the miners; every man in that mine was a good friend, and they said,

"We don't want to turn you down;" and then I said, "I'll tell you; just give it a trial; do what you can." I was working for the interest of the Coal Company; and they just said, "We'll quit using it," and I had to send the powder back. That's just as true as I am sitting on this chair.

Q. That states all the facts in connection with the matter? A. Yes, sir.

Re-direct examination by Mr. Katzenbach: 6488

Q. Mr. Martin, did you see the room where these shots of Buckeye powder had been fired off? A. I had to see them, because I had to examine the mine.

Q. This mine of Bontges and Bontges, where this powder was used, was located in East Peoria? A. Yes, sir, in Groveland Township.

Deposition of HENRY VONACH, a witness produced on behalf of the defendants, being duly 6489
sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Vonach, where do you live? A. Cuba, and run a mine at Lewiston.

Q. How long have you been engaged in the mining business? A. I have been in the mining business for about twenty-two years; of course, I haven't run mines all that time, but I have been in and about mines.

Q. And what work about mines have you done? A. Every kind of work that could be done, except hoisting coal.

Q. Are you a practical miner? A. Yes, sir.

Q. Have you any certificate? A. I have three certificates.

Q. What are they? A. A certificate for a mine, what they call a ten-man certificate; that's the second class, I got one first and one second-class, that's the second class, and one miner's certificate.

Q. Between the years 1903 and 1909, were you engaged in the coal mining business? A. I have been in the coal mining business for about six or seven years.

6491 Q. That is, in what capacity? A. Oh, not a very large business; I have been mine manager for several different parties, mine manager for the Cuba Company at one time.

Q. Were you ever connected with the Crescent Coal Company? A. Yes, sir.

Q. During what years? A. I think I was with them about two years, from 1906, on.

Q. What position did you hold with the Crescent Coal Company? A. Mine manager and general purchasing agent.

6492 Q. While you were with the Crescent Coal Company, did you use any black blasting powder in the mining operations of that mine? A. Yes, sir.

Q. During the time that you were with the Crescent Coal Company, will you state whether or not you purchased any black blasting powder known as the Buckeye powder? A. Yes, sir.

Q. About when did you purchase that? A. I think it was about 1908.

Q. About how much of that powder did you purchase, to the best of your recollection? A. I couldn't say; we had 25 kegs, or something like that, maybe more.

Q. Twenty-five kegs? A. Maybe more.

Q. Will you state whether or not, to your knowledge, that powder was used in the mines of the Crescent Coal Company? A. Yes, sir, it was.

Q. State whether or not you personally used any of that powder? A. Yes, I used some of it.

Q. Yourself? A. Myself.

Q. State what you did personally with the Buckeye powder, and what results were obtained from its use? A. The Buckeye powder didn't do as good work for us as the du Pont at that mine; of course, I have used both powders in several different places.

Q. Will you state what you did when you used the Buckeye powder? A. Well, we wanted to use it, and there was another company there using it, 6494 and, of course, they told me about it, and I was going to try it myself; we got some of it and tried it; but I couldn't get as good results as before, and we just quit using it.

Q. You didn't get the results? A. No, sir.

Q. And that is why you quit using it? A. Yes, sir.

Q. Will you state fully just what steps you took in the use of that Buckeye powder? A. Yes, sir.

Q. Go ahead. A. I took it in the mine, and I wanted the boys to use it, and I made some shots 6495 with it.

Q. State how you made the shots; just what operation you went through. A. Well, I made the shots the same as any coal miner.

Q. State how you did it. A. Stood up my machine and drilled the holes in. I set it so it would make a good shot.

Q. After you drilled the hole, what did you do? A. Made up my powder, put the powder in and tamped it up and fired the shot, and the next morning when I went, it hadn't done the work, but we didn't give it up then; we made some more shots, and it wouldn't do the work as good as it ought to have done it. Of course, I ain't got nothing against either one of these companies, understand that.

6496 *Henry Vonach—Direct*

Q. What I want you to state, is just what you saw as the result of the use of Buckeye powder; state what you saw with your own eyes. A. I seen it wasn't the thing for us, and so we had to change.

Q. What did you see; what effect did it have on the coal? A. It wouldn't work; it would flat-seam it, and it wouldn't get the coal out.

Q. It flat-seamed it? A. Yes; and it wouldn't get the coal squealed out.

Q. What do you mean by "squeal out"? A. It
6497 would blow about two or three inches out, just the length of the hole; just blow out the center of it; it was soft natured coal. Of course, it may have been we didn't have quick enough powder; we didn't try any more of it. It was supposed to be the same kind; it was double "F" and single "F."

Q. After you used these lots of Buckeye powder which you have referred to, state whether or not you continued to purchase it for the Crescent Coal Company? A. No.

Q. State why you didn't continue to purchase it
6498 for the Crescent Coal Company. A. It wasn't the kind of powder we needed for that mine.

Q. After you purchased the Buckeye powder for use in your mine, did you have any conversation or communication with any agent of the du Pont Powder Company with reference to Buckeye powder? A. I never saw any while I was down there; there never was any there.

Q. Why did you wish to use Buckeye powder in the mines of the Crescent Coal Company? A. Why, we were buying it for $1.10 a keg is the reason we bought it.

Q. Was that more or less than you had been paying? A. We had been paying $1.25.

Q. After you stopped the purchase of Buckeye powder, will you state whether the powder that

you afterwards purchased you had to pay more or less for than Buckeye powder? A. We had to pay $1.25 for it.

Q. What powder was that? A. Du Pont.

Q. Had you, prior to the use of the Buckeye powder in the mines of the Crescent Coal Company, ever had any experience with Buckeye powder? A. Before that?

Q. Yes. A. Yes.

Q. In what mine? A. The Applegate and Lewis. 6500

Q. State what that was. A. I used to work for them, and the bookkeeper down there, when the powder went in there, he give me a keg of it and I tried it out, and I went back and told him the other kind was good enough for me.

Q. Did you ever use it in the Applegate and Lewis mine? A. Yes, sir.

Q. State what results you had from the use of that powder in the mine of Applegate and Lewis. A. I didn't have very good results.

Q. In what way? A. It wouldn't work the coal, it wouldn't work the coal out. There was more than 6501 me that used it there.

Cross-examination by Mr. Abbott:

Q. Mr. Vonach, how old are you? A. About 32, 33 this April.

Q. When was it that you say you used this Buckeye powder in the Crescent Coal Company mine? A. About 1908.

Q. At that time, you were manager of that mine, were you? A. Yes, sir.

Q. Where had you been working before that? A. At Applegate and Lewis'.

Q. How long were you there? A. About—I think I worked for Applegate and Lewis about six years; I couldn't say right to the day.

Q. Who was the superintendent of Applegate and Lewis' coal mine while you were there? A. There were a good many different ones.

Q. Name some of them. A. Thomas Freer was one, and Tom Bach and a fellow by the name of Stanton; Mr. Stanton was superintendent and Mr. Harper was mine manager.

Q. Was this Crescent Coal Company an incorporated company? A. Yes, sir.

6503 Q. Who were the officers of that company? A. It had changed hands two or three times. The first starting out, I had six shares in it, when it first started; but Henry Vonach, J. C. Appleby, J. S. Vonach—

Q. What position did they hold in that company? A. Mr. Appleby used to be president; my brother was secretary and treasurer, and I was the manager.

Q. You did all the purchasing for the company? A. Yes, sir.

6504 Q. And all of the negotiating, that is, you negotiated with anyone that had anything to sell that you wanted to buy? A. Yes, sir.

Q. You bought, as you say, 20 kegs or 25? A. Twenty-five I think, I wouldn't say how many—it may be more. We bought some before that from the Mackey Coal Company.

Q. Some what? A. Some of this powder, and I got a few kegs of them at first.

Q. What did you get any more for? A. I wanted to have the powder started, if I could; it was a benefit to the company.

Q. After the use of this 25 kegs, you found it was bad, and you didn't want any more? A. Yes.

Q. When did you cease your connection with the Crescent Coal Company? A. I couldn't just say what date, but it was along about 1908, or somewhere like that.

Q. You say this purchase was made in 1908? A. I think so.

Q. What part of the year was it? A. I couldn't say.

Q. How did you know it was 1908, then? A. I don't know; it was along about that time.

Q. When did you quit the mine? A. Which mine?

Q. The Crescent Coal Company's mine. A. I couldn't say just what time it was.

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Q. Don't you know whether it was in the spring or fall? A. I think it was in the spring sometime.

Q. Did you leave of your own accord? A. Yes, sir.

Q. You say you were the purchasing agent of the Crescent Coal Company? A. Yes, sir.

Q. Who paid the bills? A. The company paid them, the secretary.

Q. Did you have anything to do with paying the bills? A. No, I wasn't secretary.

Q. You had nothing to do with paying the bills? A. No, sir.

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Q. Do you know whether the powder you purchased was paid for? A. I couldn't say.

Q. Who would know about that? A. The Secretary of the company, of course; I had six shares in the company, but I wouldn't say whether they settled for it or not.

Q. Now, don't you know, as a matter of fact, that your company bought not only one order of Buckeye powder, but that you bought a number of orders of Buckeye powder? A. I couldn't say; I think we did buy more than one.

Q. You are going to change now? A. No, I am not going to change—I wouldn't say whether we did; I wouldn't say whether we bought one or 25 or 100.

Q. Then, as a matter of fact, you don't know anything about it, do you? A. I know we bought it and used it.

Q. As a matter of fact, you don't know anything about the facts which you have attempted to testify to here? A. I certainly do; I used this powder.

Q. Don't you know, as a matter of fact, that the powder was satisfactory to you, and you so reported? Not you, but your company? A. No, sir, I don't know that they did.

6509 Q. Don't you know that they continued to buy the powder right along in the mines? A. No; they might after I had left.

Q. Don't you know that your statement, made here in your direct examination, that there was any complaint in the part of the miners is an entirely untrue statement? A. No, I don't know that.

Q. You stated a while ago, in answer to a question put to you by counsel for defendants, that you had never been approached by any agent or representative of the du Pont Powder Company to induce you to abandon Buckeye powder? A. Yes, sir.

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Q. Who are the agents or representatives of the du Pont Powder Company whom you have known? A. I have never known any of them.

Q. Have you ever known anybody that has sold du Pont powder? A. I don't know anybody personally, only Dooley Brothers; I suppose they are agents.

Q. Who is their agent? A. I don't know; I used to send in there and get powder and use it; I used to buy powder at the stores in Cuba; but I don't know whether they were agents for the du Ponts or not.

Q. Do you know anybody who went about selling du Pont powder for Dooley Brothers, that ap-

proached you? A. No, nobody ever come to sell me powder.

Q. No one would sell powder to you; you had nothing to do with the business of the company? A. I certainly did; I had all to do with the business that was done.

Q. You stated on your direct examination here, you testified to two shots, I think, you said you made with Buckeye powder? A. I made a good many more than that.

Q. Tell us about another one. A. But I could 6512
never do the work with it that I could with the other.

Q. You have said that a number of times; I want you to tell me about another shot. A. I can't just think of these shots; I made them, and I can make some more of them if you want to see them.

Q. I want you to answer my question. Will you tell me about another shot you made with Buckeye powder? A. I couldn't say; I ain't going to say just what shots I made; I never paid much attention to it at the time; I didn't think I would ever 6513
be called—

Q. As a matter of fact, you don't know anything about the shots you made, or how you made them, or the results? A. I know the shots didn't do the work that the other powder did, not only the du Pont, but the other grades of powder.

Q. What other grades? A. Hazard.

Q. Anything that is connected with the du Pont is better? A. I don't know whether it is connected or not.

Q. You stated, in explaining the results of the shots of Buckeye powder, that it might have been that you didn't have powder enough. How about that; what do you say now? A. No, I didn't say it didn't have powder enough in.

Q. You stated that another company had used the powder, and they had told you to use it? A. I could buy it for $1.10 a keg.

Q. Who was that other company? A. The Mackey Coal Company.

Q. Where is it located? A. I don't think they were incorporated; that is what they call themselves.

Q. What became of the Crescent Coal Company after you left it, if you know? A. Why, it has quit
6515 business, I guess, now; I don't know whether it has sold out. The Crescent Coal Company is here in Peoria, ain't it?

Q. When did it go out of business, if you know. A. I couldn't say, not the date.

Q. You said you had some stock in it; have you got that stock yet? A. No. I would have it if there was any of it left.

Q. What has become of it? A. I don't know; it went through.

Q. Didn't you keep track of the company as
6516 long as it was in business, as long as you had stock in it? A. No, sir.

Q. You didn't care anything about that? A. No.

Q. It didn't bother you? A. No.

Q. Was the Crescent Coal Company under contract with any corporation or person or association, to buy black blasting powder during the years 1903 to 1909? A. Not to my knowledge, they wasn't.

Q. You bought in the open market? A. Yes, sir.

Q. What did you pay for the du Pont powder you bought? A. $1.25.

Q. Was there any rebate on that? A. No, sir.

Q. Not at all? A. No.

Q. Of any kind? A. No, sir.

Q. Was that delivered at your mine? A. No, sir.

Q. Where was it delivered? A. It wasn't delivered anywhere; we had to pay freight.

Q. In addition? A. Yes, sir.

Q. Mr. Vonach, I want you to tell me about another shot that you made with Buckeye powder out of that 25 keg lot which you said you used? A. Well, I'll tell you. I was mine manager there, and I didn't have to dig coal; but I went in there, me and another young fellow there, and I said I wanted to try this, and we put a few shots and—

Q. Tell me about a third shot. A. All I know, 6518
they didn't always flat out; sometimes they would kick back; I ain't saying that it won't work in some coal, but it wouldn't work that, on account of being a soft-natured coal.

Q. Tell me of a good shot. A. I couldn't tell you that.

Q. Tell me one that wasn't a failure. A. You don't always have good shots; it don't matter what kind of powder you get, you will have good ones and bad ones.

Q. That applies to any grade of powder? A. 6519
Yes, sir; that's according to the way the shots were made; I could show you if I were in the mine.

Q. Does a shot with any kind of powder have to be drilled in a certain way? A. Certainly.

Q. And loaded in a certain way? A. Certainly.

Q. And tamped in a certain way in order to get the results from any powder? A. Yes.

Q. As I understand you, you have told of two shots you made with Buckeye powder, and say they didn't make good shots? A. I can show you, if you want to see them; I can't recollect right here; I ain't going to say how many I fired; I fired a good deal; more than two or three shots, though; not only there, but in other mines.

Q. I am asking you to tell me of the third shot

that you fired with Buckeye powder out of that 25 kegs you said you used. A. If I don't recollect it, I can't tell you.

Q. Then, how do you know you made any more than just two? A. I know we did.

Q. How do you recall the result of those two shots, while you don't remember the third? A. Couldn't you recollect it if you went in to try it?

Q. I ask you to recollect a third one. A. I ain't paid to come here; I was just fetched here.

6521 Q. Who fetched you? A. Mr. Larrimore came and got me.

Q. Who is he? A. I don't know; I never saw him until a week ago Saturday.

Q. Who does he represent himself to be? A. I don't know; he's a traveling man, I guess, for a powder company; I couldn't say; I don't know anything about him.

Q. You just allowed him to get you and bring you here? A. He got me and told me to be here.

Q. Did you talk over with him the matter of these

6522 shots you have made? A. No.

Q. That's all you know about the transaction? A. Yes. I went to—

Q. That's all you know about the Buckeye powder you say you had in the Crescent Coal Company mine? A. That's all I know; I won't say it ain't good powder.

Deposition of ISAAC WALTING, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Waltling, where do you reside? A. In Peoria.

Q. How long have you lived in Peoria? A. I think about 27 years.

Q. What has been your occupation during your life? A. Well, I have always been in the mining business ever since I was a boy.

Q. Have you been in the mining business as a practical miner, or as the owner of mines? A. Both.

Q. At what age did you get an acquaintance with practical mining; how old were you when you commenced? A. About six years old.

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Q. State how long you worked in a mine as a practical miner, and what you did. A. Well, I worked the same as all boys work, until I was a man—

Q. What line of work did you do? A. From mule driving and trapping, and what is general for boys to do.

Q. When you were a man, what did you do as a practical miner? A. The same as miners do now.

Q. What is that? Tell us yourself what steps a miner takes to get out coal, and what you did when you were a miner. A. I done so many things.

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Q. Just state them; state what you did. A. Well, I was in the old country and did boys' work until a man, and then I did what we call pick work there, that is, practical mining, until I was a man; and then, at about 20, I commenced over there as an operator for what we call them, chauter masters, over in England.

Q. When did you come to this country? A. In '66.

Q. And after you came to this country, what part of the country did you come to? A. Right to this town.

Q. Since you have lived in Peoria, have you worked as a practical miner? A. Yes, sir.

Q. In the coal fields about Peoria? A. Yes.

Q. As a practical miner, did you use black blasting powder in mining operations? A. Yes, sir.

Q. State just how black blasting powder is used in coal mining operations, if used. A. Black blasting powder is used in coal mining in this district and most of it—you drill holes n the face of the coal and put in your blast and blow it out; in some mines, of course, they undermine the coal and put the hole over the coal and blow it down.

6527 Q. And since you have been in Peoria, have you been an owner and operator of mines? A. I have been an operator of mines ever since about '70.

Q. Between the years 1903 and 1909, were you engaged in the coal mining business? A. Yes, sir.

Q. State what mines you were operating between those years. A. One at Pottstown, this county, and one at Edwards, this county, and one at Elmwood.

Q. In these mines you have mentioned as being operated by you, you used black blasting powder? A. Yes, sir.

6528 Q. Between the years 1903 and 1909, did you purchase for your mining operations any powder made by the Buckeye Powder Company and known as Buckeye powder? A. I think we used some.

Q. Do you recall in what mines you used the powder? A. I think we used some at Pottstown, and I think we used some at Edwards and at Elmwood.

Q. Prior to the use of the Buckeye powder, what powder had you been using? A. We used du Pont and Laflin and Rand, and several grades that I couldn't remember now; I guess I used to use a great deal of King's and Great Western powder; but that is before those dates.

Q. What were the reasons why you purchased Buckeye powder? A. Well, I expect, at least, I presume the reason I changed was, because the mills

were close to the works and we got the powder a little cheaper than we were getting it.

Q. Do you know how long the Buckeye Powder Company continued to manufacture powder? A. I do not, that is, I don't remember.

Q. Do you recall about the date of your first purchase of Buckeye powder? A. I could not.

Q. Could you approximate it? A. It was between those dates, between 1903 and 1907, but the particular date I cannot remember.

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Q. After you purchased powder of the Buckeye Powder Company, did you ascertain, by examination, the results of the use of Buckeye powder in your mines? A. We changed very often our powder from different dealers,—what suited the miners; we got powder what suited the miners.

Q. After you purchased powder of the Buckeye Powder Company, could you state whether or not you had any conversation with any agent or officer of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder. A. Not that I know of.

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Q. Before you purchased the Buckeye powder of the Buckeye Powder Company, did you have any conversations or communications with any agent or officer of the E. I. du Pont de Nemours Powder Company, or the company known as the du Pont Company, with reference to Buckeye powder? A. No, I think not.

Q. Did you, or did you not continue, after the purchase of powder of the Buckeye Powder Company to purchase the products of the Buckeye Powder Company? A. No, sir.

Q. State what facts you have, of your own knowledge, as to the reasons why you ceased the purchase of Buckeye powder. A. As a rule, we have to try to suit the miners; powder that suits the

miners right along, we never care to change; but always, in trying a new grade of powder, there is reports comes from the men whether they can do the work better or dig more coal with it or not so much, and we are governed in our choice in that way; and the reason we didn't continue with any firm any length of time, was to suit the miners; complaints would come sometimes, both of the Buckeye and other grades we used, and we always tried to suit the miners. I have handled a good
6533 deal of powder in my time between 70 and 80 years, I guess; I was one of the greatest shippers in the county; they were not as large then as now, of course.

Q. In your mines, between the years 1903 and 1909, how many tons of coal would you mine a year? A. Well, I can't hardly tell you that; your State statistics will show you more accurately than I can, if you will look them up.

Q. Approximately? A. All the way from forty to fifty thousand tons.

6534 Q. State whether or not there were any complaints made by miners to you of the Buckeye powder? A. I think I have already answered that, when I said that the complaints of the miners,—because we used to change to different kinds of powder—

Q. Did that apply to Buckeye powder as well? A. Yes, sir.

Q. When you received complaints as to powder, did you, between the years 1903 and 1909, ascertain or not, whether those complaints were well founded? A. Yes.

Q. In what manner would you determine whether the complaints were well founded or not? A. By the miners' bulletin,—by the amount of coal he could dig, was, as a rule, what governed me, to ascertain whether there was truth in the complaint.

For instance, a car of powder, a man in Number 5 in this district, will dig on an average so many tons to the keg of powder, and that was the only way that we had to find whether their complaints were correct; if we started on a new grade of powder, the miners didn't like it, and they sometimes say cuss words, you know, and we would look at the average what they were producing, and if it was falling off from what they were digging with the other powder, there was grounds to make a change; not always the price, but to satisfy the miners. It 6536
was to our advantage to have a powder that the miner could dig a fair day's work.

Q. Did you or did you not, investigate the complaints of the miners with reference to Buckeye powder? A. I think we have.

Q. State what you discovered as to the truth or falseness of the complaint of the miners with reference to Buckeye powder. A. Well, sometimes we have had complaints—

Q. Well, when you investigated those complaints, did you find them true or false? A. We found 6537
them, as a rule, true.

Q. In coal mining operations, does the operator or the miner pay for the powder used? A. The miner pays for the powder so much per keg.

Q. From whom does he purchase it? A. From the operator.

Q. Was that so in the conduct of your mines? A. Sure.

Q. Mr. Waltling, were you the I. Waltling of I. Waltling and Son, having mines at Edwards, Illinois? A. Am I him?

Q. Were you the Mr. Waltling of Waltling and Burdick, of Pottstown, Illinois? A. No, sir; that was a nephew of mine; I owned the land.

Q. Are you the I. Waltling of I. Waltling and

Company, of Peoria, Illinois? A. Yes, sir.

Q. In a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company as defendants, the plaintiff, in answer to a bill of particulars has given the name of I. Waltling and Company, of Peoria, Illinois, and I. Waltling and Son, of Ed-
6539 wards, Illinois, as customers of the plaintiff which were induced by the defendants, and also by the following companies and persons, namely: E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin and Rand Powder Company, Fairmont Powder Company, Judson Dynamite and Powder Company, Thomas Coleman du Pont, Pierre
6540 S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable and Jonathan A. Haskell, to abandon the purchase of powder from the Buckeye Powder Company. Will you state whether or not, you were induced by any of the defendants, corporations or persons I have named, or their agents or representatives, to cease the purchase of powder from the Buckeye Powder Company? (Objection overuled, exception allowed). A. You want me to answer whether I was induced to cease purchasing from the Buckeye?

Q. Yes. A. No, not by any one.

Cross-examination by Mr. Abbott:

Q. Mr. Waltling, you have just answered the last question stated by counsel, by stating in a general way that you were not induced by anybody? A. Yes, sir.

Q. You previously stated in your examination, that you were always influenced to make choice in the kind of powder that you used by the demand or request of the representatives of the miners and price? A. And price? 6542

Q. I believe that is what you stated? A. Yes, I believe it is what I stated.

Q. How do you know that some of these miners and others were not agents and representatives of the parties whose names were read to you a moment ago by counsel? A. How do I know?

Q. Yes. A. I don't know.

Q. You don't know that? A. No.

Q. Then, your answer to the question about which I am now interrogating you, would not be accurate, would it? A. Well, I think I have already stated that there is no one that could influence me 6543 to buy other powder if I had powder that suited me, unless there was a price that would get me to try it; then it would depend upon whether it suited me, no matter what the price was, if it didn't suit me I wouldn't have it. But in regard to the du Pont and Buckeye asking me to use powder, I emphatically say that I have not been approached by any of those firms that were read to me.

Q. And in so many words asked you to ceased purchasing— A. No one has asked me to cease purchasing from other parties.

Q. You have also stated that you took reports from your miners and acted upon those reports yourself, to know just how the powder was shot or handled, and what the results were per shot pro-

2181

duced by miners with the various grades of powder, whether it was du Pont or Buckeye or other powder, as I understood you? A. Only by looking at the bulletin.

Q. You simply took the bulletin reports? A. Yes, sir.

Q. Who made up those bulletin reports? A. The weigh master.

Q. And from whom did he get the data? A. He weighs the coal and puts every day's coal down on
6545 the bulletin.

Q. Who loaded the coal and furnished the information upon which he made his report? A. Each miner works by a number and puts his coal under that number; his coal is weighed and put on the daily bulletin.

Q. Now, if a miner, for any reason of his own, desired to use some other kind of powder than the kind of powder which he was using, couldn't he load a less amount of coal, or couldn't he fire it in a different way so as to produce a different re-
6546 sult? A. He could; he could touch it off and burn it in the woods if he wanted to; we have no prescribed way of drilling a hole; sometimes we hear of an exception; you could burn it up out in the open, if you wanted to.

Q. Isn't it a fact, that the method of boring holes and loading them and firing them, has a great deal to do with the amount of coal produced from a given shot? A. Everything.

Q. And isn't it a fact that there is a vast difference of opinion between miners as to what is the best method of leading and firing? A. Certainly, there is a difference of opinion.

Q. Is it not a fact, that there is often a very mistaken judgment on the part of miners as to the best method? A. Yes, sir.

Q. In other words, as I understand it, you made no investigation of the method used by the miners either in boring their holes or in loading their shots and firing them, or in the way in which they loaded the coal into the cars and delivered the same to your weigh master,—you made no investigation of that yourself? A. No; when we gave a miner a job, we supposed he was a miner, and we furnished the powder and he digs his coal; all we know then is, the superintendent of the pit boos, as we call him, furnishes him his room and he digs the coal to satisfy himself. 6548

Q. Then, the quantity of coal produced by any miner is absolutely under his control, according to the system you have just testified to? A. Yes, sir.

Q. Now, you stated in your direct examination, that you based your judgment, from time to time, upon the averages which were shown to have been produced by the various grades of powder as to which was the most effective in its results; is that correct? A. Yes, sir.

Q. How did you obtain that average; upon what did you obtain your information? A. By the daily bulletin. If a man is running No. 1, we will say, loads the buggy, puts his number on, the weigh master weighs it, and it is on the bulletin. If he sends out five or six in one day, it is under the number he is running by. Then it is the weigh master's duty to figure up at night what that man has got. 6549

Q. Have you in your possession or under your control, the various reports or statements of averages which were thus obtained by your weigh master regarding the coal as produced by the various grades of powder which you have testified you used? A. If I have those reports in my possession now?

Q. Yes. A. I couldn't say whether I have or not.

Q. Upon what do you base your testimony here to-day, to the effect that there was a variation in the averages in favor of other grades of powder as against the Buckeye? A. I have already stated—

Q. I am asking you what data— A. By the average of the coal—

Q. But where is the data? A. If a man—

Q. No, no; I want an answer to my question. I want you to tell me where the information is upon
6551 which you base your testimony to-day concerning the average amount of coal produced by the various grades of powder which you testified you used during this period from 1903 to 1909; you said you used Buckeye powder and du Pont powder and Laflin and Rand powder, and you testified that Buckeye didn't produce as good results as those. I want to know where that information is, not what your recollection is. A. The information may be burned up, so far as I know; but the mode of ascertaining, I have already explained.

6552 Q. I am trying to find out where that information is now; is it burned up? A. I don't know.

Q. Then, where is it? A. I don't know.

Q. Where was it? A. On the bulletins.

Q. And where are those bulletins? A. Probably destroyed; I have been out of the business now for—

Q. Why do you say that they are probably destroyed? A. I am out of the business now; because I am out of the business.

Q. Who destroyed them? A. I expect some of my children, or some other people; I don't know.

Q. Did you destroy them yourself? A. Not that I know of.

Q. Now, so far as you know, they are in existence, however? A. I don't know that; I have some of the

stuff in storage that I am paying storage on, that I have moved in the last two months.

Q. Might they be among those papers? A. They might be.

Q. How much coal in tons was produced by a keg of Buckeye powder? A. Well, that I can't remember.

Q. You can't remember it at all? A. No.

Q. Have you any records or other data that would furnish you that information? A. I don't know that I have. 6554

Q. Do you know that you have not? A. I say, I don't know that I have.

Q. Do you know that you have not? A. I don't.

Q. If you did have, where would it be? A. That I can hardly tell you; it might be among the stuff that is stored, and it might not; there has been any amount burned up, and you get a let of stuff, you know, around for a year or two, and still it is all passed; and then, the bulletins, they don't amount to anything—it's the time you are doing business that you want them. 6555

Q. Mr. Waltling, how much coal was produced by your miners from a keg of du Pont powder? A. That I could hardly tell you.

Q. How much coal was produced by your miners from a keg of Laflin and Rand powder? A. I couldn't hardly tell you. I can tell you this: years ago, miners would take more coal to a keg of powder than they will to-day.

Q. How does that statement apply to the years 1903 to 1909? A. It will apply right through, and increase with the carelessness on the part of the miner from what they used to do; they used to undermine the coal part way to save the powder, and then give it, what we call an advantage; now, they place it all together off the solid, and

6556 *Isaac Walting—Cross*

try to bring more out than it has a chance to bring.

Q. As I understand you, then, you are testifying regarding the results that were obtained by the various grades of powder, entirely upopn your recollections, aren't you? A. Yes, sir.

Q. You have no information of any kind, other than simply your recollection, upon which to base your present judgment? A. I have not. The way I have been called upon, without any preparation
6557 or any search.

Q. You have no facts upon which to base your recollection at all, in your possession? A. Only facts from what I have already stated, in figuring up the bulletin in giving me a guide.

Q. How long is it since you have taken one of those bulletins up and looked it over? A. I don't know that I have seen a bulletin for a year; I have been out of the coal business for a year.

Q. How long since you have seen one of those bulletins—when you saw the average reports of the
6558 difference between Buckeye and du Pont and Laflin and Rand? A. I can't say.

Q. Can't you state at all? A. No.

Q. You know that you used this powder? A. I have a faint recollection that I used powder—

Q. What kind of powder? A. I know I have used Buckeye and the du Pont, and the Laflin and Rand, and Austin, and different grades, as I have already said.

Q. And your recollection as to the comparative results between those powders, is purely a matter of recollection? A. Yes, sir.

Q. Now, did you testify on your direct examination definitely when you began buying Buckeye powder? A. No, sir.

Q. Are you able now to testify to that? A. No, sir.

Q. Did you testify when you ceased buying Buckeye powder? A. No, sir.

Q. Do you know how much Buckeye powder you bought? A. No, sir.

Q. Do you know how many different orders you placed for it? A. No, sir.

Q. Do you know over what period of months or years you bought it? A. I don't know.

Q. As a matter of fact, do you recollect anything about the purchase of Buckeye powder or the use of Buckeye powder? A. Yes, sir. 6560

Q. State then, definitely now, what you recollect about the purchase of Buckeye powder, and all that you recollect as to the dates and amounts and price of it. A. I can't do that.

Q. State then, definitely, just what you can recall regarding the purchase of Buckeye powder? A. I know after the Buckeye mills were erected there, that the Buckeye Powder Company wanted to put powder wherever they could put it, and, as a matter of fact, so does every other company, every mill does that. Being close to their district, we wanted to stimulate and to help an industry at home, and purchase some powder from the Buckeye. 6561

Q. When was that? A. I can't tell you.

Q. Were you a purchasing agent of the various mines which you owned at that time? A. I always did the purchasing for the firms mentioned.

Q. Have you any books of account or records showing the amount of purchases you made? A. I had up to the time I moved here three months ago. I lived in one place for 27 years, and I moved about two or three months ago down here on Main Street; I have some stuff in storage, and some was destroyed; we destroyed some magazines, papers and books that I thought I was through with; I may have some left and I may not.

6562 Q. Have you any particular recollection as to the amount of powder used by you at the Pottstown mine? A. I have not.

Q. Or at the Edwards mine? A. I can't tell you the amount.

Q. Or at the Elmwood mine? A. I can't tell you the amount.

Q. Do you know, as a matter of fact, that you used Buckeye powder at all of those mines? A. Well, I am not positive on that.

6563 Q. Then, did you use Buckeye powder at the Pottstown mine? A. I think so, but I am not positive.

Q. Did you use Buckeye powder at the Edwards mine? A. I think we did.

Q. Do you know that? A. Well, I feel sure that we did.

Q. Now, do you know whether you used Buckeye powder at the Elmwood mine? A. What time did the Buckeye cease manufacturing?

Q. I shall have to leave that to you? A. Well,

6564 I think we did, but I wouldn't be positive on that point. You see, I am trying to get all these out of my mind; I haven't kept any track of it.

Q. Now, can you recall any specific objection that was made by anyone who used Buckeye powder at either one of your mines, and if so, which one, and who was it that made the objection, and the date? A. I can't give you that; I told you all that I can remember; those dates—

Q. You testified on your direct examination, that it was absolutely necessary on the part of the coal operator, that he comply with the demands of the miners with reference to the kind of powder which he used? A. I don't think I used that term "absolutely."

Q. You said you had to suit the miners? A. I

said, if I remember right, that we tried to suit the miners, to satisfy the miners.

Q. And you found it necessary to comply with his request? A. Not altogether in that way. I tried to suit him, but price governed some, so that we were willing to make a test.

Q. Do you know what price you paid for Buckeye powder at any time? A. I couldn't truthfully state, but as near as I can recollect, the prices ran from 90 cents to $1.10, and $1.15, and varied.

6566

Q. Where did you get that information from? A. In my mind.

Q. Just in your mind? A. Just in my mind.

Q. Are you willing to testify that you ever bought as low as 90 cents, Buckeye powder; did you ever pay as low as that for Buckeye; are you willing to testify to that? A. No.

Q. Are you willing to say that you ever paid as much as $1.10 for Buckeye? A. I am willing, I think, to state that.

Q. You are willing to state that? A. Yes, sir.

6567

Q. How much powder did you buy of the Buckeye Powder Company at 90 cents? A. I don't know that we ever bought any.

Q. Are you willing to state at this time, whether the price you paid for Buckeye powder was F. O. B. mills or delivered at your mines? A. I don't think that I could say whether it was delivered price or price at the mill.

Q. Can you state at this time, what price you paid for du Pont powder? A. I cannot.

Q. Either the highest or the lowest? A. I can't.

Q. Can you state what conversations you had with the du Pont Company, or any of its representatives? A. No.

Q. Can you give us any of the freights? A. No.

Q. Can you state what price you paid for Laflin and Rand powder? A. I could not.

Q. How is it that you happen to know the price you paid for Buckeye powder, and can't remember the price of other powders? A. Because it is riveted in my mind; I have paid from 90 cents up.

Q. You say you did buy it at 90 cents? A. I know I have, but I don't know what firm.

Q. And you bought Buckeye powder at 90 cents? A. I don't know that.

Q. You don't know what you paid for Laflin and Rand or du Pnt or Buckeye? A. No, but I got
6569 some powder at that price.

Q. Now, as I understand you, after all the controlling factor in your mind in the use of the various grades of powder, Buckeye, du Pont and Laflin and Rand, was one of price, is that right? A. Was what?

Q. One of price; that was the controlling factor? A. That and the suiting of the miners.

Q. Which ground are you willing to stand on; you have said, and already gone on record, that you didn't observe the ground that the miners wanted it; which do you want to say, that it was because
6570 the miners wanted it that you were governed finally, or on account of the price? A. I beg your pardon; I didn't say that.

Q. State it as you think you already said it. A. I said—well, if the price showed was better than the other price, and we thought it was better to try the powder, we would try it, and if it gave satisfaction to the miners, we would go ahead; if it didn't, we were governed by their bulletins and their complaints, to make the change again.

Q. Now, that being so, can you state now positively what was the moving factor in your change at any time from du Pont powder or Laflin and Rand powder to Buckeye powder? A. No, I can't state positively, only as I have already stated, to assist the mill that was in our own district.

6571

Q. You are constantly giving new grounds for your change. First, it was because of the demand of the miners, then on account of the price, and then it was a question of your bulletin reports, and now it is to favor the Buckeye Powder Company because it was a local company. Now, which ground do you want to stand on?

Re-direct examination by Mr. Katzenbach:

6572

Q. Between the years 1903 and 1909, were miners paid by the number of hours that they worked, or by the number of tons of coal mined? A. The miner proper was paid by the number of tons produced.

Deposition of WARREN PYE, a witness produced on behalf of the defendants, being duly sworn, read as follows:

6573

Direct examination by Mr. Katzenbach:

Q. Mr. Pye, where do you live? A. In Peoria.

Q. How long have you lived here? A. I was born in Peoria County; I have lived here 49 years.

Q. During the years 1904, '05, '06 and '07, what business were you engaged in? A. I was in the mining business. General Manager of the Collier Co-operative Coal Company.

Q. Where were the mines of that company located? A. They were situated at South Bardenville, at Limestone County, Illinois.

Q. What is the distance from Peoria? A. I should judge four or five miles.

Q. You stated that the company was a co-operative company; will you explain what you mean? A.

A co-operative company each member had stock in the company that mined there; there were 31 of us, and each one mined coal, all but one, that was elected General Manager, and then we hired the day hands.

Q. Who was elected General Manager? A. I was.

Q. As General Manager, did you have occasion to purchase the black blasting powder used in the mine? A. I bought all the supplies, and collected and paid out all moneys.

6575

Q. Was the mine one in which black blasting powder was used? A. Yes, sir.

Q. And you made the purchases? A. Yes.

Q. What powder were you using in the early part of 1906? A. Du Pont powder.

Q. Did you use any other powder in the mines? A. Yes.

Q. What powder did you use? A. We used Buckeye powder. The agent came down there one day, and persuaded me to try 100 kegs—I think it was Jones—and I took the 100 kegs off him for trial.

6576

Q. Why did you purchase of the Buckeye Powder Company? A. Well, they sold it to us 5 cents a keg cheaper.

Q. What was the price that you paid the Buckeye Powder Company per keg? A. 95 cents, delivered at the mine.

Q. What had you been paying the du Pont Company, just prior to that? A. One dollar.

Q. Do you know or not, whether the 100 kegs that you purchased of the Buckeye Powder Company were delivered at your mine? A. Yes, sir.

Q. Do you know or not, when it was delivered at your mine, whether it was used in your coal mining operations? A. Yes, sir, it was.

Q. Did your duties as Manager take you down into the mines at times? A. Oh, yes.

6577

Q. What experience have you had in mining, and for how many years? A. I mined coal for twenty years.

Q. State, in the mining of coal, just exactly what you have done as a miner? A. Well, I have done it all.

Q. State what "all" is. A. I went in and blasted coal and loaded it in the cars, and checked it and sent it outside.

Q. Prior to the blasting of coal, what did you do? A. Why, you drill the hole in the first place, and prepare your blast.

6578

Q. State how you prepare that. A. Putting in the blasting powder and tamping the hole up with slack or any other rough stuff lying around in the mines.

Q. And after that, what? A. You either fire it with a squib or a fuse; the squibs are not used a great deal any more, but at that time they used squibs altogether.

Q. State whether or not you saw the effect of any shots fired with Buckeye powder in the mines of the Co-operative Coal Company? A. I saw some of the shots that had been fired.

6579

Q. Will you state now, how the shots fired with the Buckeye powder compared with the shots fired with du Pont powder, as to the tonnage produced. A. Why, I simply took the men's word for that; they told me they had put so much powder in the hole, and that it hadn't done anything. I relied principally upon the men; they were all members of the company, and the men said they would not use it, and told me not to get any more.

Q. After you made this purchase of 100 kegs of powder, state whether or not you continued to purchase of the Buckeye Powder Company? A. No, sir.

6580 *Warren Pye—Cross*

Q. Why did you not purchase of the Buckeye Powder Company? A. Because the men were not satisfied to use it.

Q. After you had made this purchase of 100 kegs of Buckeye powder, did you have any conversation or communication with any agent or representative of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. No, I don't remember that I did.

6581 Q. After you made this purchase of Buckeye powder, of what company did you subsequently purchase powder? A. The du Pont.

Q. State whether you purchased at a higher or lower price than you purchased Buckeye powder of the Buckeye Powder Company?

A. I paid more for the du Pont powder than I did for the Buckeye powder.

Q. That was after you had purchased the Buckeye powder, that you paid more for du Pont? A. Yes, sir; I never purchase du Pont as cheap as Buckeye.

6582 Q. Mr. Pye, in a suit in the United States District Court for the District of New Jersey, brought by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company, the International Smokeless Powder and Chemical Company and the Eastern Dynamite Company, in answer to a demand for a bill of particulars as to the customers of the Buckeye Powder Company which were induced to cease purchasing powder from the Buckeye Powder Company, it is alleged in said suit and stated that the Collier Co-Operative Coal Company had been induced to cease purchasing powder from the Buckeye Powder Company by either the E. I. du Pont de Nemours Powder Company or the following persons and corporations, or the agents or representatives of those persons or corporations,

which I will now read to you: The International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin and Rand Powder Company, Fairmont Powder Company, Judson Dynamite and Powder Company, Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du 6584
Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable and Jonathan A. Haskell; will you state whether or not anyone or more or all of these persons or corporations, or any agents or representatives of them, ever induced the Collier Co-Operative Coal Company, through you, as Manager, to cease the purchase of Buckeye powder? (Objection overruled, exception allowed.) A. No, sir. 6585

Cross-examination by Mr. Abbott:

Q. Now, Mr. Pye, when did you first become the General Manager of the Collier Co-Operative Coal Company? A. About 1901, I think it was.

Q. When did you cease to be such General Manager? A. In 1910; I was there about nine years.

Q. During all those years were you the purchasing agent? A. Yes.

Q. The exclusive purchasing agent? A. Yes, sir, bought and sold all supplies, and sold the coal, and collected all moneys, and made up the payrolls, and paid the men off, and kept the books myself.

Q. After this experience which you have just testified to, with the Buckeye powder, I understand you to say you began to purchase du Pont powder? A. I purchased it before.

Q. You ceased buying the Buckeye powder? A. Yes; we took that 100 kegs on trial, and, of course, if it gave satisfaction, we would buy it.

Q. Do you remember the date you bought that powder? A. I think it was in 1906; I think it was December, 1906, and I paid for it the following
6587 January; we paid for the powder the next year; I couldn't be positive, but I think that is the date, as near as my recollection is.

Q. Of whom did you buy your du Pont powder? A. We bought it off Dooley Brothers; I had bought it off Charlie Off before.

Q. Who was Charlie Off? A. He ran a wholesale grocery store on Washington Street; C. J. Off and Company; they had the agency for du Pont powder at that time, but the reason I quit him, I could trade some coal in with the Dooleys, whereas,
6588 I has to pay the cash to Off.

Q. What was the total amount of powder you used per year? A. Well, we used in the neighborhood of 3,000 kegs.

Q. 3,000 kegs? A. Yes; from 2,500 to 3,000 kegs.

Q. You stated you paid more for du Pont powder than for Buckeye? A. Yes, sir.

Q. How much more? A. Five cents per keg, at that time.

Q. Do you remember when you began buying the du Pont powder? A. They were buying du Pont powder before I was elected as Manager.

Q. Before 1901? A. Yes, sir.

Q. Were you under contract to buy du Pont powder? A. We made a contract with them.

Q. With whom did your contract run? A. The

E. I. du Pont Powder Company through their agent.

Q. Do you remember when your first contract was dated? A. No; I don't think I can remember exactly; I think the contracts ran for three years at a time.

Q. When was your first contract made? A. I don't remember exactly when it was. The contract was made, though, before I was elected Manager.

Q. That same contract was renewed as it expired? A. Yes.

Q. And renewed down to what time? A. To the 6590
time I quit.

Q. Have you got any of those contracts? A. No.

Q. Where are they? A. I couldn't tell you; of course, when I turned the books over, there was a new contract made and these old contracts, they didn't keep them.

Q. You have no knowledge at the present time, where they are? A. No.

Q. You haven't any copies of them yourself?

Q. What became of your company, if you know? A. The company is in existence; I simply sold my 6591
stock.

Q. How do you spell the name of your company? A. C-o-l-l-i-e-r.

Q. Do you remember what you paid the du Pont people under the contract? A. At the time when I purchased the powder from the Buckeye Powder Company?

Q. No, at any time? A. Oh, well, the prices varied some; I couldn't tell you that.

Q. I ask you then, if you can specify the price you paid the du Pont people at the time you purchased of the Buckeye Powder Company? A. Yes, sir.

Q. State it. A. $1.00 a keg, and I bought the powder from the Buckeye Powder Company for 95 cents.

Q. Is your company a member of the Coal Operators' Association of the State of Illinois? A. No, sir.

Q. Are the miners which compose the Co-operative membership of your company, members of the Miners' Union? A. No, sir.

Q. In other words, you didn't belong to the Union miners of the State? A. No; they were really mine operators, they were stockholders.

6593 Q. Do you remember whether the contracts which you had with the du Pont Company provided for any rebates? A. No, not that contract didn't.

Q. There were no rebates provided? A. No.

Q. Simply a straight price of $1.10? A. Yes, sir; nothing to it.

Q. Was it not a violation of your contract with the du Pont Company, to make any purchases at all of the Buckeye Powder Company, while you were under contract with the du Pont? A. I suppose it would have been; we didn't say anything to them about it.

6594 Q. Mr. Pye, my mind seems to be pretty clear upon what you have testified to regarding the number of kegs and the times you bought the powder; but I would like to have you state again, if you will, please, about the time you bought this 100 kegs of powder you bought of the Buckeye Powder Company. A. My recollection is, that it was December, 1906.

Q. And that was the only order of Buckeye powder that you bought? A. That was the only order that amounted to anything. My recollection is, that we tried a few kegs before that, but I wouldn't be positive.

Q. How many? A. That is out of my recollection; I think it was eight or ten kegs; I got it from another mine.

Q. When was that? A. I wouldn't say when it was; my memory is not exactly clear on that.

Deposition of JACOB GIEBELHAUSEN, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

6596

Q. Mr. Giebelhausen, where do you live? A. East Peoria.

Q. How long have you lived there? A. Since I was five years old; I would have to figure that up,—going on 23 years.

Q. During the time you have lived at East Peoria, what business have you been engaged in? A. Coal mining.

Q. How long have you been engaged in the coal mining business? A. 12 years.

Q. Do you operate any mines? A. My father.

Q. You are a partner with your father? A. Yes. 6597

Q. Whereabouts are your mines located? A. Coal Hollow, East Peoria.

Q. Have you ever worked in a mine? A. Yes, sir.

Q. How long have you worked in a mine? A. Well, inside, five years.

Q. What did you do? A. From mule driver to manager.

Q. Did you ever have any experience with getting out coal yourself? A. Well, I was around them all the time.

Q. You say you were around them all the time? A. Yes, sir.

Q. Did you ever assist in drilling the holes? A. Yes, sir.

6598 Q. State what you have done as a miner, with reference to the use of powder. A. Why, I went in many a time and showed the men how to drill holes, which way, and I helped to drill, and also I was a good judge of the amount of powder to use in a shot; in fact, I have charged many a shot for the miners.

Q.. How do you charge a shot? A. Well, when I was down we used to needle and square; of course, we made up a cartridge then.

6599 Q. State exactly what you have done, from the drilling of the hole up to the firing of the shot; state everything you have done in a mine. A. I have practically done everything; everything that can be done.

Q. What can be done? A. Set the machine drilling the hole; of course, you must use your judgment how you are going to drill it, and measure your shot and find out how much powder you must use.

Q. Where do you put the powder? A. In the

6600 hole.

Q. Then, what do you do? A. Tamp it.

Q. Then, what is the next process? A. Draw the needle, and then the squib, and then light it, and then beat it.

Q. What do you mean? A. What?

Q. What do you mean by "beat" it? A. Get out of there.

Q. Do you recall whether, in your mine, you have used a powder known as Buckeye powder? A. Yes, sir.

Q. Who purchased that powder? A. I did.

Q. From whom did you purchase it? A. From the Buckeye Powder Company.

Q. Do you recall the time of the purchase, what year it was? A. I have an idea what year it was.

Q. What year? A. 1905.

Q. What were your duties in the mines that you and your father operated during the year 1905? A. Manager.

Q. Will you state what experience you had with the use of the Buckeye Powder in your mine? A. It seems as though it was not strong enough, it would not cut the coal; it would cut it, but it wouldn't push it down. The miners had to mine every shot.

6602

Q. What do you mean by that? A. It was just like a solid chunk, and they had to either re-cut it and then wedge it down, or—

Q. Do you recall how many kegs of Buckeye powder you purchased? A. Twenty.

Q. State whether or not all of this 20 kegs were used in your mines? A. No, sir, it wasn't all used.

Q. It was not? A. No.

Q. How many kegs of the 20 were used? A. Sixteen.

Q. What was done with the remaining four kegs? A. Returned.

6603

Q. To whom? A. To the Buckeye Powder Company.

Q. Why did you return it? A. The miners would not use it.

Q. Why wouldn't the miners use it? A. Because they couldn't get the tonnage.

Q. How were the miners paid in your mine? A. By the ton.

Q. When you say the miners couldn't get the tonnage with Buckeye powder, what do you mean? A. Why, they couldn't get out as much as they did with other powder.

Q. What other powder do you refer to? A. Du Pont.

Q. After you returned the four kegs of Buck-

6604 *Jacob Giebelhausen—Direct*

eye powder, did you afterwards make any purchases of Buckeye powder? A. Of Buckeye?

Q. Buckeye. A. I am not positive; I think not.

Q. I think you stated that you personally purchased the du Pont powder, did you not? A. Yes, sir.

Q. Personally? A. Yes.

Q. Do you recall the price you paid for the Buckeye powder? A. Yes.

6605 Q. What was it? A. The first batch was $1.15, and the second was $1.10.

Q. What powder had you been using prior to this purchase of Buckeye? A. Du Pont.

Q. Will you state which was the higher in price, Buckeye powder or du Pont powder? A. The du Pont.

Q. Do you know what you paid for du Pont powder? A. Yes, sir.

Q. What did you pay? A. $1.35.

Q. After you ceased the purchase of powder of the Buckeye Powder Company, what powder did you purchase? A. Du Pont.

6606 Q. Was the du Pont powder that you purchased after you ceased purchasing powder of the Buckeye Powder Company, more or less in price than Buckeye powder?

Q. After you purchased powder of the Buckeye Powder Company, did you have any conversation or communication with any agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. Not that I can recall.

Q. In a suit instituted in the United States District Court for the District of New Jersey, in which the Buckeye Powder Company is plaintiff, and the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company, and the International Smokeless Powder and Chemical Company are de-

fendants, in answer to a demand for the names and addresses of the customers of the Buckeye Powder Company which were induced by the defendant companies which I have named, to cease the purchase of powder, or abandon the purchase of powder of the Buckeye Powder Company, the name of your firm was given. Will state whether or not these defendants that I have named, ever induced your firm to abandon the purchase of powder from the Buckeye Powder Company? (Objection overruled, exception allowed.) A. No, sir. 6608

Q. How do happen to remember so definitely dates when you made purchases of Buckeye powder and other dates which you have testified to? A. I surely ought to know that,—the year—

Q. You can remember dates? A. The year.

Q. You can remember dates pretty well, can you? A. Not actual dates of the month, but the year, I remember that.

Q. How do you happen to remember the exact amount of kegs you purchased and the amount you paid for? A. I don't know, just because I remember it. 6609

Q. Do you remember what you paid for du Pont powder at that time? A. $1.35, yes.

Q. During what year was it that you paid $1.35 for du Pont powder? A. I think it was a little while before that; well, I bought the Buckeye in 1905.

Q. In order to be more definite was it during the years 1903 to 1909? A. No, afterwards, we told Dooley Brothers we could get powder cheaper.

Q. What do you mean by "afterwards"? A. While we were buying it from the Western Powder Company or the Buckeye Powder Company.

Q. Tell me when you began buying du Pont Powder, and when you ceased. A. That I can't recall; that is too far back.

Q. Can you remember when you ceased buying du Pont powder? A. I am still using it; I have used it all the while, while I was using Buckeye; I was giving Buckeye a trial.

Q. You had a contract with the du Pont Company to buy powder? A. No, sir.

Q. Dooley Brothers? A. No, sir.

Q. You didn't? A. No.

Q. Did you ever have a contract with anybody? A. No, sir.

6611 Q. How much powder did you use? A. When?

Q. Per year? A. I should judge about 200 kegs.

Q. Now, it seems that you made two purchases, according to your testimony, of Buckeye powder; will you kindly tell when that first purchase was made, again? A. In 1905.

Q. What month? A. That, I don't know.

Q. When did you make a second purchase? A. 1905 also.

Q. What month? A. I don't know.

Q. How long after the first purchase was it?

6612 A. I can't exactly recall that.

Q. Was it a week or a month, two months or six months? A. I don't know; it might have been a couple or three months; I don't know; two or three.

Q. When was it you made this experiment that you have testified to regarding the Buckeye powder; when was it you made that? A. It was in 1905.

Q. What month in 1905? A. That, I can't recall.

Q. Early in the year or late in the year? A. I can't recall that.

Q. You were satisfied, after making that examination, that Buckeye powder was not as good as du Pont powder? A. I wouldn't say that; it wouldn't work, and the miners wouldn't use it.

Q. It wouldn't work in your mine? A. No, sir.

Q. And your miners would not use it? A. No, sir.

Q. Why did you make the second purchase? A. Why?

Q. Yes. A. Because they wanted me to try it again; they said that if I had a different grade, it might work the coal.

Q. Did you buy a different grade? A. Yes.

Q. What grade did you buy the first time? A. I think it was double "C." 6614

Q. And what the second time? A. A little stronger powder I think it was; I think it was the "C," I ain't sure.

Q. You stated, I believe, that you had bought some powder made by the Western Manufacturing Company? A. Yes, sir.

Q. When was that? A. I can't recall the time

Q. Do you know when the Western Manufacturing Company began business? A. No sir.

Q. You don't know that? A. No.

Q. You have spoken of that as being the same as the Buckeye powder? A. Is it? 6615

Q. I guess so. Why did you come to buy the Western powder again, which you, regarded as the same as Buckeye, after you found that the Buckeye wasn't good? A. A different firm took hold of it, and I happened to run across one of the salesmen, and he asked me to give it a trial again.

Q. Do you know what kind of kegs that powder was packed in that you received from the Western Powder Company? A. Tin kegs.

Q. I mean, with reference to how those kegs were branded? A. I don't understand what you mean.

Q. The kegs in which the powder is sold and used, are variously branded, are they not? A. Yes, sir.

Q. Do you remember how the kegs were branded that contained the powder which you bought of

6616 *Patrick Martin—Direct*

the Western Manufacturing Company? A. How they were branded?

Q. Yes. A. They had on "Western Powder Company."

Q. Are you sure of it? A. Yes.

Q. You are sure of that? A. Yes, sir.

Deposition of PATRICK MARTIN, a witness pro-
6617 duced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Laffey:

Q. State your name, your residence and your business. A. My name is Pat Martin, Limestone Township, and business was coal operator and miner.

Q. What state? A. Illinois.

Q. For how long have you been engaged as a coal operator? A. Since '94.

6618

Q. 1894? A. Yes.

Q. Are you a practical miner yourself? A. Yes.

Q. State what experience you have had in the actual mining of coal, Mr. Martin? A. I have been in the mines for 45 years, mining coal for other parties, and since '94, I have been operating for myself.

Q. Where have you mined coal as a miner? A. I have mined in Scotland and in Iowa, and I have mined for a time in Illinois.

Q. In Illinois? A. Yes, sir, most of the time.

Q. What was the name of the mine that you operated in Illinois? A. It went by the name of the Martin Coal Company.

Q. Where is that mine located? A. Well, it's about three miles from the city in Limestone Township, Illinois.

Q. Three miles from what city? A. Peoria.

Q. Did you use blasting powder in that mine? A. Yes, sir.

Q. Were you operating that mine between the years 1903 and 1909? A. Between them years, yes.

Q. Are you still operating that mine? A. No, not for about a month; we are done there now; it's all worked out.

Q. Did you work in the mine yourself during the years I have named, between 1903 and 1909? A. 6620
Yes.

Q. What was your position in that mine? A. Mine foreman.

Q. Who purchased the supplies for the mine? A. I did.

Q. Did you purchase the powder used in that mine? A. Yes, sir.

Q. How much powder did you use in that mine per year? A. In the neighborhood of four or five hundred kegs; that is as close as I can come to it for the year.

Q. Do you know the blasting powder known as 6621
the Buckeye powder? A. Yes, sir.

Q. Did you ever buy any of that powder for use in the Martin mine? A. I did buy a little of it.

Q. Who sold you that powder, the first you got? A. A fellow by the name of Jones.

Q. Who was he representing? A. Buckeye.

Q. Do you know about when that was that you bought the first powder from Jones? A. I think that was around 1905, as near as I can recollect. My mine was open a little while.

Q. How much powder did you buy of Mr. Jones at that time? A. Well, I got 10 kegs the first time, to try it, and then I give him an order, I think it was for 50 kegs, as near as I can recollect.

Q. Before you purchased these lots of powder

from the Buckeye Powder Company, what powder were you using? A. Du Pont powder.

Q. Did you personally use Buckeye powder in your mine? A. Yes, sir.

Q. Yourself? A. Yes.

Q. Now, did you see the holes charged with it and the effect of the blasts after they had been fired? A. Yes, sir.

Q. How did the Buckeye powder compare in price with the du Pont powder, if you recollect? A.
6623 How did they compare in price?

Q. Yes. A. I don't know; there was a difference, but I don't know that there was any difference in the price at that time. It's particularly hard for me to remember if there was; if there was, it's very little, but I don't think there was any difference.

Q. What was the result of your use of the first ten kegs of powder which you got from the Buckeye Powder Company in your mine? A. It worked good; it made good coal.

Q. The first ten kegs? A. Yes.

6624 Q. How soon after you used these ten kegs did you give a regular order? A. Yes, I give a regular order; I always gave orders for 50 kegs; I had a box that would hold that much.

Q. Through whom did you order those 50 kegs? A. From Jones.

Q. Did you personally take part in the use of those 50 kegs in your mine? A. Yes, sir.

Q. Did you see the effect of exploded shots charged with Buckeye powder? A. Yes.

Q. State what you observed, Mr. Martin, with reference to the use in your mine of that 50 keg lot of powder, and tell us what you observed as the result of that 50 kegs in your mine. A. The result of these 50 kegs,—they didn't seem to do the work of the first 10, and they would put in a

blast of this powder, and consequently, you would just see where the powder come out; it made a little crack, and that would be all; it wouldn't throw the coal out; we had to do it again; and it spoils your room; you can't get them out. They shot it again—you can't afford to do that; you can't get them out for a day or two. They shot it again, and it's the same thing over again, and it takes some time before you can get your room in proper shape again, and they blamed the powder for it, when it don't do the work. That was the 6626
result of this 50 kegs; we used a lot of it, and there was ten more in there; we miscalculated with them, but we bought them; there were ten men in there, and they had had the same results, and we didn't buy any more powder for some time; and there was another agent came along some time after—

Q. Did you afterwards try some more Buckeye powder in your mine? A. A good while after.

Q. You did? A. Yes.

Q. State the circumstances of your further trial of Buckeye powder, and also state from whom you 6627
received it. Well, there was an agent come along, and his name was Pepperd, some time later, and he wanted me to buy some powder, and I told him what happened with the other, that I couldn't use it and it couldn't do the work. He said they had changed the machinery and the powder was better now; and he said he would give me two kegs for nothing, to try. And I took these two kegs and used them, myself, and I didn't find very good results, and I didn't order any; they wouldn't do the work, and I ended it right there.

Q. Did you afterwards buy any more Buckeye powder? A. Not the Buckeye; I bought from that mill, but it was later on; I suppose it is two or three years ago.

6628 *Patrick Martin—Direct*

Q. Did you afterwards buy any more powder from the Buckeye Powder Company? A. No, sir.

Q. Did you ever have any conversation with any officer or agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. Do you mean, did I ever say anything about the powder?

Q. (Stenographer repeats the question). A. Well, it might have been mentioned in the conversation, but there was never anything said direct
6629 about it; I might have mentioned it was no good, or I might have mentioned that I had used it, or something like that; they know I used it.

Q. Mr. Martin, in a suit brought in the District Court of the United States, at Trenton, New Jersey, in which the Buckeye Powder Company is the plaintiff, and the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company, and the International Smokeless Powder and Chemical Company are defendants, it is claimed that the defendants in that suit, and certain companies and
6630 persons described as co-conspirators, induced the P. Martin Coal Company to cease purchasing powder from the Buckeye Powder Company, the names of the persons described as co-conspirators are Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskell; and the companies referred to as co-conspirators, are the E. I. du Pont de Nemours and Company, the E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin and

Rand Powder Company, Fairmont Powder Company, Judson Dynamite and Powder Company. I will ask you to state whether or not any of the officers or agents of the E. I. du Pont de Nemours Powder Company, or any of the officers or agents of any of the companies I have named, or any of the representatives or agents of the persons I have named, ever induced you to cease the purchasing of powder from the Buckeye Powder Company? (Objection overruled, exception allowed.) A. They never induced me, no sir. 6632

Q. State whether or not any effort or attempt was made by any of the persons or any of the officers or agents of the persons or of any of the persons or companies I have named, to prevent your purchasing Buckeye powder, or interfering with your relations with the Buckeye Powder Company? A. No, sir, they did not.

Cross-examination by Mr. Abbott:

Q. Did you buy Buckeye powder under any other name than the Martin Coal Company, that you know of? A. No, sir. 6633

Q. Did you use Buckeye powder anywhere else, excepting in the mines that you testified you owned and operated as the Martin Coal Company? A. No, sir.

Q. Are you able to state positively the dates when you bought Buckeye powder for use by the Martin Coal Company? A. No, sir, I couldn't exactly give you the dates.

Q. I will ask you whether or not you ever bought any powder of the Buckeye Powder Company as "P. Martin?" A. Well, I don't know whether—when I would put in my order, the agent knew me, and I don't know whether they would put down "P. Martin;" sometimes it would be "P. Martin"

and sometimes the "Martin Coal Company," I suppose.

Q. Are you the P. Martin in the coal business in or near the City of Peoria, Illinois? A. Yes.

Q. Are you the only one? A. The only one?

Q. Are you the only "P. Martin" in the coal business in or near the City of Peoria, Illinois? A. Yes, sir, there is no more, that I know of.

Q. How many kegs did you get on your first order from the Buckeye Powder Company? A. Well,
6635 I got ten kegs for the first try-out.

Q. How many on the second order? A. I generally got 50 on my orders all the time; it is so far a time away, I couldn't tell you to a few kegs, but I got my box filled, and it holds 50.

Q. How many kegs did you get— A. It would be 50 kegs.

Q. You never bought it again after that? A. No; with the exception of two kegs they give me.

Q. The first 10 kegs, as I understand, which you used of Buckeye powder, was very satisfactory.?
6636 A. Yes, it done good work.

Q. Do you know of any reason why the second 50 kegs didn't produce as good results as the first 10 kegs? A. No, sir, I couldn't tell you the reason, except when the blast went off, it didn't do the work, and we come to the conclusion it must be the powder, because it treated us all the time alike,—there was ten of us there.

Q. You don't know why the 10 kegs produced good results, and the second 50 did not? A. No, I don't.

Q. You stated that you had been a coal miner for 45 years? A. Yes, sir.

Q. How old are you? A. 56.

Q. You have been a coal miner, then, ever since you have been 11 years old? A. Yes, before I was 11 years old.

Q. And you stated that you afterwards bought powder of the company that succeeded the Buckeye Powder Company? A. Yes.

Q. How long did you continue to buy powder of that company? A. I bought it one winter all together.

Q. Do you know the name of the company? A. The Western Powder Company.

Q. Located at Edwards, Illinois? A. Yes, sir.

Q. What results did you obtain from the use of that powder? A. Good results. 6638

Q. Good results? A. Yes.

Q. Did you ever use any other powder besides the Buckeye and the Western powder; did you ever use any other make of powder but those two? A. Not in this mine, no, sir.

Q. What kind of powder did you use when you ceased buying Buckeye powder, until you began using the Western powder? A. Du Pont.

Q. How long did you continue to use du Pont powder? A. I guess I used it for ten or twelve years.

6639

Q. After you ceased buying Buckeye? A. Since 1895, up until now, with the exception, as I say, I used Western for one year, and orders between times, not to amount to very much,—orders now and then; but I used it one winter entirely, two or three years ago.

6640 *Henry Seffer—Direct*

Deposition of HENRY SEFFER, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Seffer, where do you live? A. 814 Western Avenue, this city.

Q. Do you mind telling how old you are? A. No, sir.

6641 Q. How old are you? A. 39 years old.

Q. What business were you engaged in between the years 1903 and 1909? A. Coal mining; we had a coal mine out there called the Bell Coal Company.

Q. Where were they? A. In the Horseshoe Bottom, about four miles from—

Q. How many years have you spent mining coal? A. About twenty years.

Q. Twenty years' experience? A. Yes.

Q. What work in coal mines have you done? A. Practically everything that is to be done: shot coal,
6642 dumped coal, drove the mule—well, practically everything that is to be done in coal mines.

Q. In your mining operations, have you used black blasting powder? A. Yes, sir.

Q. State how black blasting powder was used by you, what you did when you used it? A. Drilled the hole and charged the holes with powder and tamped them, in order to loosen up the coal.

Q. Did you ever fire any shots? A. Yes, I fired them.

Q. What kind of a company was the Bell Coal Company? A. Just co-operative.

Q. How many were there of you? A. Six.

Q. What position did you hold with the company? A. Manager of the mines.

Q. What were your duties as manager? A. I

done the buying and collecting, and selling coal and seeing that the bills were paid.

Q. During the time that you were manager, did you personally work in the mines? A. Yes, sir.

Q. Do you know a powder known as Buckeye powder? A. Yes, sir.

Q. Did the Bell Coal Company purchase, through you, any Buckeye powder? A. Yes, sir, I gave a few orders to the Buckeye Company.

Q. When was it purchased, about what time? A. It is a little hard for me to state; it was along in the winter but I can't say what year. 6644

Q. Approximately? A. Between 1904 and 1907.

Q. Is the Bell Coal Company in existence now? A. No, sir.

Q. Do you know when it went out of existence? A. I think it was in 1907, when we sold out.

Q. Do you recall how much powder you purchased of the Buckeye Powder Company? A. No, I don't.

Q. Can you state approximately, how much you purchased? A. It may have been 50 kegs, and it may have been 100 kegs. 6645

Q. After you purchased the Buckeye powder, did you use any of it yourself? A. Yes, I had the biggest part of it to use.

Q. State what use you made of the powder. A. Well, we had one side that worked the coal pretty well; on the East side of the entrance the coal worked good over there, and I could get pretty good results out of the powder; on the other side, it wouldn't work the coal top and bottom like it ought to.

Q. State what you personally saw after you used the Buckeye powder in the portion of that mine which you last spoke about; what effect did it have? A. It wouldn't move the coal out enough so you could get it; that is, loosen it up; by using common

judgment, you couldn't judge one shot with the other for the same sized shot, you couldn't judge one shot with the other at all, the way the powder acted.

Q. Did you ever try any other powder in that part of the mine? A. Yes.

Q. What? A. Du Pont powder.

Q. What effect did you get from du Pont powder? A. We had better results from du Pont powder in the west side of the entrance.

6647 Q. After these purchases of Buckeye powder and the use thereof in the mines, did you continue to purchase it, or did you purchase some other kind of powder? A. We always had two kinds of powder; some of the men wouldn't use it at all.

Q. Wouldn't use what at all? A. Buckeye powder; they took in a keg of powder and then wouldn't use it any more, and I had to finish it up myself; the last we bought, I had to use it altogether.

Q. After you used that up, did you, as manager of the Bell Coal Company, purchase any other powder of the Buckeye Powder Company? A. No, sir.

6648 Q. Why did you cease the purchase of powder? A. Because I didn't want to have the bills running in two places; we only used a little powder, and we didn't want to bother having it from two places, and I bought the Dooley powder from Dooleys altogether, from one place.

Q. Did the results which you obtained from Buckeye powder, have any effect upon your ceasing the purchase of it? A. No, sir.

Q. It didn't? A. No, sir.

Q. Did you fully understand the last question which I asked you? A. I think I did.

Q. (Stenographer repeats the questions as follows): Did the results which you obtained from Buckeye powder have any effect upon your ceasing the purchase of it? A. Yes, sir, it did.

By Mr. Abbott:

Q. What did you answer to that? A. I said "no;" I didn't understand what he said.

Q. Since these objections, you have changed your mind about it? A. Oh, no, I never did.

Q. After you made these purchases of Buckeye powder, did you have any conversation or communication with any agent of the du Pont de Nemours Powder Company with reference to Buckeye powder? A. I never did; I did not. 6650

Q. In a suit instituted in the United States District Court for the District of New Jersey, in which the Buckeye Powder Company is the plaintiff and the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company are defendants, in answer to a demand for a bill of particulars made by the defendants on the Buckeye Powder Company for the names of the customers of the Buckeye Powder Company which were induced to cease or to abandon the purchase of 6651
Buckeye powder, the name of the Bell Coal Company is given. In this suit it is also alleged that the following persons and companies, as co-conspirators, induced the Bell Coal Company to cease the purchase of powder from the Buckeye Powder Company. The names of these persons and companies are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskell, Judson Dynamite and Powder Company, Fairmont Powder Company, Laflin and Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Invest-

ment Company, Delaware Securities Company, du Pont International Powder Company, E. I. du Pont de Nemours and Company of Pennsylvania, E. I. du Pont de Nemours and Company. Will you state whether or not any of the corporations and persons which I have named to you as defendants or co-conspirators, or any agents or officers or representatives of these persons or corporations ever induced the Bell Coal Company to cease the purchase of powder from the Buckeye Powder Company? (Ob-
6653 jection overruled, exception allowed.) A. They did not, no, sir.

Cross-examination by Mr. Abbott:

Q. Now, aren't you able to identify the date or dates when you purchased powder, that is, Buckeye powder, a little nearer than sometime between 1904 and 1907? A. No, sir.

Q. You aren't? A. No, sir, it has been from five to eight years since I have been there, and I got other things; I can't remember; we have no records
6654 left, and everything was destroyed.

Q. Do you know about how long it was after you bought the first batch of Buckeye powder, that you bought the second batch? A. Yes, I think there was quite a period between the two agents that came there?

Q. How long? A. I don't know.

Q. You said that you knew? A. Well, probably one season to the next.

Q. How many was there in the first? A. I don't know whether it was 10, 20 or 25.

Q. How many in the second? A. Ten, I think.

Q. How many in the third? A. About ten.

Q. How many in the fourth? A. I suppose about ten.

Q. Do you know? A. I don't know.

Q. You can't tell? A. I can't say that.

Q. How many was there in the fifth? A. I don't know.

Q. How many in the seventh batch? A. I don't know.

Q. How is it you remember so well about some of these purchases and not others? A. I ordered most of that powder personally, and some was ordered through the teamster; I would give him the order and he would order it. 6656

Q. When was it that you tried that shot? A. One of the winters when I was in there.

Q. Was it towards the first or last of the time? A. Towards the last.

Q. Up until that time, had Buckeye powder been satisfactory to you? A. For my own use I used a good bit of it, but some men wouldn't use it at all.

Q. You continued to buy it? A. From time to time.

Q. If it was not satisfactory, why did you continue to buy it? A. The agent was there as regular as the month was up; he was there for another 6657 order, and I told him I didn't care for two kinds of powder; I used it myself.

Q. You continued to buy it? A. I gave him a little order when he came down.

Q. How much powder did you use per year? A. I don't know, hardly.

Q. How many miners did you have? A. Eight to ten, and we would use, probably, two kegs to the man per week.

Q. How many weeks did you run in a year? A. About 28 to 30 weeks, just from September until about February, and we would be done up there.

Q. During the time that you used these various batches of Buckeye powder, did you use other powder? A. Yes, sir.

Q. What other powder did you use? A. Du Pont.

Q. Du Pont powder? A. Yes, sir.

Q. You testified, I believe, on your direct examination, that you used Dooley powder? A. Yes, sir; I bought it from Dooley Brothers?

Q. Dooley powder? A. Du Pont powder.

Q. You meant you bought it from Dooley Brothers? A. Yes, sir, that's what I said.

Q. Do you know whether any of the other miners used Buckeye powder in that portion of the mine
6659 where you used it? A. Yes, sir.

Q. Who? A. There was one room below me that—

Q. That was on the same side? A. Yes, sir.

Q. He found it satisfactory? A. He used it for a while, but he didn't like it and he wouldn't use it; he said "To hell with it," and that is all the satisfaction he gave me.

Q. You continued to buy it and use it yourself? A. Yes, sir.

Q. Isn't it a fact that it is very often the case that
6660 the use of any blasting powder, that sometimes it will work better in one portion of the mine than others? A. Yes.

Q. That is true? A. Yes, sir.

Q. Doesn't that apply to du Pont as well as Buckeye? A. To a certain extent it does.

Q. Isn't it also a fact that sometimes one sized grain of powder will produce better results in certain kinds of coal than it will in other kinds of coal? A. Yes, sir.

Q. That is all true? A. Yes, sir, it is.

Q. And doesn't it depend very largely upon whether you have the right kind of grain and the right place to use it? A. It does.

Q. As to whether you get the best results from any grade of powder? A. Yes, sir.

Re-direct examination by Mr. Katzenbach:

Q. Who was the agent from whom you purchased the Buckeye powder? A. I think we bought some from Al Jones.

Q. Al Jones? A. Yes, sir.

Q. And anybody else? A. And some from George Pepperd.

Q. Are they personal friends of yours? A. Yes, they were miners and we worked together.

Q. You were companion workmen? A. Yes, sir; 6662
and they came there and I told them I would help them as much as I could, and I gave them an order from a certain time.

Q. Through personal friendship? A. Yes, sir.

Q. Go ahead. A. I wanted to see them get along, and I myself used the biggest part of the powder from the Buckeye Powder Company.

Q. Did you have any trouble with du Pont powder in any part of the mine? A. We never had no trouble with it; I can't say that; there were sometimes when shots wouldn't work in that west side, 6663
any more than other shots.

Q. It would not? A. No; as a general run, I got better results.

Q. With du Pont? A. Yes, sir.

Q. Better than with Buckeye, you mean? A. Yes.

Re-cross examination by Mr. Abbott:

Q. Will you swear that Jones and Pepperd were agents of the Buckeye Powder Company at the time you bought this powder? A. No, sir, I wouldn't swear to that, no, sir; but I was positive when I spoke. that it was these people that sold it to me.

Q. That they were agents? A. They said so.

Q. And that they were agents of the Buckeye

6664 *Stephen A. Drake—Direct*

Powder Company at that time? A. Well, I don't know what authority they had; I couldn't say.

Re-direct examination by Mr. Katzenbach:

Q. You gave them the orders? A. Yes, sir.

Q. And you got the Buckeye powder? A. Yes, sir, and they got the money.

6665

Deposition of STEPHEN A. DRAKE, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Drake, where do you live? A. At Canton, Illinois.

Q. How long have you lived at Canton? A. About 48 years.

Q. What is your business? A. My business?

6666 Q. Are you engaged in business? A. Yes, sir.

Q. What business? A. Coal mining.

Q. Are you engaged in that business personally, or connected with a company? A. Connected with the Canton Coal Company.

Q. Is that incorporated? A. Yes, sir.

Q. What office do you hold? A. President.

Q. How long have you beeen president of the Canton Coal Company? A. About 25 years.

Q. Where are the mines of the Canton Coal Company located? A. South of Canton, about a mile south of the city.

Q. Between the years 1903 and 1909, did the Canton Coal Company use black blasting powder in its mining operations? A. Yes.

Q. During those years, who made the purchases

of black blasting powder for the Canton Coal Company? A. I did.

Q. Do you recall whether or not you made any purchases of black blasting powder from the Buckeye Powder Company? A. Yes, we did purchase some from them.

Q. During what time did you purchase? A. Well, I should judge it was along in 1902 or '03, up to 1906 or '07, different times.

Q. Do you know the amounts you purchased of 6668
the Buckeye Powder Company between those dates? A. No.

Q. Approximately? A. No, it was just in small quantities, and for from 10, 25, 30 and 100 keg lots, if I remember right.

Q. During the entire time that you purchased Buckeye powder, how many kegs, approximately, did you purchase? A. Well, I don't know that I could say off hand, maybe five or six hundred kegs.

Q. How many kegs of black blasting powder do you use in the Canton Coal Company's mines per year? A. I would say 10,000 kegs. 6669

Q. During the time that you were purchasing Buckeye powder, did you purchase from any other company? A. We purchased from the du Pont; we had a contract, I think, with the du Pont people.

Q. Will you state why you purchased of the Buckeye Powder Company? A. I don't know that I could say; I think, probably, just for personal feeling for Mr. Waddell, or, just to, help a home industry.

Q. How many miners were in the employ of the Canton Coal Company, approximately, between the years 1903 and 1908 inclusive? A. I think during, probably, during 1903 and 1904, we probably only had 125, probably 250 in 1908; in 1905, we put in a larger mine.

Q. What method was used in your company with reference to supplying miners with powder? A. The miner would sign a check for a keg of powder, either single "F" or double "F," whichever they wanted to use, and they would use the two grades, and we would give it to them and send it down.

Q. State, between the years 1903 and 1908, inclusive, what kinds of powder you used in your mines, specifying the brands of powder. A. I think we used nothing but Buckeye and du Pont.

6671 Q. Did a miner have any right of selection in your company between the brands of powder. A. Well, we never had enough Buckeye powder, that made the necessity of a choice; some of the miners would not use Buckeye at all, and some would use it, and some wouldn't have anything but du Pont, and we always aimed to give them that; we always had du Pont with the Buckeye when we had it. We tried to get some of the men to use it, and did; but if a man would insist he wanted a certain kind of powder, we didn't argue it, with

6672 him, because we found it generally causes trouble.

Q. Do you recall the latest date that you purchased Buckeye powder? A. I couldn't say whether it was 1906 or 1907.

Q. Did you or did you not, cease to purchase Buckeye powder? A. Yes.

Q. Will you state the facts or circumstances which caused you to cease purchasing Buckeye powder? A. The miners served notice on me that, I remember at one time,—that I would have to stop using Buckeye powder, and they sent their member of the Executive Board and served notice that if I didn't have du Pont there altogether, in two or three days, the miners would go out.

Q. After you purchased Buckeye powder, did you ever have any conversation or communication with

any agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. Not that I remember of; I don't remember anyone talking to me about it.

Q. Do you know or not, Mr. Drake, whether the Canton Coal Company ever received any rebates from the Buckeye Powder Company? A. What do you mean by—

Q. Rebates on prices after the same had been billed or invoiced to you? A. My recollection is, 6674
that they used to make us a price on powder in small quantities, the same as I had a contract, and it may have been billed to me at a price, with the understanding that the price would be made that; I don't know whether you would call it rebate or not; sometimes those things are more with the understanding that the price would be the same as other prices, and I think it might have been done in that case.

Q. Mr. Drake, in a suit instituted in the United States District Court for the District of New Jersey, in which the Buckeye Powder Company is 6675
plaintiff, and the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company, and the International Smokeless Powder and Chemical Company are defendants, in answer to a demand for a bill of particulars of the names of customers of the Buckeye Powder Company induced by the defendants which I have named, or by certain alleged co-conspirators, who are the following persons and corporations, namely: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee du Pont, Francis I. duPont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskell, Judson Dynamite and Powder Company, Fairmont Pow-

6676 der Company, Laflin and Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Investment Company, Delaware Securities Company, du Pont International Powder Company, E. I. du Pont de Nemours and Company of Pennsylvania, E. I. du Pont de Nemours and Company, the name of the Canton Coal Company was given by the Buckeye Powder Company as one of their customers which had been induced by the defendants I have named, or by the 6677 alleged co-conspirators which I have named, to abandon the purchase of powder from the Buckeye Powder Company; will you state whether or not any of the corporations or persons whom I have named in this question, or any of their agents or representatives, ever induced the Canton Coal Company to cease the purchase of powder from the Buckeye Company? A. No, sir, I think not.

Cross-examination by Mr. Abbott:

6678 Q. Do you know is your coal company the same as the Canton Union Coal Company? A. No, sir.

Q. You haven't anything to do with the Canton Union Coal Company? A. No, sir.

Q. And as I understood you, you stated that you had a contract with the du Pont Company; when was that contract dated? A. Well, we have had a contract with them for several years, from year to year.

Q. Beginning when? A. I judge back in the nineties somewhere.

Q. You mean 1890? A. Yes, sir.

Q. You had that contract with them down to the present time? A. Yes, sir.

George A. Hibberd—Direct 6679

Deposition of George A. Hibberd, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Hibberd, where do you live? A. 1631 Lincoln avenue, Peoria.

Q. How long have you lived in Peoria? A. 28 years.

Q. What is your business? A. Coal miner and 6680
dealer.

Q. How long have you been a coal miner and dealer? A. I have been a coal miner ever since I was 13 years old, but I have been a dealer for 14 years.

Q. As a coal miner, what have you done in coal mines? A. Mine coal.

Q. Have you used black blasting powder in your coal mining operations? A. Yes, sir.

Q. State in what way black blasting powder has been used by you in mining coal. A. In blasting 6681
off the solid.

Q. Give the different steps you have taken in the use of the powder; in other words, how you used it? A. Why, you figure out a chance, what we call a chance, and drill our holes and put the powder in, and attach the fuse into it, and light it when the proper time comes, and blow the coal out and the coal is loaded up the next day.

Q. Between the years 1903 and 1909, with what company or partnership, were you mining coal, if you did mine coal during those years? A. Hibberd, Snedden and Company.

Q. Was that an incorporated company or a firm? A. No, just a partnership.

Q. It was not incorporated? A. Not incorporated.

6682 *George A. Hibberd—Direct*

Q. How many members were there in the partnership? A. There was 11 members, but 12 shares; one man held two shares.

Q. It was then, a co-operative company? A. Yes.

Q. Where were the mines of Hibberd, Snedden and Company located? A. Limestone Township.

Q. Between the years 1903 and 1909, did you make any purchase of black blasting powder of the Buckeye Powder Company? A. Yes, sir.

Q. State to the best of your recollection, when
6683 the first purchase was made, and how much it was. A. I believe it was in the fall of 1904.

Q. How many kegs did you purchase then? A. Ten kegs, as a trial order, at first.

Q. Did you personally use any of this Buckeye powder in the mines of Hibberd, Snedden and Company? A. Yes, sir.

Q. State was results you got from the use of the powder. Q. How long prior to using Buckeye powder in the mines of Hibberd, Snedden and Company, have you personally used blasting pow-
6684 der in coal mining operations? A. Well, I judge —let's see,—at least 12 years.

Q. Will you state how you used Buckeye powder, and what results you got therefrom? A. I used it in the same manner that I would use other powder; I will say I got fair results from the 10 kegs trial order we got.

Q. After you purchased this trial order, did you subsequently purchase any powder of the Buckeye Powder Company? A. Yes, sir.

Q. How much? A. I notice on my books there is 65 kegs in the month of October, 1904.

Q. Did you purchase the entire 65 kegs in one lot? A. No.

Q. Or more than one lot? A. No, two lots of 50 kegs was the second purchase I made.

By Mr. Abbott:

Q. Are you testifying from your own knowledge or from your book? A. From my own knowledge; I looked at the book this morning, in order to look up the date.

By Mr. Katzenbach:

Q. Did you know, before looking up, what the amount was you bought at that time? A. No, sir.

Q. You refreshed your memory entirely from the 6686
book? A. Yes, sir.

Q. Did you or not, make the purchase of 50 kegs of Buckeye powder? A. Yes, sir.

Q. Personally? A. Yes, sir.

Q. You purchased it yourself? A. Yes, sir; that is, for the company.

Q. Do you recall making that purchase? A. I don't just remember how I purchased it, whether it was through an agent or how, but I distinctly remember getting the 50 kegs in one batch.

Q. Of these 50 kegs, did you personally use any of it in the mine? A. Yes, sir. 6687

Q. State fully what you observed as to the work which this powder did in the mines. A. Well, the biggest part of this 50 kegs seemed to be weak; it left the shots tight; some of them was tight, so tight that it was impossible—it wouldn't pay to mine them out.

Q. After the purchase of this 50 kegs, did you have any conversation with any agent of the Buckeye Powder Company, that you recall? A. Not to my knowledge, after the—

Q. Purchase of the 50 kegs? A. Not to my knowledge, no.

Q. State, if you recall, how you happened to purchase the 15 kegs of the 65 kegs you have spoken of. A. That was through an agent, I believe, by

6688 *George A. Hibberd—Direct*

the name of Pepperd, that came out to the mine later on and told me that a man by the name of—

Q. Just tell what Mr. Pepperd stated to you? A. Mr. Pepperd stated to me that he was the agent on it; that he had taken the agency for this new powder and that Mr. Walsh was going to handle it; by the way, Mr. Walsh was a man that was buying coal from us, and Pepperd further stated, that they had got the powder up to the standard, and he would like to have us try it again, so we bought
6689 15 kegs through Mr. Walsh.

Q. Did you personally use any of the 15 kegs of Buckeye powder in the mines; this last 15 kegs that you have mentioned? A. I believe I used two of that batch.

Q. State in detail what you observed as to the use of this powder in the mines? A. Well, that seemed to be the same as the other, seemed to be weak.

Q. How did the use of the Buckeye powder affect the coal; state fully what the result of the use of the
6690 powder was, to your observation? A. Tight shots was the result.

Q. Will you explain somewhat more fully what you mean by tight shots? A. Shot that were not cracked enough to mine them down; were not cracked enough to enable you to get the coal.

Q. After the purchase of this 15 kegs you have last spoken about, did you make any further purchases of Buckeye powder? A. Not to my knowledge.

Q. Why didn't you make any further purchases? A. Well, we had talked it over, and come to the conclusion that it didn't pay us.

Q. After you began the purchase of Buckeye powder, did you have any conversation with any agent or representative of the E. I. du Pont de Ne-

mours Powder Company regarding Buckeye powder? A. I don't know that I did; I don't remember any conversation to that effect.

Q. Mr. Hibberd, in a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, the Buckeye Powder Company, in answer to a demand of the defendant for the names of customers of the 6692
Buckeye Powder Company induced by the defendants whose names I have given you, or certain parties in the suit designated as alleged co-conspirators, whose names are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskell, Judson Dynamite and Powder Company, Fairmont Powder Company, Laflin and Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Investment Company, Delaware Securities Company, du Pont International Powder Company, E. I. du Pont de Nemours and Company of Pennsylvania, E. I. du Pont de Nemours and Company, the name of your firm, Hibberd, Snedden and Company, is given by the Buckeye Powder Company as one of the customers of the Buckeye Powder Company who was induced by the defendants or alleged co-conspirators whom I have named, to abandon the purchase of powder from the Buckeye Powder Company. Will you state whether or not your firm, Hibberd, Snedden and Company was induced to abandon the purchase of

powder from the Buckeye Powder Company, by any of the persons or corporations I have named, or by any agent or representative of those persons or corporations? (Objections overruled, exception allowed). A. We were not.

Cross-examination by Mr. Abbott:

Q. Mr. Hibberd, you stated that you had been a dealer on coal for fourteen years? A. Yes, sir.

6695 Q. How long did you state that you had been a miner of coal? A. Well, about 26 years, I believe.

Q. How old are you? A. 40.

Q. 26 and 14 makes 40 years? A. Yes, sir.

Q. Which makes it, that ever since you were born, you have been a coal miner and coal dealer? A. No.

Q. How do you figure it out? A. I started to work in the mine when I was between 13 and 14.

Q. How long did you continue to work in the mines? A. Up to the present day.

6696 Q. You have been a miner more than fourteen years? A. Well, when as a boy I worked with my father, I couldn't consider myself a miner.

Q. Where has your mining experience been obtained? A. In Peoria County, except one season in Fulton County.

Q. In your operations of the firm of Hibberd, Snedden and Company, how many kegs of powder did you consume per year during the years 1903 to 1909? A. Why, I would judge about from six to eight hundred kegs a year.

Q. What powder did you use mostly during that period? A. We used considerable Hazard, and in the former years we used considerable American and considerable du Pont, and some that went by the name of Equitable, and the Buckeye, and also some Western.

Q. Now, when did you begin using Western powder? A. Two or three years ago; I can't remember.

Q. Are you using it now? A. Yes; there is one man at the mine that takes a little more of Western powder than he does of the other; we have to keep it in stock for him.

Q. From whom did you buy Buckeye powder, other than the Buckeye Powder Company, if anybody? A. All that I bought of the Buckeye powder, I bought from the Buckeye Powder Company, except this 15 kegs I got through Richard Walsh. 6698

Q. How many kegs all told, did you buy from the Buckeye powder, or did you use of Buckeye powder, during the years 1903 to 1909? A. Well, as far as I can remember, about 75 kegs.

Q. State again, when was the first date on which you purchased Buckeye powder? A. I don't know the exact date, but I believe it was in the fall of 1904.

Q. State when you bought the second batch. A. In the fall of the same year. 6699

Q. Can't you be somewhat more specific than saying "the fall?" A. In October.

Q. The first one was in October, or the second one? A. Well, I couldn't say whether it was October we bought it or not, but I paid for it and got a bill of it in October.

Q. You are testifying now from what you know about some bill in your possession? A. Yes, sir.

Q. You got such a bill, have you? A. I believe I have.

Q. Have you got it with you? A. No, sir.

Q. How long since you saw it? A. I don't believe I saw it since I paid it and filed it away.

Q. But you have such a bill? A. I don't know; I believe I have.

6700 Q. What do you base that belief on? A. I always file my bills away.

Q. Have you looked up anything in the last few days that has refreshed your memory of such a bill being in existence? A. I took a glance through a book this morning to see if I could find what date we bought Buckeye powder.

Q. Did you find any information on that subject? A. I did.

6701 Q. Have you got that book with you? A. No, sir.

Q. Have you any recollection whatever concerning what you have testified to as to the times and amounts when you bought Buckeye powder, except such as you have obtained from your examination of that book? A. Nothing, only my memory.

Q. What is your memory now on that subject, without any references whatever to that book? A. I distinctly remember taking this trial order of ten kegs at first, and then aftewards getting fifty kegs,

6702 and also of getting fifteen kegs from Mr. Walsh.

Q. Do you remember now, without any reference to any book, the date you bought the ten kegs? A. No, sir.

Q. Do you remember without any reference to any memorandum in your possession, the date when you bought any other batch of powder from the Buckeye Powder Company? A. No, sir.

Q. Then, the fact is, you have no recollection of the matter except such as you have obtained from this book? A. Yes, sir, I have.

Q. State what recollection that is. A. I remember when the Buckeye mill first started to distribute powder.

Q. I am not asking you for your recollection of whether you purchased Buckeye powder, but when

and the amounts; have you any independent recollection about that matter, except that which you obtained that book? A. No more than——

Q. In the first place, you can answer that yes or no, and then explain, if you wish. A. Then I will say no.

Q. You stated that you fired some shots with Buckeye powder yourself, personally? A. Yes, sir.

Q. How many shots did you fire with Buckeye powder yourself, personally? A. I can't say now. 6704

Q. Can you give an estimate? A. Yes.

Q. Please do so. Now, I want you to estimate what you distinctly remember. A. Well, I can't answer it then, because I don't distinctly remember how many.

Q. Do you distinctly remember any one shot that you fired with Buckeye powder? A. Yes, sir.

Q. Describe that shot. A. I remember taking in a keg of it and tamping two shots of it one day, and the result was——

Q. I am not asking you for the results; describe that shot, not just tamping it, but how you made that shot and all about it, and how you handled that powder preparatory to making that shot, and how you fired it, of your own independent recollection. A. I couldn't say how thick the shot was or how long, any more; but I will say I tamped it just the same as if I had tamped it with any other powder which I had been using before, and fired it in the same manner. 6705

Q. I want you to keep as close to the question which I ask you as possible, and that is, I want you to tell me exactly how you did it, not by stating how you did it with reference to something else, but I want you to say how you did that. A. We would have a drilling machine to bore the

6706 holes; I set up the machine and laid down my scraper alongside of the shot, and took a measurement of it, and drilled the hole and made the cartridges of paper upon a 1½-inch stick, and I can't remember just how much powder I put in it; it seems to me it was in the neighborhood of four feet.

Q. Why does it seem to you so, when you say you can't remember how much you put in? A. Because my shots averaged about that size.

6707 Q. You judged you used about that much Buckeye powder, as you used all other powder, you say? A. Yes, sir.

Q. And that is the only way you have any recollection of the amount of powder you used at that time? A. Yes, sir.

Q. You may proceed now. A. I fired the shots that evening, and come back in the morning to load up the coal, and the shots were just barely cracked. The result was, that I had but very little coal the next day to put out.

6708 Q. Now, I believe you said you could remember at least two shots you fired of Buckeye powder; is that correct? A. Yes.

Q. Describe the other shot. A. The same answer.

Q. The same answer? A. Yes, sir.

Q. Did you do it in the same way? A. Yes.

Q. And got the same results? A. Yes.

Q. Were these two shots fired on the same day? A. Yes.

Q. And loaded at the same time? A. Yes.

Q. Did anyone assist you in loading it at the time you were preparing the shots? A. No, sir, I was working alone.

Q. All alone? A. Yes.

Q. You stated that you had fired these two

shots; was that all you did that you can recall distinctly that you fired with Buckeye powder? A. No; I fired more than that.

Q. I am asking you about firing these shots you distinctly remember; you stated you could remember some in a general way, and some distinctly. You said two of those you can remember distinctly. A. I can't remember the shots distinctly and how they looked; but I remember the results of the first batch of powder that we got from there.

Q. You are speaking of the whole batch? A. 6710
Yes, sir; that's about all I could go by is the results.

Q. Do you remember any shots that you ever fired with any other powder, distinctly? A. Yes, sir.

Q. What kind of powder did you use when you fired some other shots that you remember distinctly? A. I can remember the shots fired with American powder.

Q. Any other powder? A. Yes, sir.

Q. What kind of powder was that? A. Du Pont. 6711

Q. Du Pont powder? A. Yes.

Q. Tell us what you know at this time, of your own independent recollection, of what shots you fired with Du Pont powder, that you now say you can recall? A. I had good shots with Du Pont powder, I might say.

Q. It is clear that that is what you might say and what you want to say?

Q. I would like to have him tell when and how he shot it. Will you answer the question, Mr. Hibberd?

Q. Describe the shots that you distinctly recall that you made with Du Pont powder. A. Well, the coal was——

Q. I am not asking you for results, I am asking you to describe the shots with the same degree of

care that you have attempted to describe the shots made with Buckeye powder. A. I drilled the holes in the same manner, and measured the shots in the same manner with the regular rule for the amount of powder, and the shots would be cracked open like, sometimes blown out.

Q. You say sometimes blown out; were there times when they did not blow out? A. Yes.

Q. You got tight shots from Du Pont powder? A. Not tight standing shots.

6713 Q. Isn't it a fact, that in the use of all powders, whether it be Buckeye or Du Pont or American or Equitable, or any other powders you used, that now and then you would get a bad shot? A. Yes.

Q. Isn't it a fact, that most experienced miners, no matter how much care they use, will now and then mistake their judgment of the manner in which the hole is driven; is that true? A. Yes, sir, that is true.

Q. And the amount of powder to put in? A. Yes.

6714 Q. And as to the manner of tamping it? A. Yes, sir, that's true.

Q. And as to the manner of firing it? A. Well, I couldn't say about firing it; all you have to do is to light it, and the powder does the rest.

Q. You have stated here that you followed the regular rule when you put the powder into the holes, that is, Du Pont; did you follow the regular rule when you put powder in the holes for the Buckeye? A. Yes, sir.

Q. State what that regular rule was. A. Take a shot six feet long, for instance, and drill a six-foot hole in it, the shot may have an average thickness of four feet; it will take about four feet of powder to loosen this shot up good, four feet of powder, and a 1½-inch cartridge, that is, in the coal I have been used to working.

Q. That is the regular rule? A. That's my rule.

Q. Is that a rule established by you for the use of powder in your mine, or is that the regular rule followed by miners? A. That is my rule individually.

Q. These shots that you fired with Buckeye powder, were they slanting shots or straight shots in the drilling; were they drilled slantingly or straight? A. Do you mean slanting up and down, horizontally?

6716

Q. Horizontally. A. You mean, they were curving shots?

Q. I am trying to find out the relative slant of shots with reference to the face of the coal. A. Well——

Q. In other words, what degree did you use in drilling your holes? You understand the word "degree" in that sense? A. Yes, sir.

Q. What degree did you use? A. I can't figure it down to degrees, but I would say I took this shot about 3½ feet thick at the heel, and drilled it to 4½ feet thick on the point.

6717

Q. You are describing the thickness of it; I want to get the slant. You can state whether it was between one degree and another degree, if you wish; I would like to get the degree of slant of the hole with reference to the fact of the coal. A. I always pitch the shots upward.

Q. What degree of slant did you use? A. I generally give them one foot in six, but you can't get it exactly. Well, that's according to the conditions; sometimes there might be a nigger-head in the shot, and sometimes the top coal hanging in it. In that case, you would shoot a little high; start in the middle of the coal and let it go to the roof.

Q. In drilling a hole for the purpose of making a shot, you have to use very considerable judgment, don't you? A. Yes, sir.

Q. And you may make a mistake in your judgment? A. Yes.

Q. And it doesn't make any difference what kind of powder it is, if you make a mistake in drilling your hole, such a shot is a failure? A. Yes; not always a complete failure, but——

Q. More or less? A. More or less.

Redirect Examination by Mr. Katzenbach:

6719 Q. Independent of any refreshing of your recollection from any paper or book in your possession, can you state the amount of powder you purchased of the Buckeye Powder Company? A. There were 75 kegs, to my knowledge; there may have been more.

Q. Did you get these all at one time? A. No, sir.

Q. State the amount that you got each time. A. I distinctly remember getting ten kegs the first time, and then fifty kegs the next time, and fifteen kegs one time.

Recross Examination by Mr. Abbott:

6720 Q. You just answered that you distinctly remember that you got this powder, when, on your cross-examination awhile ago, you said you couldn't remember that independently of the book which you have and which you have examined; why do you change your testimony on that point? A. It must be because you got me rattled, or something; because I distinctly remember, and have remembered ever since we bought that powder, about getting the 10 kegs first——

Q. Do you distinctly remember the date when you got those kegs? A. No, sir.

Q. How is it you can distinctly remember that you got those 10 kegs, and you can't remember anywhere near the time you got it? A. A person forgets dates.

Q. You can remember somewhere near the time when you got it, can't you? A. I might say seven or eight years ago.

Q. How many different batches did you get of Buckeye powder, separate batches of Buckeye powder? The first was ten, when was the second? A. After I bought the ten.

Q. How many kegs was that? A. 50 kegs.

Q. And when was that, as to date? A. I believe it was in the month of October, 1904.

Q. When was the next batch? A. It might have 6722
been in the same month, or it may be a month later; I am not sure.

Q. About how many kegs was that? A. Fifteen.

Q. When was the next batch? A. I don't remember that we ever got any more of it.

Q. You don't remember you got any more at all? A. No.

Q. Is the first batch you referred to, the batch you used in making up the shots which you testified you fired of Buckeye powder? A. The first batch?

Q. Which batch was it? A. That was out of 6723
the batch of 50 kegs.

Q. And when was that batch obtained? A. October, 1904.

Q. Now, then, if it should appear to be the fact that you bought Buckeye powder on various dates after October, 1904, will you please state why it is that you continued to buy Buckeye powder, when you found by experience that it was not the best powder for you to use? A. I will say, there was one man in the mine that used the biggest part of this 50 kegs, and if we did buy any more, it was for him.

Q. What was that man's name? A. Lyman Monroe.

6724 *Benheart Heitzman—Direct*

Q. Where is he at the present time? A. Limestone Township.

Q. Can you give me his specific address? A. No, I can't, but it's near the Plank Road.

Q. Then, all the powder you bought subsequent to that time, you kept for the use of Mr. Monroe? A. That's the way it comes to my memory now.

Q. When did Mr. Monroe enter your employ? A. I couldn't say, but he worked for us four or five years.

6725 Q. Covering what period? A. I couldn't say exactly.

Q. You said four or five years; you must know something about what years those were. A. Well, we will say from—let me see—we started to mine in '99—about from 1902 to 1907, I believe—not to be exact about it.

Deposition of BENHEART HEITZMAN, a witness produced on behalf of the defendants, being duly

6726 sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Heitzman, where do you live? A. Bartonville.

Q. Bartonville, Peoria County, Illinois? A. Yes, sir.

Q. How long have you lived at Bartonville? A. I have been down there, well, I boarded there about 16 years.

Q. What business are you engaged in? A. Digging coal at the present time.

Q. How long have you been digging coal? A. About 12 years, off and on.

Q. Between the years 1903 and 1909, did you operate any mines? A. Yes, sir.

Q. What mine was that? A. Heitzman Brothers Coal Company.

Q. Heitzman Brothers Coal Company? A. Yes, sir.

Q. Was it a partnership? A. Yes.

Q. Composed of whom? A. Of me—I don't understand you.

Q. Who formed the partnership? A. I did.

Q. What were the brothers of the partnership? Heitzman Brothers.

Q. What were their names? A. Ben and 6728
Xaiver.

Q. And you are the Ben Heitzman of that firm? A. No, my brother is named Benjamin.

Q. You were a member of the firm? A. Yes.

Q. Where is your mine located? A. Right in Bartonville.

Q. Who did the purchasing of supplies for the mine? A. I did.

Q. You spoke of having dug coal; will you state how long you have worked in a coal mine? A. Yes.

6729

Q. How long? A. About 14 years.

Q. What kind of work have you done in coal mines? A. I done practically all kinds.

Q. Have you ever used black blasting powder in coal mines? A. Yes.

Q. State just what you have done in connection with the use of black blasting powder. A. Do you mean making shots?

Q. Yes. A. I have drilled the holes and taken a nice square for the shot, like a man would do, about three and a half thick, and about six feet long, according to the chance you have, and made up the place for the powder.

Q. How do you make it up? A. With cartridges, placing the powder——

6730 *Benheart Heitzman—Direct*

Q. Where do you put the powder? A. In the holes.

Q. After you put the powder in the holes, what do you next do? A. When firing time comes, either shoot it yourself, or, if you got a shot-firer, the shot-firer shoots it.

Q. After you make up your cartridges with powder and put it in the hole, what else do you do? A. Tamp it.

Q. What else? A. Then it is ready to be shot.

6731 Q. Have you used black blasting powder in this way? A. Yes, sir.

Q. Will you state whether you ever used in your mines any powder known as the Buckeye powder, made by the Buckeye Powder Company? A. Yes, sir.

Q. Of Edwards, Illinois? A. Yes, sir.

Q. Who made the purchase of that powder? A. I can't just think of his name now, George Pepperd.

Q. Who was George Pepperd? A. He was the agent of the Buckeye Powder Company at that

6732 time.

By Mr. Abbott:

Q. How do you know he was the agent of the Buckeye Powder Company? A. That's what he told me.

Q. You have no information other than that? A. No, sir.

Q. What did Mr. Pepperd say to you when he came there to your place of business, if anything? A. He said—he asked me to deal with him and asked me to buy the Buckeye powder, and I told him I didn't care about buying the powder right away, as we had powder.

Q. Why did you buy the powder? A. Well, he

kept talking there quite awhile, and finally I told him that I would try it anyhow.

Q. How many kegs did you order? A. I think the first batch was either four or five kegs; I couldn't say for sure.

Q. State whether or not it was delivered to your mine. A. Yes, sir, it was delivered at the mine.

Q. What powder had you been using before you purchased Buckeye powder? A. Du Pont.

Q. State whether or not there was any difference in the price of Du Pont powder and Buckeye pow- 6734
der, to you? A. Yes.

Q. What was the difference?

Q. Was there any difference in price? A. Yes.

Q. What was the difference? A. $1.15 and $1.25.

Q. Which was $1.15? A. The Buckeye.

Q. And which was $1.25? A. Du Pont.

Q. After the Buckeye powder was delivered to your mill, who used it in the mine? A. I used some of it.

Q. State how you used it and what results you obtained from the used of it. A. I used it the 6735
same as I did other powder before I got that, and the results wasn't any good.

Q. State fully what you observed from the use of the Buckeye powder; what effect did it have upon the coal? A. Well, it was, to my knowledge, or never proved satisfactory, and we couldn't never knock out a shot with it, and it always left standing coal, and it was hard to get out after it was shot.

Q. Just explain what you mean by "standing" coal. A. A shot that would work up and down all right, but it wouldn't shove it very far; it would shove it a little ways, and stand right there.

Q. After you tried this Buckeye powder, did you

afterwards buy any other of the same make? A. Yes—I don't understand you.

Q. Did you afterwards buy any more of this same powder? A. Yes, sir.

Q. Who used the second lot of Buckeye powder in the mine? A. I used some of it.

Q. State fully the results of your personal use of this second lot of powder in your mine and what you observed were the results of the use of it. A. I found it just the same as what the rest was; we
6737 used a little more, and added a little more to it; we thought we hadn't given it a fair trial, and kept adding more to it, the same size, and it didn't seem to do much better.

Q. Will you state, Mr. Heitzman, just what you did with the Buckeye powder in the mine from the time you took it into the mine until you were through with it; explain fully just what you did with it. A. Well, as I said before; it didn't prove satisfactory.

Q. State what you did with the powder, how you
6738 used it. A. I drilled the hole, the same as I had always used the other powder, and took a shot about 3 feet or 3½ feet thick by 6 feet, and tamped the hole, and made the cartridge and used it the same as I would any other powder.

Q. Who fired it? A. I did, sometimes, and sometimes my brother did.

Q. What did you observe as to the results of this use which you have explained of the Buckeye powder; state fully what effect it had, if any, upon the coal? A. Why, it was the same, we tried to do the best we could, to my knowledge; it worked as I said before, it cracked the shot up and down, but it wouldn't shove it very far, and left it standing pretty hard, and it was pretty hard to get out.

Q. After you made these two trials of Buckeye

powder, did you continue to use that powder in the mines? A. No, sir.

Q. After you purchased the Buckeye powder, did you have any conversation or communication with any agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. No, sir.

Q. Mr. Heitzman, in a suit in the United States District Court for the District of New Jersey, brought by the Buckeye Powder Company as plaintiff, against the E. I. du Pont de Nemours Powder 6740
Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, the Buckeye Powder Company has stated in a paper filed in that cause, that you were induced by these defendants, or by certain other persons mentioned in the pleadings, and certain other companies, also mentioned in the pleadings, to abandon the purchase of powder from the Buckeye Powder Company. These persons and companies are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du 6741
Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskett, Judson Dynamite and Powder Company, Fairmont Powder Company, Laflin and Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Investment Company, Delaware Securities Company, Du Pont International Powder Company, E. I. du Pont de Nemours and Company of Pennsylvania, E. I. du Pont de Nemours and Company, International Smokeless Powder and Chemical Company. I now ask you to state whether any of these corporations or persons whose names I

have given you, or their agents or representatives, ever induced you to cease purchasing powder from the Buckeye Powder Company?

Objection overruled and exception allowed.

Cross Examination by Mr. Abbott:

6743 Q. Do you know all the persons, associations and corporations whose names were read to you? A. No, sir.

Q. Do you know all the agents or representatives of all those persons whose names were read to you? A. No, sir.

Q. How many shots did you fire or use of Buckeye powder? A. I couldn't tell you; I used quite a few of them.

Q. When did you first make use of Buckeye powder? A. In 1906.

Q. What month? A. I couldn't tell you exactly

6744 what month it was.

Q. When was it? A. During the summer time.

Q. How many kegs of powder did you use at that time? A. Either 14 or 15 kegs, I couldn't say.

Q. Did you ever have a failure in a shot that you had placed of any powder than Buckeye powder? A. Yes, sir, at certain times; sometimes you misjudge a shot.

Q. Sometimes you misjudge a shot? A. Yes.

Q. Isn't it true that the most experienced miners with the use of any powder, will at times misjudge the placing of a shot? A. Yes, sir.

Q. And that the same miners will get a different result from the use of the same powder? A. Yes, sir, I suppose they will.

Q. That is true? A. I suppose it is.

6745

Q. Isn't it a fact that experienced miners have misjudged the quantity of powder that it takes to bring down the coal which they are attempting to bring down? A. Yes.

Q. Isn't it a fact, that whether or not good results are obtained from any grade of powder is largely a matter of chance? A. I don't quite understand you right there.

Q. Well, can you answer that question from your understanding of the question? (Stenographer repeats the question.) A. Yes, sir.

6746

Q. Mr. Heitzman, you stated that this man who sold you this powder told you that it was better powder than the powder that you had been using? A. No, sir, he just asked me to try it.

Q. He didn't make any representations concerning its quality at all? A. No, not that I know of.

Q. Did you try it without making any experiments as to whether it required different handling from the Du Pont powder? A. No, sir.

Q. You used it in the same way as the Du Pont powder? A. Just the same way.

6747

Q. You didn't change your method? A. No.

Q. Nor the amount? A. No.

Q. Did you ever use a shot of Du Pont powder where the result left the coal standing? A. Yes.

Q. Now, as an experienced man, as you say you are, to what would you attribute such a result? A. There is times that there might have been a nigger-head or something like that on the roof, and sometimes they might misjudge the powder.

Q. That would not be the fault of the powder, would it? A. No, it couldn't be, I don't think.

Q. It could not be? A. No.

Q. About what is the proportion of shots that proved to be entirely satisfactory to the miner, with any grade of powder that he uses; about what

6748 is the usual proportion, taking the use of powder over a period of weeks, say 100 shots; how many shots of those would be entirely successful and to the entire satisfaction of the miner? A. I think if a man is a practical miner, he ought to get quite a few of them; he ought to get 80 or 90 shots.

Q. 80 or 90 shots? A. Yes, sir, 80 or 90 that would work.

Q. That applies to one grade of powder the same as another? A. Yes, sir; that is, if he can
6749 judge it right.

Redirect Examination by Mr. Katzenbach:

Q. Did you get that average from the use of Buckeye powder, 80 or 90% of the shots? A. No, sir.

Q. State what percentage you got of good shots out of the Buckeye powder which you used. A. Well, there wasn't a very big percentage; I just used about 14 inches of powder more than I did with Du Pont to get the same amount of coal, and
6750 then lots of times I had to work hard to get it.

Q. Can you state what percentage of good shots you got from the Buckeye powder you used in your mines? A. There wasn't very many.

A. No.

Q. Will you state how many good shots you recall having had from the Buckeye powder that you used? A. No, sir.

Q. What powder did you use after you ceased using Du Pont powder? A. Du Pont.

Q. State how the price of Du Pont powder which you bought after you stopped purchasing Buckeye powder compared with the price of Buckeye powder. A. There was 10 cents difference.

Q. Which was the higher priced? A. Du Pont.

 6751

Recross Examination by Mr. Abbott:

Q. What price did you pay for Buckeye powder? A. $1.15.

Q. Sure of that? A. Yes, sir.

Q. Was that price F. O. B. the mills? A. No, sir, delivered at the bank.

Q. Who delivered it? A. George Pepperd.

Q. Do you know whether he delivered that powder to you from the Buckeye mills, or from a dealer 6752
in powder in the City of Peoria by the name of Walsh? A. The first powder, I couldn't tell you—well, I couldn't tell you either, but I think we once got it from Walsh.

Q. How far apart were the purchases which you testified you made of the Buckeye powder? A. They were not over six or eight weeks, I don't think.

Q. And the first one was how much? A. Either four or five kegs.

Q. And the second one was how much? A. I think ten kegs.

6753

Deposition of OSCAR BOETTICHER, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Boetticher, where do you reside? A. Evansville, Indiana.

Q. How long have you resided at Evansville? A. 45 years.

Q. Are you engaged in business there? A. Yes, sir.

Q. What business? A. The wholesale hardware business.

Q. What is your name—what is the name of your firm or corporation? A. Boetticher and Kellogg Company.

Q. Is it a firm or corporation? A. A corporation.

Q. Do you hold any office in that corporation? A. Vice-President.

Q. Does your company deal at all in black blasting powder used in mines? A. Yes, sir.

6755 Q. How long has your company been in existence as a company? A. A corporation or a company, or the two together?

Q. Yes, the two together. A. 55 years, I think; I am not sure of that.

Q. How long have you been connected with the company, either as a firm or corporation? A. Thirty years.

Q. Do you recall when you became a corporation? A. In 1898.

Q. What office did you hold in the corporation between the years 1903 and 1909? A. None.

6756 Q. Were you working for the corporation at that time? A. I was, yes.

Q. What were your duties, if any, with reference to the purchasing of black blasting powder between the years 1903 and 1909? A. I purchased powder and other lines.

Q. But were you the purchasing agent of the company for powder between the years 1903 and 1909? A. Yes, sir.

Q. Do you recall or not, whether your company purchased any powder of the Buckeye Powder Company? A. They did.

Q. Can you recall about the time of that purchase or purchases made? A. I don't recall the exact year; I think I answered that question; I don't remember, though, the year.

Q. Can you approximate the year? A. 1905, I think it was.

Q. For what purpose did you purchase black blasting powder? A. To sell to the dealers in the different towns.

Q. After you purchased the powder of the Buckeye Powder Company, did you continue to purchase the powder from that company, and if so, up to what time? A. Just a short while, I think; I don't remember how long; it was possibly two or three months. 6758

Q. What were the reasons, if any, which caused you to cease the purchase of powder of the Buckeye Powder Company? A. Well, as near as I can remember, we couldn't buy to advantage to make any money for ourselves or for our customers, on account of being slow in shipment, and there was no demand for Buckeye powder.

Q. After the time that you purchased the Buckeye powder, did you meet any of the agents of the E. I. du Pont de Nemours Powder Company? A. Did we meet any of them? 6759

Q. Did you meet any of them? A. Yes, I think we did.

Q. What agents did you meet? A. Some of the du Pont men, and some of the Hazard men, and the Laflin and Rand men.

Q. What conversation, if any, with reference to the Buckeye powder, did you have with any agent of the du Pont Powder Company, or of the Hazard Powder Company, or of the Laflin and Rand Powder Company? A. None, that I know of; they were in there soliciting sporting powder business.

Q. Did you have any conversation at all with any agent of these companies that you have mentioned, with reference to the black blasting powder or Buckeye powder? A. In reference to the two together?

Q. Well, with reference to the Buckeye powder? A. I tried to buy du Pont powder, but I couldn't at that time; they had an agent in Evansville, and I couldn't buy it from their agent at a price we could make any money on it. The du Ponts referred me to their agent.

Q. Was anything said in these conversations with reference to the Buckeye powder at all? A. Not that I remember.

6761 Q. After you purchased Buckeye powder, did you have any conversation with any of the following persons, whom I will name, or anyone representing himself as an agent of these persons: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene M. du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable or Jonathan A. Haskell? A. They are all strangers to me.

6762 Q. After you purchased the Buckeye powder of the Buckeye Powder Company, did you have any conversation with any officer or agent representing the following companies, other than you have referred to? I will read the names of the companies, Judson Dynamite Company, Fairmont Powder Company, Laflin & Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Investment Company, Delaware Securities Company, du Pont International Powder Company, Eastern Dynamite Company, a corporation known as E. I. du Pont de Nemours and Company of Pennsylvania, International Smokeless Powder and Chemical Company and E. I. du Pont de Nemours and Company, the latter being a different concern from the E. I. du Pont de Nemours Powder Company? A. In regard to blasting powder?

Q. Yes. A. I suppose I might have asked them the prices on them and the price wasn't satisfactory; at least, I don't remember buying any at that time.

Q. Do you recall any conversation with any officer or agent, other than you have testified to, of the companies which I have just read to you? A. No, sir.

Q. After you purchased the Buckeye powder, were any efforts made to induce you or persuade you not to continue the purchase of Buckeye powder 6764
from the Buckeye Powder Company by either the E. I. du Pont de Nemours Powder Company or any of the gentlemen or companies whose names I have just given to you, or the agents or servants of any of them? A. No.

Deposition of GEORGE W. HATCH, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach: 6765

Q. Mr. Hatch, where do you live? A. Greenview, Illinois.

Q. How long have you lived in Greenview? A. All my life, except four years I was in Petersburg, ten miles away.

Q. Have you any connection with the Greenview Coal and Mining Company? A. Yes, sir, I was.

Q. What office did you hold? A. I was President of the company, I think, in possibly '93 and '94, and from '99 until '07, I think in March, 1907, I was general manager.

Q. What business were they engaged in? A. Mining coal.

6766 *George W. Hatch—Direct*

Q. Where were their coal mines? A. In Greenview, Illinois.

Q. Did that company use black blasting powder in its coal mining operations? A. Yes, sir.

Q. Who made the purchases of black blasting powder for the company? A. I did the time I was manager.

Q. Between the years 1903 and 1907, did you make any purchase of black blasting powder for
6767 the company? A. Yes, sir.

Q. I understood you to say you didn't act as manager longer than March, 1907? A. No, sir.

Q. Is that what you meant? A. Yes, sir.

Q. Did the company go out of existence at that time, or did you sever your connection with it? A. It went out of existence; that is, we ceased to operate.

Q. Then, you didn't operate the mines of the Greenview Coal and Mining Company after March, 1907? A. Sometime in March, 1907.

Q. How much black blasting powder did you use
6768 per year at the mines of the Greenview Coal and Mining Company? A. Well, I can't say just offhand, but it run somewhere around five or six thousand kegs, I think.

Q. Do you recall whether you ever purchased for the company any powder known as the Buckeye powder, from the Buckeye Powder Company? A. Yes, I did, some.

Q. Did you know any of the officers of the Buckeye Powder Company? A. I don't know that I knew any of them outside of Mr. Waddell.

Q. Do you know or not, whether he was an officer of the Buckeye Powder Company? A. I couldn't say; I supposed he was manager of it, I think—I couldn't say; I think at that time he was President; maybe I am wrong about that.

Q. The Mr. Waddell you have referred to is the Mr. Waddell that is sitting here in the room, Mr. R. S. Waddell? A. Yes, sir.

Q. State whether you had any conversation with Mr. R. S. Waddell relative to the purchase of Buckeye powder? A. Yes, sir, I think, possibly, two or three conversations with him; I can't say exactly how many times I talked with him about it.

Q. Where were these conversations held? A. Well, I think possibly the first one was in my office, or in the Greenview Coal and Mining Office, at 6770
Greenview; I can't say positively whether that is true, whether I was there or at his office in Peoria, but I think it was in the Greenview Coal and Mining office.

Q. State the substance of the conversation you had with Mr. Waddell at that time, with reference to Buckeye powder. A. Do you want me to state how this conversation came about?

Q. State what led up to the conversation and what Mr. Waddell said and what you said. A. If this is permissible, the way I happened to get acquainted with Mr. Waddell and the Buckeye pow- 6771
der——

A. Brice and Burdick of Joliet, they were handling our coal at that time and I was on a deal with them, and became interested in the mine—I can't say, but as near as I can remember, they were agents for the Buckeye powder, or, rather, solicited me to use it; and in that way I became acquainted with Mr. Waddell, who was kind of acting attorney for them in a deal or something of that kind, and I don't remember just now——

Q. Will you detail the conversation which you had with Mr. Waddell, stating what Mr. Waddell said to you and what you said to Mr. Waddell with reference to Buckeye powder? A. Well, in the conversation with Mr. Waddell, I told him I had a con-

tract. He asked me to use Buckeye powder, and I told him I had a contract with the du Pont Powder Company, and that I didn't want to violate that contract. He told me he would make me a powder that was as good as the du Pont powder, and as far as the contract was concerned, it wasn't binding on me, and that he would stand between me and any danger and any trouble I would have with the du Pont Powder Company on account of using their powder.

6773 Q. After this conversation that you had with Mr. Waddell, did you order any of the Buckeye powder? A. Yes, sir, I think I did.

Q. State why you ordered it. A. Well, I forget just the price I was paying for du Pont powder at that time; anyway, Mr. Waddell said he would make Buckeye powder for me that would give me as good results for less money—I think it was 10 cents a keg—I ain't sure; I don't just remember.

Q. After this order was given, do you know or not whether the Buckeye powder was delivered to the mines of the Greenview Coal and Mining Com-

6774 pany? A. Yes, sir, it was.

Q. State what facts you know with reference to the use of this powder in the mines. A. Well, the men didn't like the powder, and I don't know—I took the matter up with Mr. Waddell, and I think he took a sample of the du Pont powder, and I am not sure, but I think, he sent me some other powder; I can't remember just the number of kegs I bought the first time—I don't remember now; anyway, I think the last shipment was either two or four hundred kegs—I am not sure—I don't remember just the number.

Q. Did you have any conversation with Mr. Waddell as to what had been the results of this powder in the mines? A. In our mine at Greenview?

Q. Yes. A. I think I did; I think I talked with him.

Q. What did you say to him? A. I possibly wrote him in regard to it.

Q. What do you recall saying to Mr. Waddell in regard to it? A. I can say I said this, or wrote it to him—

Q. Will you then state, Mr. Hatch, what you said to Mr. Waddell, and what he said in regard to the use of Buckeye powder in the mines of the Greenview Coal and Mining Company? A. As I said 6776
before, I can't state whether it was in a letter, or whether I told him that the powder was not giving satisfaction; that our men didn't like it, and we had a number of kegs there—I don't know just how many—and we couldn't use it.

Q. What did Mr. Waddell say to you, if anything, in answer to that? A. Whether he wrote me or told me, I couldn't say, but we shipped it to the Manchester Coal Company at Petersburg.

Q. Do you know or not whether that was done? A. Yes, sir, that was done. 6777

Q. How many kegs of Buckeye powder did you purchase of the Buckeye Powder Company? A. I couldn't tell you now just exactly.

Q. Approximately? A. I don't remember whether I got 25 kegs or what number I got first; there were 200 kegs or 400 kegs in the shipment; I used some of them, and I shipped the balance of them to the Manchester Coal Company at Petersburg.

Q. After you shipped the balance of this consignment to the Manchester Coal Company, did you subsequently purchase any powder of the Buckeye Powder Company? A. I can't say now whether I did or not, but I think possibly I got some for the Middletown Company.

Q. But I mean for the Greenview Coal and Min-

ing Company? A. No, not for the Greenview Coal and Mining Company.

Q. After you purchased this powder of the Buckeye Powder Company did you have any conversation or communication, with any agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. I can't say that I ever did; I might have said something to Mr. Donnelly, but I can't say I ever did.

Q. Do you recall anything Mr. Donnelly ever said
6779 to you in regard to Buckeye powder? A. No, sir, I don't think he did say anything; I might have talked to him about it; I may have said something to him about having this powder; I don't know.

Q. In a suit in the United States District Court in the District of New Jersey, in which the Buckeye Powder Company is plaintiff, and the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company are defendants, in answer to a demand for the names of customers
6780 of the Buckeye Powder Company induced by these defendants which I have mentioned, or by any of the persons or companies whose names I will give to you, to cease purchasing powder of the Buckeye Powder Company, the name of the Greenview Coal and Mining Company was given as one of the customers of the Buckeye Powder Company who were induced by the defendants or the other persons or companies which I will name to you, as one of such customers of the Buckeye Powder Company. The names of the persons in this suit alleged to be coconspirators of the defendants are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham,

Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable and Jonathan A. Haskell; the companies are: International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin and Rand Powder Company, Fairmont Powder Company and Judson Dynamite and Powder Company. 6782
I now ask you to state whether or not any of these defendants, or the persons or companies which I have named to you as alleged co-conspirators, ever, to your knowledge, induced the Greenview Coal and Mining Company to cease the purchase of powder from the Buckeye Powder Company? (Objection overruled; exception allowed.) A. No, sir, they did not.

Cross-examination by Mr. Abbott:

Q. In reference to the last question which was 6783
propounded to you by counsel for the defendant, did you follow those names and fully understand that question? A. Whether any of these parties had induced me to quit buying Buckeye powder? A. Yes; did you understand the question? A. Yes, I think so.

Q. Who are parties, associations and companies whose names were read to you by counsel? A. I suppose they constitute the du Pont Powder Company.

Q. Do you know all of the agents or representatives of all of the persons whose names were read to you there? A. I could answer it in this way: I don't think anybody ever tried to induce me, or did induce me, to quit buying Buckeye powder.

Q. How do you know that the miners, whom you have stated did induce you to stop buying Buckeye powder, are not agents or representatives of the perpersons or corporations; you don't know that? A. No, but I don't think any of my men were agents.

Q. If that were true, your answer would be erroneous? A. Why, certainly, if it were true that any of those men that wouldn't use the powder were agents of these parties.

6785 Q. When did you make the first purchase of Buckeye powder? A. I don't know the date.

Q. Have you any idea? A. I think it was in the fall or winter of 1903—I am not positive.

Q. When did you make the last purchase? A. Well, I don't know just when I did make the last purchase.

Q. Can you come pretty close to the date? A. No, I don't know that I can; I don't think I ever purchased more than—there might have been 25 kegs to start on, or 10 kegs; there might have been three or four purchases; I can't say positively.

6786 Q. You haven't any idea of how many purchases you made? A. Not unless I looked over my records.

Q. When did you go out of business? A. In 1907.

Q. What month? A. I think it was in March.

Q. 1907? A. Yes, sir.

Q. Did your mine fail? A. No, sir.

Q. Have you paid your creditors? A. Yes, sir.

Q. Have you paid the Buckeye Powder Company? A. Every cent we ever owed them.

Q. At the time when you went out of business, had you paid them? A. If we didn't directly, it was a little afterwards; we are not out of the business yet.

Q. What business are you in yet? A. Our charter was never cancelled.

Q. Then your statement that you went out of business—— A. I said that we ceased to operate.

Q. Had you paid your bills when you ceased your operations in 1907? A. If we didin't, we did immediately afterwards.

Q. Were you under contract. The Greenview Coal and Mining Company was under contract, as you said, with the du Pont Powder Company during the years 1903 to 1909? A. I think so.

6788

Q. During all of those years? A. I think that we had a contract with them every year.

Mr. Abbott: (After objection). The witness stated on his direct examination, that he had a contract with the du Pont Powder Company, and that it was that contract that Mr. Waddell endeavored to get him to break.

A. I didn't say he tried to get me to break it; I said he said he would stand between me and any trouble I might have on account of this contract.

6789

Q. What did you think he meant? A. That the contract wasn't binding upon me—

Q. He didn't regard the contract as binding, and endeavored to get you to break it? A. That I wouldn't have any trouble if I used his powder.

Q. You understood he wanted you to break your contract with the du Pont people and buy powder of him, and that he would stand between you and trouble? A. Yes, sir; if I took any of his powder and they sued me, he would defend me.

Q. And you didn't accept the proposition, except buying a few kegs of powder? A. I tried his powder.

Q. And that was 40 or 50 kegs? A. I can't say, but I think it was more than that.

6790 *George W. Hatch—Cross*

Q. How much? A. I told you that I possibly got 25 kegs, and then two or four hundred kegs.

Q. You broke your contract for a while? A. No, I didn't.

Q. Why was it, after you first tried the first few kegs, and you found it didn't quite satisfy you, you bought 400 kegs? A. Mr. Waddell took a sample of the powder and told me, if the powder didn't give satisfaction, he would make me a powder that would do the work. We tried different grades of
6791 his powder.

Q. And you took a large quantity of powder from him with that understanding? A. What understanding?

Q. On the understanding that you have just stated, that it would do the work? A. Yes, sir.

Q. And you didn't make any test of the powder yourself? A. No, sir.

Q. What information you had regarding it, came from the miners? A. Yes. sir.

Q. When did you get this information from the
6792 miners that you speak of? A. As they used the powder.

Q. In what mine were these miners operating? A. The Greenview Coal and Mining Company's mines.

Q. Your mines? A. Yes, sir.

Q. Didn't you state in your direct examination, that you only bought a few kegs of powder of the Buckeye Powder Company and tried it and didn't find it satisfactory because the miners wouldn't take it, and that you didn't buy any more? A. Only one time.

Q. Just answer that question, please. (Stenographer repeats the question). A. Why, I considered that if I bought 600 kegs it was only a few kegs, compared with what I used; we gave this powder a thorough trial.

Q. Was anything said by these miners that this powder was the right grade or grain? A. By the miners?

Q. Was anything said by these miners that the powder wasn't the right grade or grain; did they say anything about the size of the powder not being right? A. I don't think they said anything about the size of the powder.

Q. You testified, did you not, in the case of The United States of America, Petitioner, against The E. I. du Pont de Nemours Company, et als., in a 6794
suit pending in the United States Circuit Court for the District of Delaware; do you remember such a suit as that? A. Yes, sir.

Q. As a witness in that case on behalf of the defendant—you were a witness on behalf of the defendants, weren't you? A. Yes, sir.

Q. Did you state in your testimony at that time, anything concerning the size of the powder as being the only reason why this powder was not satisfactory to you? A. I might have; I couldn't say; I don't remember what my testimony was. The 6795
gist of it was, that the powder didn't give satisfaction and didn't do the work.

Q. Did you state at that time that the powder didn't give satisfaction? A. I think I did.

Q. I will read to you the following language taken from your testimony as reported, and ask you to state whether or not it is correct. The following question was propounded to you: "Was there anything said about prices in that conversation?" Do you recall such a question as having been put to you? A. I think, possibly, that is true.

Q. What did you say in answer to that question? A. Well, I don't know what question you are asking about.

Q. I am asking you about that question. A. I

don't know who the conversation was with, or anything about it.

Q. I will read you the following answer: "I don't remember whether we talked about the prices or not; I think possibly he said they lost money; anyway, he read the price list, and we tried this powder, but it didn't work. Is it right I should go ahead and state this. Ques. Just state it in your own way. Ans. He sent what we call "F" powder. The miners, part of them, liked it very
6797 well, but we found it too strong to use where they were mining the coal, it shot the coal all to pieces." A. I think that is correct, that is, in a measure, correct.

Q. Did you testify that way before? A. That is true, I think that is correct in a measure.

Q. You next said: "Ques. Did you use up the Buckeye powder you bought? Ans. No, sir, we didn't. Ques. What did you do with it? Ans. I can't state now whether I returned any of it to the mill or not, but Mr. Waddell authorized me to ship
6798 part of the powder I bought, or the powder I had on hand, that is, the "C" powder, to the Manchester Coal Company up in Petersburg." Is that true? A. Possibly that is true.

Q. You testified that way? A. I think I did; I can't say positively.

Q. If you testified that way, was it true, that whatever complaints were made to you were made because the powder wasn't of the right sized grain? A. The complaints were made on account of the powder not shooting they couldn't shoot coal with "C" powder, it wouldn't shoot the coal out; that is, it wouldn't blow the coal out; and Mr. Waddell, I think, sent me the "F" powder, and they tried it, and it didn't shoot the coal—and they tried it, and it shot the coal too hard.

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Q. How did you know that? A. I know it from the way the coal screened; I kept a check on my coal.

Q. That is one fact you didn't get from the miners? A. Sure; they didn't care which way it shot the coal.

Q. Did you learn that from the miners, or did you make your own investigations and determine that fact? A. We made the complaint to the men that they were shooting the coal all to pieces, and they claimed it was the fault of the powder, and 6800 they wanted what was called single "C" powder.

Q. How do you know they wanted it? A. They did want it.

Q. You say, if I understand you, that they called for another grade of powder than they were using? A. They wanted du Pont powder.

Q. Oh, they wanted du Pont? A. Yes, sir.

Q. Then, which position are you going to take? You said they called for another grain of powder, and you said they asked for single "C?" A. I said—

Q. Which position are you going to take? A. I meant du Pont— 6801

Q. You said they called for another grain, and then you said they asked for single "C;" which do you want us to understand; where do you stand? A. What they said was—

Q. I want to know what position you are going to take; you said they called for another grain of powder, and you said they, asked for "C?" A. I said or meant, du Pont single "C" powder.

Q. Did you buy any powder for any other mines? A. I think I tried it, and used some of it in the Middletown mine; I couldn't say whether I bought that powder myself or not.

Q. Did you buy any of it for any other than the Middletown mine? A. I may have bought some in the other mines, but I can't say whether I did.

Q. Did you buy it for still another mine? A. No, sir.

Q. Those were the only mines? A. I didn't say I bought it for those three mines.

Q. You are not going to put yourself into saying anything not absolutely true? A. I can't say that I bought it; I might have bought some for the Greenview Mining Company and I might have bought some for the Middletown.

6803 Q. You didn't shoot any of the powder yourself? A. No.

Q. You are not a practical miner? A. No, sir.

Q. You have nothing to do with that part of the business? A. Nothing, only to go down the mine and inspect the mine and inspect the shots—

Q. If you are not a practical miner, how could you do that? A. I know what kind of coal it is when it is shot to pieces or when it lumped, as far as that is concerned; I have general supervision of the mines—

Q. You are not a practical miner? A. No, sir.

6804 Q. Do you know anything about how the shots are loaded and fired? A. Yes, sir, and drilled.

Q. Do you know that just intuitively? A. Just from seeing the holes drilled and the charges put in, and about the number of inches they use in a shot.

Q. And you know that without being a practical miner? A. Yes, sir, I do.

Q. Well, I think you are a wonderful man. A. I am glad you have that good opinion of me; thank you.

Q. Now, I will ask you to state whether you know how much Buckeye powder was placed in any one shot that was fired by any miner in your mine? A. Some of them used 60 inches, and some of them would use 30 inches, and they tried to say—I talked

with them about using this powder and asked them if they used the same quantity as they used of the du Pont powder, and if they gave their shots a chance to work in places where they drilled in on the solid and places where they cut and gave the powder a chance to work.

Q. What did they say to that, what you did or said? A. Well, certainly, wherever they put a cut in the piece of coal and gives it a chance to work —it works better on the solid, the same as the du Pont powder would; that's what I was there for. 6806
As far as Mr. Waddell's powder was concerned, there was no reason why I shouldn't use it, if I could buy it for less money.

Q. You were under contract? A. Well, if I wanted to make a new contract when that expired—

Q. During the pendency of the contract, you didn't want to break it? A. I was trying the powder.

Q. Did you see with your own eyes any single shot loaded with Buckeye powder. A. I think I did. 6807

Q. You think you did? A. Yes.

Q. Well, now, you tell us how that shot was made up and loaded. A. It was made up in a cartridge; some, they would take common newspaper, and some of them had cartridge paper, and they would take a stick of the size,—of not quite as large as your wrist, and they made a cartridge, and they would put their fuse in, sometimes in the lower end, and sometimes they would put the fuse in the upper end. Then that cartridge was tamped with the clay from the mine, with the fuse left sticking out; sometimes they used a squib instead of a fuse; and if you want to know how the holes were drilled, I can tell you.

Q. You have wandered again very far from the

question I asked you. I asked you if you saw any particular shot fired; you have been telling what you saw sometimes, and what you didn't see. A. I saw several.

Q. Describe one shot.

Q. Describe one shot. A. I told you some of them were drilled in the solid at different angles, and some of them were drilled the other way where they put clay in, and I have seen them both fired, and I have seen them charged, and I have seen the
6809 coal after the shot was fired. I went into the room the next day.

Q. Wandering off again. Why is it you won't tell me about a single shot you saw loaded and fired with Buckeye powder? A. I say I have seen more than one shot.

Q. I want you to tell me about one shot. ?A. I have just told you about one.

Q. I didn't hear it. A. Just tell you the one?

Q. Yes. A. A. I saw a shot put in the solid with Buckeye powder.

6810 Q. Describe it in detail. A. I don't know how you want me to describe it any different to that; if you go into the miner's room—

Q. I don't want any speech—I asked you for a description of this particular shot you saw fired, and I would like to have you confine yourself to that. A. I couldn't see it fired.

Q. You said you saw it fired. A. I seen it loaded.

Q. What did you see? A. I seen the man make his cartridge and load it with the powder, and put it in the hole he had drilled, and tamp it; I didn't see the man go in there and fire it.

Q. How much powder did he put into it? A. They put in different numbers of inches in there.

Q. How much do you say was put in? A. All

the way—some of them put in only 18 inches, according to what shot they had to shoot.

Q. Did you see the du Pont powder loaded in the same way? A. Yes; plenty of them, which have been loaded and tamped.

Q. Now, I am going to ask you once more, because I consider it important. I want you to tell me of any single shot you ever saw loaded with Buckeye powder, and just exactly how that shot was loaded. A. Well, I am telling you several. 6812
I can't tell you of any single one; I can tell you of several that were fired.

Q. Well, I am going to keep asking you till you tell me, if I stay here all night. Tell me of a shot that was fired. A. I can't tell you of a single one; I have told you several.

Q. Now, Mr. Hatch, I want to be fair with you if it is possible. I am going to try to be; and I will ask you if it is not a fact that at this time, the matter being so far distant, in time, and from the further fact that you did not make any notes of what transpired, that you have no distinct recollection of 6813
any particular shot that was fired with any particular kind of powder, but that your testimony and recollection goes in a general way to shots you have seen fired with all kinds of powder? A. I don't know how to answer that question direct; if you will let me answer it in my own way, I will tell you.

Q. You can answer that yes or no, and then make such explanation as you please. (Stenographer repeats the question). A. I don't know how to answer that question. You got it in so many ways, I don't know whether I could answer it yes or no.

Q. You are not able to? A. I don't know how I could.

Q. Well, you'll answer the question? A. Well, I

want to be truthful, and you are going at me so, that I want to be careful. I don't understand the question to answer it; I don't know what you are after.

Q. I don't have to let you know what I am after. I want a direct answer. I have been trying all kinds of questions, and I thought this one, probably, would give you a chance to say what I want. A. You want to know whether it hasn't been so long, that I don't remember what kind of powder
6815 I seen the shots fired or loaded with? A. You got pretty near the idea. A. My men were testing this powder, and I wanted to know whether the Buckeye powder would give as good results as the du Pont powder; for that reason I tried to find out how it shot the coal, and whether it worked as good in the coal as the du Pont powder.

Q. Yes. A. That's the only thing I can say to you.

Q. Proceed to tell just how you attempted to find that out. I found it ou by the men taking the pow-
6816 der down in the mine and trying it, and they claimed the powder wasn't working, and I asked Mr. Waddell, I think possibly I wrote him, or told him,—I don't know whether I wrote him or seen him in person. I met him on more than one occasion and told him this powder wasn't strong enough—it wouldn't shoot the coal; and he sent me what they call the "F" powder; and we tried it and it blowed the coal to pieces, it was too strong. The miners didn't like the Buckeye powder as well as they did the du Pont powder, that is, it didn't work as good in that coal; possibly, it might work just as well in some other coal.

Q. Did you see the "F" powder used, which you say you saw used, or did you take the miners' word for it? A. They were shooting the coal to pieces,

and we didn't get the lump coal, and I asked them what was the trouble.

Q. I am asking you what the trouble was then. Do you know, of your own knowledge, whether any other powder that you have ever used or seen used, has been unsuccessful at times in producing the best results? A. Why, certainly; you might find the same thing with the du Pont or any other powder; but when you get a grade that does the work, that's the grade you got to have for your coal.

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Q. Did you ever see coal blown to pieces with the du Pont powder? A. Yes, sir,—if they used too strong a powder.

Q. That brings me now to where I wanted to get a long time ago. Did you ever see any shot fired with the Buckeye powder that produced the results you have testified to? A. I have seen the shots and the charge made and put in the hole and ready to fire, and I have seen the shot after it was fired and the results from it.

Q. State how that particular shot was loaded and fired. A. Those particular shots I looked at were loaded and fired—

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Q. I must stop you there; you are talking about a lot of shots, and I am asking about that shot you referred to a moment ago. A. There was more than one, but I couldn't tell you one shot. I went down and made a general inspection of the coal.

Q. Now, when the coal was blown to pieces, as you say it was, by the Buckeye powder, did you make any change in the manner of using that powder? A. Yes, sir.

Q. You reduced the charge? A. Yes, I told my men to do it.

Q. Did they obey your orders? A. I think they did.

Q. Do you know they did? A. I didn't see any shot fired; it is an unfair question for you to ask.

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Q. If you would answer my question, you would probably find it was not as unreasonable as you think. I don't think you are unreasonable, but I know something about mining.

Q. Tell us about the shot that you saw fired after the one that you saw blow the coal all to pieces, and tell us just how much less powder was used in the shot than was used in the former shot. A. When I talked to the men—I will have to answer it this way—I told the men to give it a good fair trial always, and when they blew this coal to pieces, I said, "You are using too much powder, don't you think you are?" Those questions naturally came up: "Give your shot a little better chance, don't get your heel so heavy;" or something like that; and they would say they give it all the chance they could give it, and they didn't want any more of that powder. I don't know, but at one time we were out of du Pont powder, possibly, and the men probably used part of a keg, and as soon as the other powder came in, we gave them that. They naturally—

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Q. Do you consider that an answer to my question? A. In regard to giving it a chance,—I think we gave it all the chance we could give it; at least, the men said so.

Q. Isn't a fact that you depended upon the reports you got from the men as to the use of Buckeye powder? A. Not when they took this powder down and shot this coal all to pieces; when it ought to have made 60 per cent. and it didn't make more than 30 per cent., I wanted to know the reason, and they said they couldn't use the powder.

Q. Well, you didn't answer my question. Where did you get the information upon which you based this conclusion you have stated? A. I could see it in my coal; that was my information.

Q. Did you measure it? A. Well, I screened my coal, and it easy enough for a man to know when the miners are shooting the coal to pieces.

Q. And that's your answer, is it? A. Yes.

Q. Isn't it a fact, that if the miner wanted to, he could shoot your coal all to pieces in order to discredit a powder? A. That is naturally sure, if he had anything in for the Buckeye powder, or if he was interested in any other way in any other powder; certainly, if he wanted to. He would be a fool, though. I don't know who was hired, 6824
though; they might have had some fellow hired, but I don't think so. I used considerable powder and seen it used.

Re-direct examination by Mr. Katzenbach:

Q. How many miners in your mine used Buckeye powder? A. Well, I couldn't say just the number now; quite a number.

Q. Approximately, how many to your knowledge? A. In the Greenview Coal Company's mines?

Q. Yes. A. Possibly half of the miners tried Buck- 6825
eye powder.

Q. How many miners or employees were there at the time Buckeye powder was used? A. About 125 to 140 miners; possibly, that's a little bit big; I will say between 100 to 130 or 135.

Q. The Greenview Coal Company which you have spoken of, what kind of a concern was that, a large or a small concern? A. The one that failed?

Q. The one you spoke about? A. That company was very weak, a small company; that was a company that was very weak.

Q. Was it a corporated company? A. Not at that time; they are at the present time; it's changed; they are called the Greenview Mining Company.

Q. How many men did the Greenview Coal Com-

pany employ at that time? A. Well, while I was with them?

Q. Yes. A. I think they had about 60 men at one time.

By Mr. Taylor:

Q. The question was, whether it was a larger or small company? A. It was a small company.

6827 *Re-cross-examination by Mr. Abbott:*

Q. You stated you used between five and six thousand kegs of powder a year at the Greenview Coal and Mining Company? A. I think along there,—about 5,000 kegs, maybe six.

Q. What do you call a small company? A. No; the Greenview Coal and Mining Company.

Q. Used between five and six thousand? A. Yes, sir, as high as 6,000 kegs one year.

Q. How many kegs did the Greenview Coal Company use? A. I couldn't say

6828 Q. Have you any idea? A. Well, I wasn't with them.

Q. You stated it was a small company; tell us how much powder they used; you must know the one thing if you know the other? A. I think it was—in fact, about the highest they could have averaged was, possibly ten kegs a day.

Q. Ten kegs a day? A. Maybe, not quite that many, that is, for a short time, a very short time.

Q. How long a time? A. Probably 60 or 90 days.

Q. How long were they in business? A. 1908—about two years, I think.

Q. Beginning when? A. I think they commenced operations,—they commenced the sinking in the fall of 1907.

Q. And continued until what time? A. I think

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they went into the receiver's hands in,—I think it was either in 1908 or 1909.

Q. 1908 or 1909? A. Yes, sir, I can't say which year.

Q. Now, you stated that about half the miners in the Greenview Coal and Mining Company used Buckeye powder? A. A very short time, yes, to start with.

Q. To start with? A. Yes, sir.

Q. How long a time did they continue? A. A very short time.

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Q. Tell us how long? A. I think probably they got one keg.

Q. And they didn't use any more? A. Some of them didn't use that one keg.

Q. What did you do with the other Buckeye powder that you received, after these miners ceased using Buckeye powder? A. I tried to use it; some few of them liked it pretty well. I don't know whether you want me to say this. I think as you are going into details, you ought to be fair with me, and if we got different grades of coal in one mine, I ought to be able to explain.

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Q. Go ahead. A. In some places we couldn't use the same grade of powder, and we had to use double "C" or single "C."

Q. Did that apply to du Pont powder as well as Buckeye powder? A. With some powders the miners weren't satisfied, and where they did use it and where they were satisfied, they shot my coal all to pieces.

Q. What was the total amount of Buckeye powder that you purchased? A. I can't tell you exactly.

Q. How many miners used Buckeye powder? A. I couldn't tell you exactly.

Q. How many miners did you have in your mines? A. Well, sometimes we had more and sometime less.

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Q. How many miners did you have in your mine at the time you were using Buckeye powder? A. I would say between 120 and 135 men.

Q. What percentage of that hundred to 135 men, used Buckeye powder? A. Possibly half of them tried it.

Q. How long did that half continue to try Buckeye powder? A. I couldn't say positively; some used one, or part of a keg, and brought the other back; some of them would get more, and some
6833 wouldn't.

Q. During a period of how many weeks or months did you buy Buckeye powder? A. I couldn't say positively at this day.

Q. How long would it take a miner to use one keg of powder? A. I would have to know what miner that was to answer that question.

Q. Based upon the knowledge which you have testified here you have of the operations of miners in your mines— A. And what kind of a place he was in.

6834 Q. I am asking you to base it upon your knowledge, how long it would take a miner to use a keg of Buckeye powder? A. Some of them two days, and some of them three days, and some it would be more, according to the sized shot he put in.

Q. How long would it take 60 men to use 1,500 kegs of powder? A. That is owing to the way they shot the powder.

Q. I am asking you as an expert, as you claim to be. A. I don't claim to be an expert.

Q. You do not? A. No.

Q. You said so. A. I don't think I did.

Q. You said you know how to shoot it, and that you went down in the mines and you followed it up and know all about it. I would like you to state how long it would take 60 men to use 1,500 kegs of powder. A. 60 men?

Q. Yes. A. I say, I have seen holes drilled and fired; I am not an expert.

Q. Will you answer the question? A. I have told you how long it would take; it is according to the way they shoot it. We would use, probably, as near as I can remember, with a hundred men—well, a man would average about two kegs to a pay.

Q. What is that. A. About 12 to 13 days' work.

Q. 13 days' work is a pay? A. Yes, sir.

Q. You say they would average about two kegs a pay? A. About two kegs, yes, sir. 6836

Q. Then, it would take one man about 13 days to use two kegs of powder, wouldn't it? A. Yes, sir, sometimes one man would use three kegs and sometimes one.

Q. But on the average, one man would use two kegs of powder in 12 or 13 days; is that right? A. Yes, sir, that's right.

Deposition of LOUIS BLANK, a witness produced on behalf of the Defendants, being duly sworn, read as follows: 6837

Direct examination by Mr. Katzenbach:

Q. Mr. Blank, where do you live? A. I live in Limestone.

Q. That is a township in Peoria County? A. They call it the Plank Road.

Q. What business are you engaged in? A. Coal mining every day, running a little team bank with eight or nine men now; what they call a small place.

Q. Have you any partner in the business? A. Yes, sir.

Q. Who is it? A. Fred Fisher.

Q. What is the name of the partnership? A. Fisher and Blank, they call it.

Q. Fisher and Blank, or Blank and Fisher? A. They change it around sometimes.

Q. How long have you been a miner of coal? A. Oh, about 26 or 27 years.

Q. At what age did you commence working in a coal mine? A. I started in when I was 12 years old; I am 39 now.

Q. Have you done anything else during your life other than mining coal since you were 12 years of
6839 age? A. I have driven mule off and on, but for the last ten years I ain't.

Q. In the mining of coal, have you used black blasting powder? A. Yes.

Q. State in what way you have used black blasting powder, that is, how you used it. A. In the shots or in the cartridges, or loose?

Q. Yes. A. Some puts it in charges loose, and some in cartridges; I have used it both ways.

Q. Will you state in your own way, just how you used black blasting powder in the mine, giving the details of what you have to do to use it? A. Maybe
6840 I will have a shot 3 feet square and 3 feet long; that's what they call a block; I will have a six foot chance behind that; that's what you call a big shot, four or five feet thick. Maybe, I will have another one 6 feet long, and only 3 feet thick. Well, you got to gauge them shots according to your knowledge of a 3 foot hole, so it takes two feet of powder——

Q. I think you misunderstood my question. I want you to tell me just what you do in a mine in order to use powder? A. In order to use it?

Q. When you use it; before you use it, what do you do; what do you have to do to prepare for the use of it? A. If you use a charger, you get your charger and scrape it, and scrape out your hole and put it in a charger. You know what your charger

holds, eight or nine inches, and some ten, and if you want to put it in with a cartridge, you make it up with the cartridge and clean your hole out and put the fuse in——

Q. Have you ever done any drilling of holes? A. Yes.

Q. Now, after you drilled the holes, state specifically what you have done, step by step. A. Clean the dust out of them and get your powder, and if you are going to put in a cartridge, make your car- 6842
tridge and put your powder in and tamp it up.

Q. Between the years 1903 and 1909, where was your mine located? A. They call it Rocky Glen. It's worked out now; it ain't working any more.

Q. Between the years 1903 and 1909, did you use any blasting powder known as Buckeye powder?

Q. Between the years 1903 and 1909, did you operate any mine? A. Yes, that small place.

Q. Which you called Rocky Glen Mine? A. It had no name; we called the place Rocky Glen; it went under Blank and Fisher.

Q. Who bought the black blasting powder for 6843
use in your mine? A. Well, I would buy it.

Q. Did you buy between the years 1903 and 1909, any black blasting powder known as Buckeye powder? A. Yes.

Q. About what time, to the best of your recollection, did you buy that powder? A. I think it would be—they run five years, and Jones was the first agent we bought from, so it must have been around 1904, or along there, and they run quite a while after, and we never got any of them; it must have been 1904, I guess.

Q. How much of the powder did you purchase first? A. I think it was five kegs.

Q. Did you use yourself in the mine any of that powder? A. Yes, sir, all myself; me and Fisher, my partner.

Q. State what you did with the powder, and what results you observed from the use of it. A. Well, it didn't work for us.

Q. State exactly what you did with it. A. We used it just the same as we would the other powder, and give it the same chance as the other powder.

Q. Well, how did you use it; just describe how you used it in your mine. A. Just the same as I told you before.

6845 Q. Well, tell it again. A. I think we tried it just the same as the other powder; the way powder is used in the bank; the same as any man would use it.

Q. What results did you see from the use of Buckeye powder? A. Well, we used five kegs of it, and I didn't think it was as good powder; it didn't work like the other powder did.

Q. State how it worked. A. We expect it to blow a shot out, and we didn't get the results out of it, what we thought we ought to have.

6846 Q. State what results you did get.

Q. Describe just how the use of Buckeye powder affected the coal. A. Well, we didn't think it was as strong as the other powder, and didn't cut up and down like the other powder did; it just blowed back and wouldn't cut up and down.

Q. Did you make any other purchase after these five kegs? A. Yes.

Q. We ordered five more. I told him we didn't want ten; he sent ten. I said we would try it again; he said they had a different man making powder now and it would run regular.

Q. Who said this? A. Jones.

Q. Do you know who Mr. Jones represented? A. The Buckeye Powder Company.

Q. Did you yourself use any of this second lot of powder? A. Yes.

Q. State fully, in detail, what was the result of that use by you of this second lot of Buckeye powder. A. He told us if it isn't satisfactory to us, we could send it back; and we used two kegs of it and sent word for them to come and get it back, we couldn't use it.

Q. What I want you to tell me is, what the results in the mine were of the use by you of this second lot of powder, what effect did the powder have on the coal, as you observed it? A. It wouldn't do the work, or it didn't work. 6848

Q. State what it did do or didn't do. A. We couldn't get the coal—it wouldn't make no coal; it wouldn't work in the coal; we couldn't use it.

Q. State particularly how it didn't work. A. Well, it didn't seem to have the strength; you put in what you would think of the other powder, and it seemed like it wouldn't have enough strength. Whether the powder was weak or not, I don't know; it seemed like it was weak.

Q. What became of the second lot of powder that you purchased of the Buckeye Powder Company? 6849
A. We sent it back.

Q. After sending this back, did you afterwards purchase any more powder of the Buckeye Powder Company? A. No, never any more.

Q. That was the last you bought? A. Yes, sir.

Q. Mr. Blank, in a suit in the United States District Court of New Jersey, in which the Buckeye Powder Company is the plaintiff, and the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company are defendants, in answer to a request or demand from the customers of the Buckeye Powder Company who were induced by the E. I. du Pont de Nemours Powder Company, or the other two companies which I have

6850 *Louis Blank—Direct*

mentioned, to cease or to abandon the purchase of powder from the Buckeye Powder Company, the name of your firm was given by the Buckeye Powder Company as one of the customers of the Buckeye Powder Company induced by the E. I. du Pont de Nemours Powder Company and the other two corporations, to abandon the purchase of powder from the Buckeye Powder Company. Will you state whether or not any agent or representative of these defendants, or any of them, ever induced you to
6851 abandon or to stop the purchase of Buckeye powder from the Buckeye Powder Company? (Objection overruled; exception allowed.) A. No, sir.

Cross-examination by Mr. Abbott:

Q. How many kegs of powder did you use per year in your mine? A. I don't know exactly; you see we only run about—we hardly use any in the summer; I guess we use 75 to 100 kegs; through the summer months we didn't use many.

Q. Was your partnership, as you call it, a corporation? A. No.

6852 Q. You and Mr. Fisher conducted business between you without having any agreement between you as to what he should do, one thing or another? A. No, everything was all right what we did.

Q. You would approve of each other's cast? A. Yes, sir.

Q. Will you state again just exactly how many kegs of powder you purchased the first time? A. I think five kegs.

Q. How many the second time? A. I think he said ten kegs; he said if we didn't like it, he would take it back, and I couldn't do much with it.

Q. Did you state the second time that you bought the powder—when was the second time you bought Buckeye powder? A. Right after we used that first up; do you mean the year?

Q. What year, what month? A. I am not exactly sure; I think around 1904 or '05, I think.

Q. Did you buy it at any other time except those two periods? A. That's all.

Q. When was it you found it wasn't what it ought to be? Out of the first batch? A. Yes, sir, it didn't work right.

Q. Some worked good? A. Some of the kegs, yes.

Q. Some were good? A. Yes, sir.

Q. Isn't that the case with all powder; some 6854
works good and some doesn't? A. Well, it's expected to run regular.

Q. Have you not had some experience with du Pont powder? A. Yes, sir.

Q. Have you ever found that du Pont powder didn't work satisfactorily? A. It runs regular, the grain does, unless you get a spoiled keg, and you don't want to use it.

Q. You don't? A. No.

Q. But you have seen that with the du Pont powder? A. Yes; that got wet or something.

Q. But you have seen du Pont powder that 6855
wasn't right, and sent it back? A. Not batches, only a keg.

Q. One keg? A. A keg or two that got wet out of a batch.

Q. In every batch? A. Not every batch.

Q. Isn't it a fact, that your experience with Buckeye powder is no different from your experience with du Pont powder, so far as now and then having bad results? A. It never worked right out of what we used. Maybe a keg or two worked right, but the rest didn't.

Q. Some did work right and some didn't? A. No, the more we tried the worse it got.

Q. But answer my question; some of it worked

right and some didn't; isn't that what you say? A. Oh, yes.

Q. Is that what you say? A. Yes.

Q. Who asked you to come here?

Q. (The stenographer repeats the last question asked by Mr. Katzenbach.) Do you remember that question? A. I remember it now.

Q. Do you understand it? A. Yes, sir.

Q. What do you understand by it? A. If anybody wanted us to take du Pont powder or Buck-
6857 eye powder.

Q. What else do you understand by it, or is that all? A. Yes; we got all our powder where we pleased, and whatever worked the best; that's what we did; if it worked all right, we might have stayed with them; maybe it worked all right other places, as far as I know.

Q. Did you ever hear any such question as that put to you before? A. About what?

Q. Similar to the one just read to you by the Commissioner? A. No.

6858 Q. Do you know all the persons whose names have been read to you there, and corporations? A. No.

Q. Do you know all the persons who are their agents and representatives? A. No, only Mr. Moffatt, that's the only one.

Q. Then, the only man you had in mind as a representative of all of these gentlemen and corporations and associations when you answered the question, was Mr. Moffatt? A. Well, I know we bought our powder off him.

Q. He was the only man you had in mind when you answered the question? A. We bought the powder off them?

Q. Do you understand? A. Yes.

Q. Then, do I understand you to say he was the

only man you had in mind who was the agent of any of these parties when you answered that question? A. Yes, sir.

Deposition of EDWARD MARSTON, a witness produced on behalf of the defendants, being duly sworn, made as follows:

Direct examination by Mr. Katzenbach:

6860

Q. Mr. Marston, where do you live? A. Half a mile from the city limits, on the extreme end of Lincoln Avenue.

Q. What business are you engaged in? A. Coal mining.

Q. How long have you been engaged in the business of coal mining? A. The spring of 1902.

Q. Had you had anything to do with the mining of coal prior to the year 1902? A. Yes, sir; I have done nothing but mine coal all my life.

Q. When did you commence to mine coal? A. When I was nine years old. 6891

Q. How old are you now? A. 47.

Q. Between the years 1903 and 1909, what coal company, if any, were you interested in? A. With the Fair Oaks Coal Company.

Q. Where were the mines of that company located? A. Out west of the city here, about a mile and a half.

Q. Was that a partnership or a corporation? A. A partnership.

Q. Who were the partners? A. Myself and Mr. Walting and Mr. Williams.

Q. Who purchased the supplies for the Fair Oaks Coal Company between the years 1903 and 1909? A. I did.

6862 Q. Did you use black blasting powder in the mines of the Fair Oaks Coal Company? A. Yes, sir.

Q. Have you had any experience personally with the use of black blasting powder? A. Yes, sir, 28 years.

Q. 28 years' experience? A. Yes, sir.

Q. State how black blasting powder is used, or how it has been used in the mining of coal by you? A. In the first place, you drill a hole in the coal,
6863 and then you make a cartridge and put your powder into that, into the hole and tamp it up. Now, they use a fuse all over, but when I come they used squibs.

Q. You would put that in and tamp it up? Since you have been a partner in the Fair Oaks Coal Company, have you personally used any black blasting powder? A. Yes, sir.

Q. Between the years 1903 and 1909, did you make any purchases of black blasting powder, know as the Buckeye powder? A. Yes.

6864 Q. Of whom did you purchase that powder? A. Of the agent of theirs by the name of Pepperd.

Q. An agent of whom? A. From the Buckeye Powder Company.

By Mr. Abbott:

Q. How do you know he was an agent of the Buckeye Powder Company? A. Because he came there and represented himself as an agent of the company.

Q. Who told you he was? A. He told me.

Q. He told you he was an agent? A. Yes, sir.

Q. Did you give this gentleman, Mr. Pepperd, any order for powder? A. Yes.

Q. Did you have the powder delivered to you which you had ordered? A. Yes, sir.

6865

Q. Whom did you say, what company did you pay for this powder? A. Paid Mr. Waddell, in his office right here on Main Street.

Q. Do you know what connection Mr. Waddell had with the Buckeye Powder Company? A. No, sir, I know the offices were there, and he was with the Buckeye Powder Company.

Q. How many kegs of Buckeye powder did you purchase? A. 75.

Q. Do you recall about the time you purchased it? A. I am not sure whether it was in 1905 or 6866
1906; it was the fall of one of those two years; I am not sure which.

Q. 1905 or 1906? A. Yes, sir.

Q. After you purchased this Buckeye powder, did you yourself use any of it in the mines of the Fair Oaks Coal Company? A. Yes, sir.

Q. State what you did in the use of this powder; in other words, how you used it. A. Well, I used it the same as I did any other powder; I prepared my shot and put in the same amount of powder, because it had been represented to me as just as 6867
good as we had formerly used, and it was 10 cents a keg cheaper, and that's the reason we took the powder, with the 10 cents a keg, it was saving money to us, and we might as well save that if we could; but we prepared the shot just as carefully as we did with the powder we were using before, but the powder didn't seem to do the work.

Q. State, Mr. Marston, the various steps that you took in the use of Buckeye powder. A. In using it?

Q. Yes, yourself. A. Well, I took the same steps as what I have said with the other powder.

Q. Please state them. A. Prepared the shots, made the cartridge, tamped the hole up, fired the shot off, the same as we did with the other powder.

Q. Did you see yourself, what the results of the shots fired with Buckeye Powder were? A. Yes, sir.

Q. State what the results were that you observed. A. The results of the powder was, that it didn't work the coal as successfully as that formerly used; it would only come from where we drilled the holes; it would strike uphill over where the hole was, but it wouldn't come down.

Q. State what effect that had upon the coal? A.
6869 It had this effect, that we had to go and prepare another shot the next day, and shoot the same shot twice.

Q. Why did you have to prepare a shot the next day? A. Because this one wouldn't do any good; it wouldn't blow the coal out so you could work it; it wouldn't come out; the coal was all as solid as before you shot it; then you had to prepare another shot to shoot it out.

Q. Why did you originally purchase the powder, the Buckeye powder? A. As I stated before, be-
6870 cause the price was 10 cents a keg cheaper, and it was represented to us as being as good as du Pont, by their agent.

Q. Did you, or did you not, use all of the kegs of powder which you purchased from the Buckeye Powder Company, in the mine of the Fair Oaks Coal Company? A. No, sir, we didn't.

Q. You did not? A. No.

Q. Do you know how much was not used, and what became of it? A. We had eight kegs left that the miners and ourselves, me and one of the other men mining coal at the same time, and all the miners working for us refused to use the powder any more, because it was detrimental to us; it didn't seem to have the same strength to work the coal as the powder we used. They insisted on getting the old powder back.

Q. After you made this purchase of Buckeye powder, did you have any conversation or communication with any agent of the du Pont Powder Company with reference to Buckeye powder? A. No, sir.

Q. In a suit instituted in the United States District Court for the District of New Jersey, in which the Buckeye Powder Company is plaintiff, and the E. I. du Pont de Nemours Powder Company, the International Smokeless Powder and Chemical Company and the Eastern Dynamite 6872
Company are defendants, in answer to a demand for the names of customers of the Buckeye Powder Company induced by these defendants which I have named, or by certain other persons and corporations which I will name, the Buckeye Powder Company has stated that the Fair Oaks Coal Company was a customer of the Buckeye Powder Company which these defendants, or the other persons or corporations which I will name, which was induced that is, the Fair Oaks Coal Company was induced to abandon the purchase of powder from the Buck- 6873
eye Powder Company. The names of the persons and corporations given in this suit, are as follows: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable, Jonathan A. Haskell, International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin and

Rand Powder Company, Fairmont Powder Company and Judson Dynamite and Powder Company. I now ask you whether any of these corporations or persons which I have named, or any agent or representative of these corporations, ever induced you to cease the purchase of powder from the Buckeye Powder Company?

(Objection overruled; exception allowed.)

6875 A. No, sir, they never did.

Cross-examination by Mr. Abbott:

Q. Do you know all the agents and representatives of the persons and associations and corporations whose names were just read to you by counsel for the defendants? A. No, sir.

Q. What particular agent, if any, did you ever see, representing any of these parties? A. I don't know that I ever saw anyone. We purchased our powder, whenever we got any, off Dooley Brothers.

6876 Q. Of Peoria? A. Yes.

Q. Who are Dooley Brothers? A. They are doing business on South Adams Street.

Q. Who solicited the business of you? A. We used to call up over the telephone and tell them to send out 25 or 50 kegs, whatever it might be; but usually it was 25 kegs we had.

Q. You have said that none of the agents or representatives of these people called upon you or induced you to buy Buckeye powder; how do you know that any person representing some of these people has not called upon you within the last ten years? A. I think I pretty near know; I done all the purchasing for the mine since we were in operation, and if an agent or representative of any firm should come in to do any business, and he come

in and saw one of the others, they would tell him to come and see me; they left it in my hands; no matter what line of business he came on.

Q. Nobody had been to see you about powder then, within that time? A. Nobody but George Pepperd.

Q. Nobody but George Pepperd? A. No, sir.

Q. No one has ever been to ask you to buy any powder at all except George Pepperd? A. No, sir.

Q. Any powder of any kind? A. Not of any kind, no, sir. 6878

Q. Do you know Mr. Moffatt, who represents Dooley Brothers? A. Yes, sir.

Q. Have you ever seen Mr. Moffatt within the last ten years? A. Yes; I saw him about once a month every month.

Q. Where did you see him? A. Well, in the line of business; sometimes at the office, sometimes at the mines; he would come out and bring small job lots of supplies, such as fuse that we needed, and he used to run around with a little rig for that purpose, because it was too expensive to send a team out, I presume. 6879

Q. Did he ever bring you any powder? A. Yes; when we have ordered single "C" and they wouldn't have the 25 kegs on hand, and we needed the powder right away, and he would run out with about five kegs in the rig.

Q. How long has it been since you have seen Mr. Moffatt; how long since the last time you saw him? A. In a business way?

Q. No, in any way. A. To-day.

Q. And how long before that? A. Well, I guess about two weeks ago I saw him.

Q. What transpired at the time you saw him about three weeks ago? A. He came to collect some money. I hadn't been in town to collect our accounts, and he asked me if I was all right.

Q. Did he show you a paper? A. No, sir, not at that time.

Q. When was it that he showed you a paper? A. Some other time, just prior to that.

Q. Would it be four weeks ago? A. About four weeks, if I remember right.

Q. What did that paper contain, if you remember? A. I forget exactly what it was, but it was pertaining to whether I had been induced to buy powder off any particular company, or whether him,

6881 or anybody else had coerced me into buying their or anybody else's powder and like that.

Q. What conversation did you have with Mr. Moffatt at that time about the powder? A. No conversation; he presented the paper and I signed the questions to the best of my knowledge.

Q. Did you read them? A. Certainly.

Q. Did you talk to him about them? A. What was the use of talking about them? No, sir.

Q. What did you do with the paper? A. Handed it back to Mr. Moffatt.

6882 Q. Is he in the room at the present time? A. Yes, sir.

Q. How do you happen to know that you bought 75 kegs of powder of the Buckeye Powder Company in 1905 or '06? A. Because, as I stated before, experience is the best teacher, and we lost out by using that powder.

Q. How did you know about the time you bought this powder? A. I said 1905 or '06, in the fall of the year; I am not sure.

Q. Have you any data upon which to base your recollection in that matter? A. I presume there would be in the books?

Q. Have you looked it up? A. No, sir.

Q. You have not? A. No.

Q. You are just trusting to your recollection? A. Yes.

Q. You are sure you bought 75 kegs? A. I am not sure, but I know it was over 50 we bought.

Q. You are sure it was over 50? A. Yes, sir.

Q. Did you use—how much of that powder did you say you used? A. All but about eight kegs.

Q. Did you say how much you had paid for that powder when you were being examined by Mr. Katzenbach? A. I paid 10 cents a keg less for that powder.

Q. How much did you pay for it? A. I believe it 6884
was $1.20.

Q. That is a matter of opinion? A. And the other powder was $1.30, and that is the reason we bought the powder, being represented as good a grade of powder as the other.

Q. I am trying to get you to answer my questions. What did you do with that powder,—use it all? A. We used it all but eight kegs.

Q. What did you do with the eight kegs? A. Returned them.

Q. To whom did you return them? A. Their 6885
agent.

Q. It was Jones, then, you say? A. Yes.

Q. How does it happen you bought powder of one man and returned it to another? A. Pepperd had quit, and Jones took hold of it, and he was the one that came and got the powder.

Q. You say you made a payment on that powder to Mr. Waddell? A. Yes.

Q. What Mr. Waddell is that? A. He had an office up here on Main Street.

Q. Would you know him if you saw him? A. No, I only met him one time, but I would see the name on the receipt.

Q. You are not sure you paid it to Mr. Waddell? A. No, but that was the name on the receipt.

6886 *Edward Marston—Cross*

Q. Have you got that receipt? A. I may have it around home some place.

Q. Now, did you ever have any experience with any other kind of powder except Buckeye powder and du Pont powder? A. Why, sixteen or eighteen years ago, there was a powder they called the Laflin and Rand in existence here, and the American powder, I believe it was called.

Did you ever use either of those powders? A. Yes, sir.

6887 Q. How were they, satisfactory? A. Well, in some cases they were, and in some cases——

Q. And in some cases they were not? A. Yes, sir.

Q. Has your du Pont powder always been satisfactory? A. It has always given better results than any other powder we use.

Q. Where do you get your powder from now? A. Dooley Brothers.

Q. Do you know where it comes from? A. No, sir.

6888 Q. Do you know where it is made? A. No, sir.

Q. How is it labeled? A. I presume it's labeled "Du Pont" on the top of the keg.

Q. You don't know where it's made? A. No.

Q. How long have you been buying of Dooley Brothers? A. Since 1902, excepting this time we bought this powder of the du Pont.

Q. Did you ever use any Phoenix powder? A. I couldn't say.

Q. Isn't it a fact, that in the use of any powder of any brand, you will now and then have bad results from the use of that powder? A. Well, that depends upon the condition of the shot and how it's prepared.

Q. Then, isn't it a fact— A. But if a man uses judgment and carefulness in the preparing of a

shot, he will get good results from the proper grade of powder.

Q. If his judgment is always right, he gets good results? A. If the powder is right.

Q. But if his judgment is wrong, no matter what powder he uses, he gets poor results? A. Yes, sir.

Q. That applies to any powder? A. Yes, sir.

Q. And isn't it true, that the very best of miners will often make a mistake in their judgment as to how to drill a hole and how to charge it, and what slant to give it, and how much powder to put in it, and as a result, the most experienced miners will make a failure of the shot? A. That's true enough. 6890

Q. In the use of a new powder, one never used before, might it not be necessary to experiment with it awhile before you get so you could tell how best to use it? A. I think we gave it enough experiment.

Q. Answer my question. A. Certainly it would.

Q. How many men do you employ in your mine? A. At that time we were employing about 18, through the winter months. 6891

Q. And how many kegs of powder did you use per year? A. From 75 to 125 a month.

Q. 75 to 125 a month? A. Yes, when business was going good.

Q. How many months do you run? A. From the first of September until about the first of March is generally the best of the months.

Q. About seven months, then, it was that you operated your mine. A. About six months we operate.

Q. How do you transport your coal to market? A. By wagon.

Q. You don't use the cars at all? A. No, sir.

Q. To whom do you sell your coal? A. Everybody that wants to buy it around town.

6892 *George Westerby—Direct*

Q. Dooley Brothers? A. No, sir.

Q. Did you ever sell to Dooley Brothers? A. Yes, we have sold some.

Q. Don't you pay your powder bills largely by coal? A. No, sir.

Q. You do not? A. No.

Q. And never did? A. Sometimes we do; they give us credit.

Q. In other words, you are very friendly to Dooley Brothers? A. No; only in a business way.

6893

Deposition of GEORGE WESTERBY, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Westerby, where do you live? A. Farmington.

Q. State of Illinois? A. Yes, sir.

6894 Q. About how far from Peoria? A. About 25 miles.

Q. What business are you engaged in? A. Not in any business just now, but I was running a coal mine up until a year ago.

Q. How long were you engaged in the coal business? A. Five years.

Q. Have you had any experience in the mining of coal yourself? A. Yes, sir.

Q. How many years have you had experience in the mining of coal? A. Well, I have been in this country since 1880, the same year Garfield was shot in, but I was a miner in the old country before I came here.

Q. 1881, July 2nd, President Garfield was shot. Since you came to this country you have been en-

gaged in the coal business up until a year ago? A. Yes, sir.

Q. Have you personally worked in mines? A. Yes.

Q. Personally? A. Yes.

Q. What kind of work? A. All kinds; I sunk mines and mined, and started right at the top and come right down to the bottom, and worked until five years ago, all my life.

Q. In your mining operations did you ever use black blasting powder? A. Yes, sir. 6896

Q. State what use you have put black blasting powder to, in mines, that is, how you use it? A. Both in coal and shooting rock. Not so much in rock, though, because it is not adapted for that kind of work.

Q. How have you used powder in coal mining work; state the different steps you have taken to use powder? A. In shooting coal off the solid and loading it after it has been mined, and drilling holes, and putting the charge of powder in, and what a man would do in shooting, you know. 6897

Q. After putting the powder in, what next? A. Tamped it up and put the fuse in and tamped it up.

Q. Have you had any experience in the firing of shots? A. Oh, yes.

Q. Between the years 1903 and 1909, were you operating any mine? A. Yes, sir.

Q. Where was that located? A. In Farmington.

Q. In whose name did you conduct business? A. In my own name, George Westerby.

Q. Who purchased supplies for your mine? A. Myself.

Q. Did you purchase black blasting powder for your mines? A. Yes, sir.

Q. Between the years 1903 and 1909, did you purchase any black blasting powder for your mines, known as Buckeye powder? A. One shipment.

Q. From whom did you purchase that? A. Right from the company themselves.

Q. What company was it? A. The Buckeye Powder Company it was called.

Q. How much was that shipment? A. I believe it was a hundred kegs, I believe so.

Q. About when did you purchase it, to the best of your recollection? A. I have a question I would like to ask: Was there a man collecting money by the name of Foster for that company?

6899 Q. We can't answer that. A. That's all I can remember; we remodeled our house some time ago, and I had the books destroyed, and we took this out of the bank book, that we had paid $100.00 to some Foster, and we judged that was for the powder; and that was December 31st when it was paid, 1907.

Q. Where are your books and papers now? A. What we have is right at home.

Q. After you purchased this powder of the Buckeye Powder Company, did you personally see any of the powder used in your mine? A. Yes, sir.

6900 Q. State what you saw done with it with your own eyes. A. Well, the men drilled their holes and put the fuse in, and charged it, and they had very poor results, very poor results. The men claimed, and I claimed myself, that the powder hadn't the strength to throw the coal out; that it worked up into the roof too much.

Q. What did you see the miners do with the Buckeye powder? A. Drill their holes, charge it, make the cartridges same as with any other kind, put it in the holes and fire it.

Q. After these shots were fired with Buckeye powder, did you yourself see the effects of the shot? A. Yes, sir, I was——

Q. State what you saw with your own eyes. A. I examined them myself; I was running my mine

6901

myself, and I was the examiner, and I went down at six o'clock in the morning and examined the place in the mine before anybody went down, and I could see what the shots had done, and see the effect they had on the roof in every particular.

Q. State fully what you saw; what effect they had on the roof, and how the coal was, and everything about it. A. Most of the shots had caught the coal and cut up into the roof and damaged the slate, and it wouldn't throw the coal out; then they had to drill the holes again and it damaged the

6902

coal; it made the coal more slack; the powder worked more through the coal and damaged the coal and made it more slacky.

Q. After this purchase of 100 kegs of Buckeye powder, did you ever purchase any more of the same powder? A. No.

Q. After you made this purchase of Buckeye powder, did you have any conversation or communication with any agent of the du Pont Powder Company with reference to Buckeye powder? A. No, sir.

6903

Q. What powder had you been using before you purchased Buckeye powder? A. Du Pont powder.

Q. State how the price of Buckeye powder which you bought, compared with the price of du Pont powder, which you had been using. A. The reason we purchased it, we had two men in the mine that said that if—they were trying this Buckeye powder; it was cheaper; some said, these two men, that it would work the coal just as well, and I purchased this shipment, and I couldn't be confident whether 100 kegs or 50 was bought, but it runs in my mind that it was 100 kegs; but the reason we bought it, the price had something to do with it; it was a cheaper powder; that was what induced us to try it.

Q. Mr. Westerby, in a suit in the United States

6904 *George Westerby—Direct*

District Court for the District of New Jersey, in which the Buckeye Powder Company is plaintiff, and the E. I. du Pont de Nemours Powder Company and others are defendants, the Buckeye Powder Company, in answer to a demand for a list of customers which the Buckeye Powder Company alleges that the du Pont Powder Company and the other defendants and parties named in the pleadings in the case, induced to abandon the purchase of Buckeye powder, your name is given as one of the cus-
6905 tomers of the Buckeye Powder Company which the du Pont Powder Company and the others, whose names I will give you, was induced to abandon or stop the purchase of powder from the Buckeye Powder Company; the names of the other defendants and persons in the suit which I have mentioned are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G.
6906 Buckner, Frank L. Connable, Jonathan A. Haskell, International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin and Rand Powder Company, Fairmont Powder Company, and Judson Dynamite and Powder Company. Will you state whether any of these persons or corporations which I have mentioned ever induced you, either through their officers or agents, or the individuals which I have named personally to abandon the purchase of powder from the Buckeye Powder Company?

(Objection overruled; exception allowed.)

A. No, not at all; they neither influenced or even spoke to me; not at all.

Cross-examination by Mr. Abbott:

Q. Do you understand the last question put to you? A. Yes, sir.

Q. Do you understand it fully? A. Yes, the sum and substance of the question is: Did they try to encourage me or induce me to buy the powder from them when I was buying it from the Buckeye Powder Company. 6908

Q. Do you know all the names of the persons that were read to you there? A. No; I heard the names, that's all. We have always dealt through their agents, though.

Q. You know these persons whose names you have heard read dealt with you through their agents? A. Yes.

Q. Who are the persons? A. The Dooley Brothers we have dealt with, except one carload we had shipped right from the factory.

Q. What factory? A. From the du Pont Powder Company at Chicago, I believe it was, and outside of that we dealt with Dooley Brothers. 6909

Q. In answer to this question, you had in mind Dooley Brothers as one of the persons you had dealt with? A. We simply went back to the Buckeye Powder Company.

Q. You have been dealing with them ever since? A. Yes, sir.

Q. And Dooley Brothers have never come to you and asked you to quit buying Buckeye powder? A. No, sir.

Q. When you testified regarding the amount of Buckeye powder which you bought, you had a memorandum in your hand, did you not? A. Yes, a

date out of a bank book; just a date out of a bank book where my wife looked it up, yes, sir; and she thinks that is $100.00 we paid for the 100 kegs of powder to that company.

Q. What date was that? A. We took it out of our bank book on the 31st day of December, 1907.

Q. You have testified that you bought the 100 kegs of powder, upon the information which you obtained from that bank book? A. Yes, sir.

6911 Q. And you wife thinks that must have been—A. The payment for these 100 kegs.

Q. That was the powder that you received at the time you have stated, this 100 kegs of powder that you used in the way in which you say you have used it, and which produced the bad results you say were produced, is that right? A. Yes; we only had one shipment.

Q. Only one shipment? A. Yes, sir.

Q. And the powder that came from that shipment which you received on December 31st, 1907—A. It might have been paid for.

6912 Q. That is the powder which you received and had the bad results? A. Yes, sir.

Q. You personally saw that powder used that you have now testified to? A. Yes.

Q. And it produced the results which you testified it produced? A. Yes, sir.

Q. Did anybody ever ask you to buy Buckeye powder? A. I told you we had two men in the mine that encouraged us to try it.

Q. Who were those men? A. One was Jack Picton and George—I forget his name, I forget the other man's name, only they called him "George" something.

Q. Where did Jack Picton live? A. I don't know at present, but I think he is living somewhere around Springfield.

Q. Where does George live? A. Merchant they call him, I don't know.

Q. Where does he live? A. I think he lives at Raperts; he is farming at present.

Q. Did anybody else ever induce you to buy powder, or recommend it to you? A. No.

Q. Who? A. No, sir.

Q. Nobody ever did? A. No, sir.

Q. You are sure of that? A. Sure.

Q. Did you know a man by the name of Newsem? A. Yes, Tom Newsem. 6914

Q. Where was he? A. He is a son of this Dick Newsem.

Q. Where did he live? A. In Farmington.

Q. What kind of business is he in? A. He was running mines for Dick Newsam; if it's the same Newsam you have reference to.

Q. Was he a miner? A. No, he was a pit boss, a mine manager.

Q. He was a manager of the Newsam Mine, was he? A. Yes, sir.

Q. Did you know him pretty well; you did, did you? A. Pretty fair; only acquainted with him, that's all. 6915

Q. He is a pretty competent man? A. I don't know whether he was or not, really.

Q. Do you know what sized powder you bought? A. It was "C" powder, I think.

Q. "C" powder? A. Yes; I believe we had 50 kegs of single "C," and I believe 50 kegs of double "C"; I believe so, but I won't be positive. I would like to state something else, if I can.

By Mr. Katzenbach:

Q. Have you make any mistake? A. No, sir.

Q. That's all.

6916 *James Dalton—Direct*

Deposition of JAMES DALTON, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Laffey:

Q. What is your name? A. James Dalton.

Q. Where do you live? A. Elmwood.

Q. What is your business? A. Coal miner and operator.

6917 Q. How long have you been engaged as a coal miner and operator of coal mines? A. Twenty-five years.

Q. Where have you mined? A. South of Elmwood for 25 years.

Q. There for 25 years? A. Yes, sir. I have always been South of Elmwood; for the last seven or eight years about two and a half miles of Elmwood, and the other time two miles away from Farmington.

Q. Were you engaged as a coal operator between the years 1903 and 1909? A. Yes, sir.

6918 Q. Operating in your own name? A. In my own name.

Q. James Dalton? A. Yes.

Q. What was your post office address? A. Elmwood.

Q. What State? A. Illinois.

Q. As a coal mine operator, did you use blasting powder? A. Yes, sir.

Q. About how much blasting powder were you using in your operations during the years from 1904 to 1908, inclusive? A. Two or three hundred kegs, I suppose; I don't know exactly; I never kept track of it.

Q. Two or three hundred kegs a year? A. Yes, sir.

Q. Who did the buying of the supplies, includ-

ing the powder, during the years I have named? A. I did, most.

Q. Did you ever buy any powder of the Buckeye Powder Company? A. Yes.

Q. What year did you make that first purchase? A. I don't know what year it was in; it was along about the last of their operations; I don't know what year it was; seven or eight, or somewhere around there; it must have been just before they went out of business.

Q. How much did you buy? A. I think 50 kegs. 6920

Q. Was your trade solicited, or did you give the order in? A. I came down on Main Street and got it myself.

Q. To the Buckeye Powder office? A. Yes, sir.

Q. Got it yourself? A. Yes.

Q. And, pursuant to that order, was the powder delivered to your mine? A. Yes, to the station, and we hauled it to the mine.

Q. Prior to this purchase of powder, what powder had you been using? A. We had been using some du Pont.

Q. Why did you change to the Buckeye powder? 6921
A. Because I got it cheaper than the du Pont.

Q. Can you state what the difference in price was; that is, the difference you had been paying for du Pont and the price you paid for Buckeye? A. I can't exactly say how much, ten or fifteen cents cheaper.

Q. Ten or 15 cents? A. Yes.

Q. Did you ever have any conversation with any officer or agent of the E. I. du Pont de Nemours Powder Company relative to Buckeye powder? A. I never did.

Q. In a suit brought in the District Court of the United States at Trenton, New Jersey, in which the Buckeye Powder Company is the plaintiff, and the

E. I. du Pont de Nemours Powder Company, and the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company are defendants, it is alleged in the declaration that the defendants, or some of the persons or companies named as co-conspirators, induced the customers of the Buckeye Powder Company to cease or abandon the purchase of powder from the Buckeye Powder Company, and in answer to a demand for a bill of particulars, made by the defendants for the
6923 names of the customers of the Buckeye Powder Company that were induced to cease the purchase of powder from the Buckeye Powder Company, the name of James Dalton is given as one of the customers of the Buckeye Powder Company that was induced to abandon the purchase of powder from the Buckeye Powder Company. The names of the persons designated as co-conspirators, are as follows: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee
6924 du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable and Jonathan A. Haskell, and the companies being: Judson Dynamite and Powder Company, Fairmont Powder Company, Laflin and Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Investment Company, du Pont International Powder Company, E. I. du Pont de Nemours and Company of Pennsylvania, E. I. du Pont de Nemours and Company, International Smokeless Powder and Chemical Company, Delaware Securities Company. You may state if any of the companies that I have named, or any of their agents or representatives, ever induced you to abandon the purchase of powder from the Buckeye Powder Company? A. They never did.

Cross-examination by Mr. Abbott:

Q. Do you know all of the gentlemen and corporations and associations whose names were just read to you? A. No, sir.

Q. Do you know all of the agents or representatives of those gentlemen? A. No, sir.

Q. Then, as a matter of fact, you don't know whether anyone has called upon you or has made some effort to induce you to stop the purchase of Buckeye powder? A. I know nobody ever did. 6926

Q. You know nobody ever did? A. Yes, noboody ever did.

Q. Yes; how do you know that? A. I know nobody ever did.

Q. How do you know it? A. Nobody ever spoke to me anything about it; I always did my own business.

Q. And it is only because nobody ever spoke to you about it, that you draw the inference that nobody ever influenced you? A. Yes, nobody ever spoke to me.

Q. And it is only on that ground that you answered the question in the negative? A. Yes. 6927

Q. Has this question ever been put to you by anybody else within the last few weeks? A. I didn't know anything about a lawsuit until two or three weeks ago, and Mr. What's-his-name come up——

Q. Who is he? A. That gentleman sitting there, Moffatt, came up with a paper.

Q. And you read the paper? A. Yes.

Q. What did he say to you when he handed you the paper? A. He said there was a lawsuit, and he read them papers, and I read it over, and he wanted me to sign my name to it.

Q. And you signed your name to it? A. Yes.

Q. And that's all you know about it? A. That's all I know about it.

Q. Have you any records in your possession to show anything concerning what price you paid for Buckeye powder? A. No.

Q. Or for du Pont powder? A. I think I paid $1.25 for du Pont, or $1.15, I don't know now.

Q. Upon what do you base your recollection? A. On the basis that I know I was getting the Buckeye cheaper.

6929 Q. How much cheaper did you get Buckeye? A. Ten or fifteen cents. I know it was much that much, anyway.

Q. And you paid $1.25 for the du Pont? A. Fifteen or twenty-five.

Q. $1.15 or $1.25 for the du Pont? A. Yes, sir.

Q. How many times did you buy Buckeye powder? A. I don't know whether it was more than once or not; I wouldn't say; I did it until they quit business.

Q. You did it until they quit business? A. Yes.

6930 Q. When did you begin buying? A. I couldn't say; about the last year they run; it must have been, or something along there.

Q. Are you still in the mining business? A. Yes, sir.

Q. Do you still use black blasting powder? A. Yes.

Q. What powder? A. Western.

Q. You have been using it ever since, have you? A. Yes.

Q. And Western powder is manufactured where? A. The same place as the Buckeye powder was.

Q. I believe you stated on your direct examination, that the price you paid for Buckeye powder was the price at the station, Edwards' Station? A. No, at the office on Main Street.

6931

Q. That was the price at the place of business? A. Yes, sir.

Q. And you took it over there to your own mine? A. No; they shipped it up; I gave them an order; we had to cart it from the station.

Re-direct examination by Mr. Laffey:

Q. How long have you been using powder? A. Oh, I guess it must have been seven or eight years.

6932

Q. You are a practical miner yourself? A. Yes, sir.

Q. I will ask you to state which was the better powder, Buckeye or Western? A. I liked the Western powder better than I did the Buckeye.

Re-cross examination by Mr. Abbott:

Q. As I understand you, you continued to buy Buckeye constantly until they went out of business? A. Yes, sir.

Q. And you went right on buying Western powder after that? A. Yes, sir.

6933

Witness called as Plaintiff witness.

Direct examination by Mr. Abbott:

Q. Mr. Dalton, you testified a moment ago when you were on the stand before, while you were a witness for the defendants, that you had used Buckeye powder from the time when you first began to buy it in 1908, until the Buckeye Company went out of business? A. Yes, sir.

Q. Did you after that use Western powder? A. Yes, sir.

Q. It was made at the same place? A. Yes, sir.

Q. I will ask you to state whether or not you ob-

6934 *Edward Shirkie—Direct*

served any difference between the two grades of powder? A. Well, I thought the Western was a little stronger, that is all.

Q. How long did you continue to buy the Western powder? A. I am buying it now.

Q. Did you buy it the following year? A. Yes, sir, right along.

Q. Was the Buckeye powder, while you used it, satisfactory? A. Yes, sir, fairly.

6935 Q. Was it as satisfactory to you as the Western powder? A. Nobody couldn't tell much difference, as I know of.

Q. It was practically the same thing, was it? A. Yes, sir, I guess it was. It is a hard matter to tell.

Cross-examination by Mr. Laffey:

Q. Did you give more than one order to the Buckeye Powder Company? A. I think that was all; I don't know whether it was one or two; just before they went out of business, I know.

6936

Deposition of EDWARD SHIRKIE, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Shirkie, where do you live? A. Terre Haute, Indiana.

Q. And what business are you engaged in? A. Coal.

Q. As an owner and operator of coal mines? A. Yes, sir.

Q. Do you recall the name of the company known as the Indiana Fuel Company? A. Yes, I was the owner.

Q. Was that a corporation? A. Yes, an Indiana corporation.

Q. What office did you hold in that corporation? A. President and Treasurer.

Q. Can you tell me about the period of existence of the Indiana Fuel Company? A. No; quite a number of years.

Q. Was it in existence between the years 1903 and 1909? A. I am not sure about that; it was in existence up to about eight or nine years ago; we sold out to the Dearen Coal Company. 6938

Q. Then it was in existence during the years 1903 and 1904? A. Yes.

Q. In the operation of the Indiana Fuel Company, did you have occasion to use black blasting powder? A. Yes, sir.

Q. Do you recall whether the Indiana Fuel Company made any purchase of black blasting powder from a company known as the Buckeye Powder Company, a powder known as Buckeye powder? A. Yes, sir.

Q. To the best of your recollection, when was 6939 that purchase made? A. I couldn't say, I don't know when, I don't remember; our books show.

Q. Can you give me your best recollection of that date? A. No, I can't; it was in 1904, though, I think.

Q. Do you recall the circumstances under which this purchase was made? A. Yes, sir.

Q. What were the circumstances? A. It was a complimentary order, an order given to Mr. Waddell through friendship.

Q. Mr. Waddell who is sitting in front of you now? A. Yes, sir.

Q. After you made these purchases of the Buckeye Powder Company, do you recall or not, whether you continued purchasing from that company? A. No, sir, I think that is all the powder we bought.

6940 *Edward Shirkie—Direct*

Q. State any facts which you know which led you not to place any more orders with the Buckeye Powder Company. A. Oh, we had a contract with the Indiana Powder Company, I think.

Q. After the purchase of this complimentary order from the Buckeye Powder Company, did you have any conversations with any of the following persons or representatives with reference to Buckeye powder, or continuing or ceasing to purchase the same from the Buckeye Powder Company? I
6941 will state to you the names of the persons: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. Dupont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner, Frank L. Connable or Jonathan A. Haskell? A. I never met any of them, that I know of.

Q. Did you ever meet anyone purporting to be an agent of any of those gentlemen? A. I never met anybody, I guess, only Mr. Spensler; I don't
6942 know whether he was an agent for any of those people or not, whether he was an agent for the Powder Company at that time.

Q. After the purchase of the powder of the Buckeye Powder Company did you have any conversation with any officer or agent or representative, with reference to Buckeye powder, with the following corporations: Judson Dynamite and Powder Company, Fairmont Powder Company, Laflin and Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Investment Company, Delaware Securities Company, du Pont International Powder Company, E. I. du Pont de Nemours and Company of Pennsylvania, which is a Pennsylvania corporation, E. I. du Pont de Nemours and Company, which was a corporation

other than the E. I. du Pont de Nemours Powder Company, the International Smokeless Powder and Chemical Company, and the Eastern Dynamite Company?

Mr. Abbott: That is objected to on the same grounds as before stated.

A. No.

Cross-examination by Mr. Abbott: 6944

Q. How much powder did you use per year, Mr. Shirkie? A. During that time?

Q. During that time, yes. A. About three or four carloads a month, I guess.

Q. That would be about 2500 kegs per month? A. I expect about that.

Q. You are interested, are you not, with the du Pont Powder Company, or some of its associates at the present time? A. No, sir.

Q. You are interested in what is known as the United States Powder Company? A. No, sir. 6945

Q. How long since you have been interested in that company? A. Why, the dates are confusing to me; I don't know just exactly when I did sell my stock, but probably a year ago.

Q. You sold a large interest that you had acquired in the United States Powder Company to the E. I. du Pont de Nemours Powder Company, did you not? A. No, sir.

Q. Did you have any interest in the United States Powder Company prior to 1909? A. I couldn't tell you; I don't know.

Q. To whom did you sell the interest which you had in the United States Powder Company? A. The interest I had in the United States Powder Company was sold to Mr. Olin.

Q. Mr. F. W. Olin? A. I don't know his initials.

Q. Do you remember how much that interest was? A. No, I don't.

Q. Was it about 60%? A. Of the stock of the company?

Q. Yes. A. No, sir, it was only a small amount.

Q. Didn't you collect together a number of shares of stock from other persons and pool them and dispose of them to Mr. Olin? A. Yes, sir.

6947 Q. And what was the total amount of the pool which you collected together? A. I don't know; I can't tell, but it was less than 30% I expect.

Q. Less than 30%? A. Yes, sir.

Q. Are you sure? A. I think so; I am not positive, but I know we didn't have such a great holding in it, as I remember.

Q. Do you know how much stock Mr. Olin owns in the United States Powder Company? A. No, I don't.

Q. What, if you know, is the business of Mr. Olin at the present time? A. I don't get you.

6948 Q. Mr. Olin is President of the Equitable Powder Company, is he not? A. I don't know.

Q. Was he not at the time when you owned your interest? A. I don't know that.

Q. Do you know whether he is President of the Western Powder Manufacturing Company at Evansville, Illinois? A. No, sir.

Q. You stated that you were under contract with the Indiana Powder Company; do you remember when that contract began and when it ended, if it ever has ended? A. No, sir, I couldn't tell you.

Q. Do you remember the terms of the contract? A. No, sir.

Q. Do you remember the price you paid for the powder? A. No, sir.

Q. Do you remember whether there was any re-

bate provided for in the contract? A. No, sir, there was no rebate.

Q. It was a flat rate? A. A flat rate.

Deposition of WILLIAM M. CARTER, a witness produced on behalf of defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach: 6950

Mr. Carter, where do you live? A. Joilet.

Q. How long have you resided in Joliet? A. Most of the time for the last nine years.

Q. In what business are you engaged? A. The stone business.

Q. With what company were you engaged in business during the years 1904, '05 and '06? A. The Sexton Building Material Company.

Q. Where did that company make its headquarters? A. Chicago.

Q. During the years 1904, '05 and '06, what office, if any, did you hold in that company? A. Superintendent of the quarry and vice-president of the company, the latter part of it. 6951

Q. Where were the quarries of the company? A. At Joliet.

Q. As superintendent, or vice-president of the company, was it your duty to purchase any blasting powder? A. Yes, sir; I bought all of their blasting powder; I bought all of their supplies.

Q. Do you recall or not, whether you purchased during the years 1904, '05 and '06, any powder of the Buckeye Powder Company? A. Yes, we did.

Q. After you purchased powder of the Buckeye Powder Company, did you, prior to the first of

6952 January, 1909, purchase powder of any other company? A. Yes, sir.

Q. What company was that? A. The Burton Powder Company.

Q. State what the facts were which caused you to cease purchasing powder of the Buckeye Powder Company, and caused you to purchase powder of the Burton Powder Company? A. We bought powder from the Buckeye Powder Company at a price F. O. B. cars Joliet. We had to add our
6953 hauling, and the Burton was F. O. B. our plant, and we saved about a dollar on a load; we thought of the cost, and we didn't have to attend to that delivering.

Q. State, if you know, about how many kegs of powder comprise a load? A. We order, approximately, 25 kegs at a time.

Q. Between the time of your first purchase of Buckeye Powder and on down to January 1st, 1909, did you have any communication or conversation with any agent of the E. I. du Pont de Nemours
6954 Powder Company? A. Yes, sir.

Q. State, if you will, who the agent was, if you remember, and also, what was the conversation? A. I don't remember the name of the agent; my recollection is, they had various men that solicited business, but their price was so high I couldn't do anything with them.

Q. State more explicitly— A. It was higher than we were paying at that time.

Q. In any of these conversations that you had with the agents of the E. I. du Pont de Nemours Powder Company, was there anything said by those agents with reference to the Buckeye Powder Company? A. No.

Q. Will you state whether you had any communication or conversation regarding the Buckeye

powder or the Buckeye Powder Company with anyone of the following persons, or anyone representing as agent or otherwise, any one of the following persons whose names I will read to you: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond D. Buckner, Frank L. Connable or Jonathan A. Haskell? A. No. 6956

Q. Will you state whether or not, after you purchased powder of the Buckeye Powder Company, you had any conversation or communication with any officer, agent or representative, concerning the Buckeye powder or the Buckeye Powder Company of the following corporations which I will name: The Judson Dynamite and Powder Company, the Fairmont Powder Company, Laflin and Rand Powder Company, Hazard Powder Company, Delaware Investment Company, California Investment Company, Delaware Securities Company, du Pont International Powder Company, the E. I. du Pont de Nemours Company of Pennsylvania, which is a different corporation from E. I. du Pont Powder Company, and the E. I. du Pont de Nemours and Company, which is likewise a different concern, the International Smokeless Powder and Chemical Company, and the Eastern Dynamite Company? 6857

(Objection overruled; exception allowed.)

A. No.

Q. Will you state or not, whether you were induced or persuaded by any agent of the persons or corporations that I have named, or by those persons, or by any officer of the corporation, not

to purchase powder from the Buckeye Powder Company? A. No.

Cross-examination by Mr. Abbott:

Q. Mr. Carter, were you the sole person in charge of the purchasing department of the Sexton Building Company during the period you have stated? A. No, I wouldn't say that.

Q. Who was the other person? A. Mr. Jacobs.

6959 Q. What are his initials? A. S. T.

Q. Would you recognize his signature if you saw it? A. I don't know whether I would or not.

Q. I show you a paper writing purporting to be a letter on the letterhead of the Sexton Building Material Company, Chicago, October 27, 1905, signed by Sexton Building Material Company, S. T. Jacobs. State whether or not you recognize the signature? A. Yes, sir, I think that is his signature; it looks very much like it. I haven't seen it for a number of years, but I should say it is.

6960 Said letter is marked "Exhibit P. 27" and read to the jury as follows:

Chicago, Oct. 27th, 1905.

991
Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:

We have tried the powder you sent us and find it very good indeed. Our Superintendent says all the sizes you sent are good; so please send to us 25 Kegs of Powder to Joliet which would make about 6 kegs of each of your four sizes.

Please send this as promptly as possible and oblige,

Yours truly,

Sexton Building Material Co.
S. T. Jacobs.

A. If I may be allowed to say something, I would say I was not at the quarry, and I very frequently called on Mr. Jacobs and told him to order a certain number of kegs.

Q. He was under your direction? A. No, but 6962
I called up and told him what I wanted.

Q. What was his position in the company? A. I think he was Treasurer.

Q. The letter that has been introduced in evidence, "Exhibit P. 27," to the best of your knowledge and belief, was sent out in the regular course of business? A. I presume so, yes.

Q. Now, you stated that some agent of the E. I. du Pont de Nemours Powder Company called upon you, but you didn't remember the name of the agent? A. No; I remember the name of one 6963
agent for the du Pont Powder Company.

Q. I am asking you now about the agent who called upon you? A. No; the only name I remember is the man who has been calling upon me for the last year and a half.

Q. Has that agent called upon you within the last few days? A. No; I think the last time I saw him was about a month ago.

Q. What was his name? A. I think Connolly.

Q. Was his name Donnelly? A. I think it was; he was a red-headed Irishman.

Q. What business did he see you about? A. To make a contract this coming year.

(Mr. Donnelly appears in the room.)

6970 *Patrick F. Murphy—Direct*

Q. Is that incorporated? A. Yes, sir.

Q. What office do you hold? A. President.

Q. How long have you been President of the Capital Coal Company? A. About twelve years.

Q. You became President, then, in the year 1901? A. Somewhere around there, yes.

Q. Prior to your becoming President did you have any connection with the company? A. I have been connected with that company for thirty-two years.

Q. What have you been doing for that time? A.
6971 A driver, trapper, miner, and superintendent, and President, and Secretary and Treasurer. I went all the way up.

Q. Then you have had practical experience as a miner? A. I am a practical miner, yes, sir.

Q. Where are mines of the Capital Coal Company located? A. There were two, we only have one now. It's on Monroe and Nineteenth st., City of Springfield.

Q. In the mining operations of the Capital Coal Company will you state whether or not you used
6972 black blasting powder? A. Yes we used black blasting powder, single C—

Q. Between the years 1903 and 1909 did you use black blasting powder in your mining operations? A. Yes, sir.

Q. Between those years who made the purchases of black blasting powder for your company? A. I did.

Q. Do you recall, or not, whether, between the years 1903 and 1909, you bought any powder known as Buckeye powder of the Blckeye Powder Company? A. Yes, sir, the years of 1905 or 6—

Q. In the years 1905 or 1906, will you state from whom you purchased that powder and the circumstances of its purchase? A. I bought it from a young man by the name of Stickel and he had a

letter of introduction from Mr. Giblan. He was one of our Board of Directors and a friend of his family.

Q. How much of the Buckeye powder did you purchase? A. Fifty kegs, as I recall it.

Q. Fifty kegs? A. Fifty.

Q. Will you state whether or not the fifty kegs, or any portion thereof, was used in the mine of the Capital Coal Company? A. As I remember it, we used some of that powder. We gave it to the miners and told them to try it out, as it was much 6974
cheaper than the powder we were buying.

Q. Will you state, Mr. Murphy, whether or not, to your knowledge, it was tried out in the mines? A. Yes, sir, it was.

Q. Did you ever have occasion to see the results of the use of the powder in your mines? A. No, sir, only just from those men that we gave the powder to.

Q. Did you make an examination in the mine yourself?

Q. Did you, with your own eyes, see the results of the use of this powder? A. No, sir. 6975

Q. State whether or not you continue the purchase of Buckeye powder. A. No, sir, we discontinued the use of it.

Q. Give the reasons for discontinuing the use of Buckeye powder. A. It was used at Flat Creek. The miners were given the powder to try out, and they said at Flat Creek that it wouldn't shoot the coal.

Q. Will you state, Mr. Murphy, whether you knew the miners personally to whom this Buckeye powder was given for trial. A. Did I know them personally?

Q. Did you know the standing of the men as miners, whether it was good or bad, to whom the pow-

der was given. A. They were good, practical miners.

Q. Will you state whether or not you endeavored to use the Buckeye Powder in the mines of the Capital Coal Company in any other way than in kegs of the Buckeye Powder Company? A. Yes, we did.

Q. State what you did. A. I took the powder from the Buckeye kegs and put it into the du Pont kegs, and the same men refused to use it.

6977 Q. Will you state whether or not you returned any of the powder that you purchased of the Buckeye Powder Company, to the Buckeye Powder Company. A. Yes, we returned them thirty-nine kegs out of fifty.

Q. State your reasons for returning them. A. I opened the kegs and the powder wasn't a C powder. There were three grades of powder in one keg, C., F. and some FF.

Q. After you purchased the Buckeye Powder, Mr. Murphy, did you have any communication or

6978 conversation with any agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. No, sir. They knew nothing about it.

Q. In a suit instituted in the United States District Court for the District of New Jersey, in which the Buckeye Powder Company is Plaintiff, and the E. I. du Pont de Nemours Powder Company and others are defendants, the others being the Eastern Dynamite Company, and the International Smokeless Powder and Chemical Powder Company, the name of the Capital Coal Company has been given as one of their customers, which the defendants or their agents or representatives induced to abandon the purchase of Buckeye powder. Will you state whether or not any of the defendants, their

6979

agents or representatives, induced the Capital Coal Company to abandon the purchase of Buckeye powder? (Objection overuled, exception allowed). A. No, sir.

Cross-examination by Mr. Abbott:

Q. Do you know all the agents and representatives of the defendants in this case? A. I know them all in this district.

6980

Q. In this district? A. Yes.

Q. What were the names of their agents during the years 1903 to 1909? A. Mrs. E. Rice, we bought of her; we bought powder of her.

Q. Is she the only agent? A. She is the only one.

Q. And she is the only person you had in mind when you answered the last question propounded by counsel? A. Yes, she was the agent for this district.

6981

Deposition of GEORGE W. SOLOMON, a witness produced on behalf of the Defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Solomon, where do you live? A. At Springfield, Illinois.

Q. How long have you lived here? A. All my life.

Q. Thirty years or so? A. Thirty-three years.

Q. In what business are you engaged? A. Coal mining.

Q. How long have you been engaged in the coal mining business? A. For the last nine years.

6982 *George W. Solomon—Direct*

Q. You have been coal mining for nine years? A. Yes, sir.

Q. Are you connected with any company? A. Yes, sir.

Q. What company? A. I am connected with the Black Diamond Coal Company.

Q. Is it an incorporated company or a partnership? A. An incorporated company.

Q. Do you hold any office in that company? A. Yes.

6983 Q. What office? A. President.

Q. How long have you been President? A. Nine years.

Q. Since you have been connected with it? A. For nine years.

Q. Do you recall the year that the company commenced business? A. Yes.

Q. Just tell us. A. It was in 1904.

Q. Where are the mines of the Black Diamond Coal Company located? A. At Auburn, Illinois.

Q. How far is that from Springfield? A. About

6984 20 miles.

Q. Will you state whether or not, between the years 1904 and 1909, you used black blasting powder in your mining operations? A. Yes, sir, we did.

Q. Who made the purchases of supplies and black blasting powder? A. I did.

Q. For your company? A. Yes.

Q. Do you recall or not, whether you purchased any powder known as Buckeye powder, from the Buckeye Powder Company? A. Yes, sir.

Q. About when was that purchase or purchases made, to the best of your recollection? A. In the summer of 1905.

Q. Do you recall the amount of the purchase of black blasting powder that you made of the Buckeye Powder Company? A. Two or three carloads.

Q. Are you a practical miner? A. Yes, sir.

Q. Have you used black blasting powder personally in mining operations? A. Yes.

Q. Did you have any control of the management of the mining operations of the Black Diamond Coal Company in 1905? A. Yes, sir.

Q. After you purchased the two or three carloads of black blasting powder of the Buckeye Powder Company, will you state whether or not that powder was used in your mine? A. Whether it was used? 6986

Q. In the mines of the Black Diamond Coal Company? A. Yes, sir, it was used.

Q. Was all of that powder used? A. Some of it was returned on account of not being the right grade.

Q. After this powder was used in your mines, will you state or not, what was done with the powder, so far as the miners were concerned? A. The miners refused to use it.

By Mr. Abbott: 6987

Q. Do you know that of your own knowledge? A. Yes.

Q. You personally saw them endeavor to use it, and then refuse to do so? A. The Miners' Committee waited on me personally, and told me they wouldn't use it any more.

Q. Did you, after this committee had called upon you, make any examination of the powder yourself, personally? A. I required them to bring some of the powder to me.

Q. And in what form was it brought to you? A. It was brought to me in kegs.

Q. Will you state whether or not, at the time the powder was brought to you, these kegs had been opened or not? A. Some of them had been opened.

6988 Q. All of them? A. I don't remember positively.

Q. Did you make an examination of the powder? A. Yes.

Q. State what was the result of that examination? A. It didn't seem to be of uniform grade to me; it didn't seem to be the same size as it generally is in black blasting powder.

Q. Are you familiar with the grades of black blasting powder used in mining operations? A. I am familiar with the two grades we use down there,
6989 the "C" and double "C."

Q. Will you state what you saw with reference to the grade or grades of Buckeye powder that was submitted to you? A. It seemed to me that the two grades were mixed, the "C" and double "C"; there were small grains and large grains all together.

Q. State whether or not you saw any difference in the size of the grain with your own eyes. A. Yes; there was a difference.

Q. Will you state whether or not, after you examined this powder, whether you purchased for the
6990 company any more of the Buckeye powder? A. No, sir, we didn't.

Q. You didn't purchase any more? A. No.

Q. After you purchased Buckeye powder, did you have any conversation or communication with any agent of the E. I. du Pont de Nemours Powder Company, more commonly known as the du Pont Powder Company, with reference to Buckeye powder? A. No, sir.

(Objection overruled and exception allowed.)

Cross-examination by Mr. Abbott:

Q. Referring to the last question propounded to you by counsel for the defendants, do you claim to know all of the persons who may be agents or representatives of the E. I. du Pont de Nemours Powder Company, and the other companies which he named to you? A. I don't know them all.

Q. Did you know them? A. No, I didn't know them all; I don't think I know them all.

6992 Q. You spoke about the Miners' Committee calling upon you in regard to Buckeye powder; what powder were you using at that time, what other powder? A. Buckeye.

Q. What other powder? A. Not any.

Q. What powder had you been using before that? A. We purchased powder from the Explosive Supply Company.

Q. What was the name of it? A. Du Pont.

Q. How do you know the members of the Mine Committee were not agents of the du Pont Powder Company? A. I don't know whether they were or not; I know they were working for us, that's all. 6993

Q. You say you are 34 years old? A. Thirty-three.

Q. Have you been living at Springfield or Auburn all your life? A. I have been living at Springfield all my life; I go back and forth.

Q. Who were the officers of the Black Diamond Coal Company during the years 1903 to 1909, besides yourself? A. It was organized in 1904.

Q. Then, from 1904 down to 1909, besides yourself, who were the officers? A. Four brothers.

Q. Four brothers? A. Three other brothers.

Q. State the various positions they hold in your company. A. Edward is Secretary.

Q. Not now—what was he? A. They hold the same positions now.

Q. Go ahead? A. And Henry is Treasurer, and Robert C. Solomon, Jr., is Vice-President.

Q. Those are the offices they held then? A. Yes.

Q. Those brothers are still living, are they? A. Yes, sir.

Q. And still officers of your company? A. Yes.

Q. And they live in Springfield, do they? A. One of them lives at Auburn.

Q. Are they older or younger than you? A. One is older and two younger than I.

6995 Q. Wasn't your father engaged with you in the business at the time you began? A. No, sir.

Q. He was not? A. No, sir, he never was engaged with us.

Q. You stated a while ago, that you made a purchase of Buckeye powder in the summer of 1905? A. Yes.

Q. Can you be a little more definite about that and state the month? A. Well, it was—it was before July, I think.

Q. Before July? A. Yes; because in July, Au-

6996 gust and September we had a strike, I know, and we didn't buy any powder then to amount to anything; if we bought anything, we bought it after we started up.

Q. You still wish it understood that you bought that powder in the summer of 1905? A. In the spring or summer of 1905, the early part of 1905.

Q. I will ask you if you have any data, any papers or letters or documents to which you can refer, on that subject, to refresh your memory? A. My ledger.

Q. Have you recently refreshed your memory on the subject? A. Yes, sir.

Q. When? A. A couple of months ago, I should think.

Q. Have you any papers now in your possession relating to the matter? A. No, sir.

Q. None at all? A. No.

Q. No bills or letters? A. No.

Q. At whose request did you refresh your recollection? A. Mr. Larimore.

Q. Who does he represent? A. He was the agent of the du Pont Powder Company.

Q. Where? A. Springfield is where he resides; I guess he is agent here.

Q. Who were the members of the Miners' Committee who called upon you and informed you that they would not use any more Buckeye powder? A. 6998
I couldn't give their names; it was so long ago; the Mine Committees has changed so often, that I did not keep any record of it.

Q. Is a record of such matters kept, anywhere, to your knowledge? A. No, sir.

Q. You stated you didn't think this powder was the right grade; how did you arrive at that determination? A. By having so many sizes of powder in the grain.

Q. Are you familiar with the different kinds of black blasting powder? A. I could tell single "C" 6999
from double "C."

Q. What has been your experience with reference to any particular grade of black blasting powder; is it uniform or not uniform? A. It's generally uniform.

Q. Did that rule obtain during the years 1904 to 1909, as it does now? A. I don't know whether I paid any particular attention——

Q. Isn't it a fact, that from 1904 to 1911, there was no regular grading of black blasting powder in the State of Illinois, but that it has since been made necessary by law? A. No, sir.

Q. Don't you know that a recent Legislature has made it necessary to conform to certain sizes absolutely under certain names as to grade of black blasting powder? A. No, sir.

Q. Don't you know, that during the years 1904 to 1909, there was no established grade of powder among the powder companies? A. I know there was an established grade of powder, and that we bought it.

Q. There was an established grading of powder? A. Yes.

Q. But, was it always the same, even from the same brand of powder? A. Yes, sir, I could always open a keg of powder and tell.

7001 Q. As a matter of fact, were you not under contract with the du Pont Powder Company? A. No, sir.

Q. Have you ever been under contract with them? A. Yes, lately.

Q. How long since? A. I think it's since 1907 or 1908, I am just guessing at that; but it's about that time.

Q. Do you remember what the terms of that contract that you made with the du Pont Powder Company were? A. I don't remember positively, no, sir.

7002 Q. Do you remember what price you had to pay for the powder which you bought at that time?

Q. Do you recall as to that? A. Yes.

Q. Will you state what it is? A. 95 cents.

Q. How long did it continue to be 95 cents? A. I think for about two years.

Q. How much black blasting powder did you consume in your mining operations during the years 1907 and 1908? A. I couldn't tell, offhand.

Q. Can you give an estimate of the number of kegs of powder you consumed during those years? A. I don't think I could get anywheres near the truth, because I don't remember anywheres near how much we used. We were using some part of the time machines, and shooting off the solid some part of the time.

Q. Do you remember how much you used during the years 1904, '05 and '06, per year? A. No, sir.

Q. You don't know? A. No.

Q. You don't recall anything about how much you used at all at that time? A. No, sir.

Q. Do you know how many distinct sizes of a single grade of powder there are? A. No; all I know is the general, size of "C" and double "C."

Q. When you say the "general size," are there other grades? A. They won't all be exactly the same size. 7004

Q. Don't you know, as a matter of fact, that there was nearly 100 sizes of "C" powder? A. I don't know.

Q. And of "CC"? A. That I don't know; all I know is, I can take the two kegs, "C" and double "C," and I can tell them apart very easily.

Deposition of JOHN B. FALCETTI, a witness produced on behalf of the defendants, being duly sworn, read as follows: 7005

Direct examination by Mr. Katzenbach:

Q. Where do you live? A. At Verdon.

Q. The State of Illinois? A. Yes sir.

Q. How far is that from Springfield? A. Twenty-two miles.

Q. What line of railroad is that on? A. On the Alton and the C. Z. & Q.

Q. Are you connected with that company? A. What company?

Q. Are you connected with any company? A. With the Royal Colliery Company.

Q. What position do you hold with that company? A. I am superintendent.

Q. Between the years 1903 and 1909 were you connected with that company? A. Yes.

Q. In what capacity? A. Superintendent.

Q. In what business is that company engaged? A. Coal mining.

Q. Where are the mines located? A. About a mile and a half south and west of Verdon.

Q. On the line of what railroad? A. The same.

Q. It is of the line of those railroads? A. Yes, sir.

7007 Q. Did you say both? A. Both.

Q. In the mining operations did you use black blasting powder between the years 1903 and 1909? A. Yes, sir.

Q. How many purchases of black blasting powder for the Royal Colliery Company did you make —or, who made the purchases of black blasting powder for the Royal Colliery Company between 1903 and 1909? A. I did myself.

Q. Of what company or companies did you purchase powder prior to September, 1907? A. Why, we opened up the mine in 1903 and I shoved around

7008 a little and bought powder, but I don't know what different kinds I bought for a while, and we were demonstrating or trying to demonstrate the respective powders which might be suitable for our mines and we finally settled on the Alton powder.

Q. Do you know what company makes that powder? A. The Equitable, I think.

Q. Did anything occur, to your knowledge, in the year 1907, impossible to get Equitable powder? A. In 1907?

Q. Yes. A. I don't remember the year, but there was an explosion at the Equitable factory, I think that's 1907, I am pretty well sure it was 1907.

Q. You think it was in that year? A. I am perfectly well satisfied it was.

Q. What effect did that explosion have, if any, with respect to the supplying of your company with powder? A. It simply put them out of the business and we couldn't get any powder from them and they told me to go on the market and buy powder and they would stand by me on the price

Q. After that explosion will you state whether or not you purchased any powder known as Buckeye powder? A. Yes, sir.

Q. Of whom did you purchase that powder? A. Of Mr. Waddell there. 7010

Q. Do you know what office he held in the Buckeye Powder Company? A. He was President, I think.

Q. Now, do you recall about amount of powder purchased of the Buckeye Powder Company? A. Well, I bought two or three lots, I am not sure, I bought the first lot of a hundred and fifty kegs and tried out and it proved all right, and I am under the impression that we bought two carloads afterward.

Q. Will you state whether or not you continued to be a purchaser of Buckeye powder? A. No, only just that instance, I think. 7011

Q. Why did you cease to purchase powder of the Buckeye Powder Company? A. Why, the Alton mill come into operation and we bought powder from them.

Q. And then you went back as soon as the mill was in operation and purchased powder of the Equitable Powder Company? A. Yes.

Q. Is that what you mean? A. Yes.

Cross-examination by Mr. Abbott:

Q. Mr. Falcetti, you were superintendent of this company? A. Yes, sir.

7012 *John B. Falcetti—Cross*

A. D. V. Wentz of Philadelphia.

Q. Do you refer the question of the purchase of powder to Mr. Wentz sometimes? A. Well, we have last year or this year, but prior to that I bought all the powder we used.

Q. Were you under contract for the purchase of black blasting powder before the year 1903 or 1904? A. In 1903 we just began to look around, but we were under contract ever since the first time.

7013 Q. You mean from when you first went under contract you remained so? A. Yes, sir.

Q. Who were you under contract with at that time? A. Well, with the Alton people until a year ago about this time.

Q. The Alton people? A. Yes, sir.

Q. Always with the Alton people? A. Yes.

Q. You mean the Equitable Powder Company? A. Yes, sir.

Q. How many kegs of powder did you consume in your mining operations during the years 1903 to 1909? A. After we got developed we used about

7014 two thousand kegs a month.

Q. A month? A. From 1,800 to 2,000 kegs a month.

Q. Twenty-four thousand kegs a year, do you mean? A. Well, the mine don't work steady, and we get nineteen tons to a keg, and we produce about twenty-four hundred tons.

(Mr. Abbott makes the witness his own witness.)

Direct examination by Mr. Abbott:

Q. Mr. Falcetti, do you recall how long you used Buckeye powder in your mines? A. I don't know how fast it was used. We used the first one hundred and fifty kegs, and I think two carloads after-

wards, and we used it, of course, as fast as they burned it.

Q. A carload is how many kegs? A. Eight hundred.

Q. Did you, yourself, know about the use of the Buckeye Powder at that time in your mines? A. Yes.

Q. Did you see the results of that powder? A. Yes, sir.

Q. Did you talk with the men concerning the powder? A. Yes, sir. 7016

Q. What did you find was the result of the powder so far as its quality is concerned?

Mr. Katzenbach: That is objected to as incompetent, irrelevant and immaterial, the issue in this case not being a case of the merits or demerits of the Buckeye powder.

Mr. Abbott: If you will stipulate that I will not ask another question.

Mr. Katzenbach: I will say that that is my understanding of the law.

7017

A. The Buckeye powder was all right. It done the work.

Q. Was it as satisfactory as any powder? A. It was satisfactory.

Q. And as satisfactory as any powder, was it? A. Yes, sir.

Deposition of ISAAC N. BIGGS, a witness produced on behalf of the defendant, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Biggs, where do you live? A. I live in Telula, Illinois.

7018 *Isaac N. Biggs—Direct*

Q. How far is that from Springfield? A. Well, I don't know. Some of them call it twenty-two miles and some twenty-two and a half, and twenty-five. It's hard to get at it.

Q. What business are you engaged in? A. I am operating a wagon shaft, a gin shaft.

Q. Mining coal? A. Yes.

Q. How long have you been engaged in that business? A. Well, I sunk the shaft about six years ago and sold it out and bought it back and sold
7019 it again and fell heir to it the next time, and I ran it for three years, to the 14th of February this time.

Q. Did you use black blasting powder in your mine? A. Yes, sir.

Q. Do you recall whether or not you purchased any black blasting powder of the Buckeye Powder Company, known as Buckeye Powder? A. Yes, sir.

Q. How many purchases did you make? A. Just one.

7020 Q. When was that? A. Well, I don't know just what year it was, but it has been about five years ago this spring.

Q. About five years ago? A. Yes.

Q. How many kegs did you purchase at that time? A. Fifty.

Q. Whom had you been buying powder off before? A. Of Mrs. Rice, all the time.

Q. Du Pont Powder? A. Yes, sir.

Q. What price did you pay for that? A. $1.25.

Q. What price did you pay for Buckeye powder? A. $1.15.

Q. State whether or not the fifty kegs of Buckeye powder was used by you? A. Well, just the fifty is all. We didn't get any more.

Q. You did use that? A. Yes.

Q. Why didn't you purchase any more of the Buckeye powder? A. Well, they shipped it to us sight draft on the bank, the same as C. O. D., and we had to pay for it before we could get the powder, so it made us sore, and we decided that we wouldn't buy any more of it.

Q. From whom, then, did you purchase? A. We come back to Mrs. Rice again.

Q. What price did you pay her afterwards? A. I don't remember, I think it was $1.25. 7022

Q. After you purchased this Buckeye powder did any agent of the Du Pont Powder Company ever communicate with you in any way with reference to this Buckeye powder? A. No, sir.

Cross-examination by Mr. Abbott:

Q. When you went back to buying powder of Mrs. Rice she didn't make a sight draft on you? A. No, sir, never thought of anything of the kind.

Q. She gave you credit which you wanted? A. Well, I ordered it over the telephone, and she sent the bill and I paid it. 7023

Deposition of EDWARD G. EDWARDS, a witness produced in behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Edwards, where do you live? A. At the present time?

Q. Yes. A. 115 North Borland Avenue.

Q. City of Peoria? A. Yes, sir.

Q. Between the years 1903 and 1909, were you

engaged in the mining of coal? A. 1903, yes, sir.

Q. Are you still engaged in that business? A. No, sir.

Q. When did you cease to be an operator? A. Well, I couldn't tell you now when I did quit.

Q. About how many years ago, to the best of your recollection? A. Well, around about five years, I think; to be as near as—I wouldn't say that was correct, but I think so.

Q. Where were your mines located? A. Our
7025 mines were located in Rosefield Township; I couldn't give you the section.

Q. About how far from Peoria? A. I should judge about 13 miles.

Q. Under what name did you do business? A. The Edwards Mining Company.

Q. That wasn't an incorporated company? A. Yes.

Q. It was? A. Yes.

Q. What office did you hold? A. Treasurer and Manager.

7026 Q. Between the years 1903 and 1908, did you use black blasting powder? A. Yes, sir.

Q. Who made the purchases of black blasting powder? A. I did.

Q. Between those years, what black blasting powder did you use in your mines? A. We used du Pont, Hazard, Buckeye, and I believe we had a batch of American; wasn't there an American powder? I think we had a batch of that. I think we got it through Mr. Barnewolt.

Q. Why did you use so many kinds of powder in your mines? A. Well, I always figured around to get the best prices on the powder that I could.

Q. State whether or not you permitted your miners to use any kind of powder that they desired. A. Well, we tried to. Whatever kind of

powder we had on hand, we generally tried to get them to use that powder; of course, rather than have any trouble, we would get them other powder. There always seemed to be some of them kicking around, and we generally tried to get them to use whatever we had on hand, because when we bought a batch of powder, we wasn't forehanded enough to carry 400 kegs of powder, which you had to buy in good quantities to get the price low.

Q. State whether or not, up to the time you 7028
went out of business, you continued to purchase Buckeye powder? A. I believe we had Buckeye powder when I quit; I think that's the last powder we used.

Q. After you purchased Buckeye powder, did you have any conversation or communication with any agent of the du Pont Powder Company with reference to using Buckeye powder? A. Well, no more than with Mr. Moffatt; that was the only one, I guess.

Q. What conversation did you have with him? A. Well, now, I couldn't state the conversation, but 7029
he wanted to know why we didn't give him an order for powder; he would see me all right, or something around about that strain.

Q. Who was Mr. Moffatt acting for, if you know? A. Dooley Brothers, I think.

Q. And where are Dooley Brothers engaged in business? A. On Adams Street.

Q. In the City of Peoria? A. In the City of Peoria.

Q. As a result of this conversation with Mr. Moffatt, did you give any order to him? A. I gave them some orders, but I couldn't say to what extent they were.

Mr. Abbott: No questions.

7030 *Edward G. Edwards—Direct*

(Counsel for the plaintiff makes the witness his own witness.)

Direct examination by Mr. Abbott:

Q. Mr. Edwards, you stated on your examination a moment ago, that you continued to purchase Buckeye powder until you went out of business? A. Yes, sir.

Q. I would like to ask you to state what the re-
7031 sults were which you obtained from the Buckeye powder as compared with the other kinds of powder which you used?

By Mr. Katzenbach:

Q. Did you ever use Buckeye powder yourself in the mines? A. No, sir, I never worked in the mines; I was weighing the coal and out on top.

Q. Did you ever make any inquiry or keep any data with reference to the results obtained from the use of the various powders which you had in
7032 your mine? A. This much: Mr. Waddell's mill was situated right down below us there, where we could get powder in ten keg lots any way we wanted; we could call up on the telephone, and if we found that we had to have powder, we could call up down there, and they would send us up anywhere from ten to twenty kegs; of course, when we were nearly out we could get that order up, and he would send us any number of kegs we wanted; that was the reason I preferred to use Buckeye powder.

Q. Did you keep track of the results you obtained from Buckeye powder, so far as the tonnage was concerned? A. Yes; our men made a kick against this powder, and we couldn't get the results, as we could the other powder, and I took their bulletin, and I said, "Your bulletins show that you did fully as well, if not better."

By Mr. Katzenbach:

Q. That is what the men told you? A. They said they didn't want to burn it any more.

Q. These bulletins you refer to, what were they? A. Well, that was the weight of their buggies of coal that come out.

Q. You examined those bulletins from time to time? A. Yes, several times, when the controversy come up.

7034

Q. State what were the results which you discovered were obtained by the use of Buckeye powder, as shown by those bulletins? A. The results were really better than obtained from the other powder; that's what I showed the miners.

Q. What did the miners say to you, if anything, after you showed them the results were better? A. They had nothing to say; it kind of stumped them. A. That was the reason in using the Buckeye powder it was a great deal more convenient to us, and we could get it in small lots, without a contract for a great many kegs.

7035

Q. You wanted to use Buckeye powder, but some of the miners objected? A. Yes, sir.

Cross-examination by Mr. Katzenbach:

Q. Then, the reason you preferred to use Buckeye powder was, because you could get it in smaller lots? A. And it was handier.

Q. Yes, and also because it was cheaper? A. It ran just about the same price.

Q. Then, the controlling motive was, because you could get it in smaller lots? A. Yes, and get it—

Q. Just when you wanted it? A. Yes, sir.

Q. And you continued to keep it on hand up until you went out of business? A. We generally tried

to run off whatever we had on hand, because the men sometimes positively refused to use Buckeye powder. I bought of them, but the committee would object to it, so that they had to get some other powder, and that the agreement said for them to get whatever powder the men wanted.

Q. The agreement is the state agreement, or the agreement between the operators and the mine workers? A. I think it was in the agreement; I
7037 wouldn't say sure; but they claim the right, anyhow, to get the powder the miners wanted.

WILLIAM E. FOLEY, a witness produced on behalf of the defendants, being duly sworn, testifies as follows:

Direct examination by Mr. Abbott:

Q. Mr. Foley, where do you live? A. 801 North
7038 Monroe, Peoria.

Q. Between the years 1903 and 1908 were you engaged in any business? A. Yes, sir.

Q. What business were you engaged in? A. The coal business, operating mines.

Q. State what mines between those years you operated. A. Two, the Mapletown and the Canton shaft. It was known then at that time as the Foley Coal Company. I sold it to H. W. Lynch.

Q. When did you cease to own the Canton mine? A. The fifteenth day of December, 1905.

Q. Did you subsequently dispose of the other two mines you mined? A. Yes.

Q. When was that? A. About 1907 or 8, possibly.

Q. You operated these mines under your own

name? A. The Canton mine I incorporated it under the Foley Coal Company, and the Mapleton mines under the name of W. E. Foley.

Q. Did you use any black blasting powder in your mining operations? A. Yes.

Q. Who made the purchases of black blasting powder? A. I think I did.

Q. Did you purchase any black blasting powder between the years 1903 and 1909? Or, I should say, December 15th, 1905, for the Canton mine? A. Yes, several carloads. 7040

Q. Did you purchase, during that time, any black blasting powder known as Buckeye powder? A. I don't think we did at Canton.

Q. Did you use any black blasting powder known as Buckeye powder at Canton? A. Yes.

Q. Under what circumstances did you use it? A. I think there was a gentleman by the name of Reynolds, I am not certain, but I think it was Reynolds that came there and got us to handle some of their powder.

Q. After his visit was there any Buckeye powder used in the Canton mine? A. I think there was only ten kegs. That's my best recollection. 7041

Q. After the ten kegs were used did you make any purchase of Buckeye powder for your Canton mine? A. I think not.

Q. You did not? A. No, I think not.

Q. Did you purchase any Buckeye powder for your other mines? A. Yes. I expect probably eight or ten at different times.

Q. In what lots? A. I think in ten-keg lots.

Q. During the period that I have named did you use any other powder in your mines? A. Yes.

Q. What kind of powder did you use? A. The du Pont, the Mooar mills.

Q. State the purpose of the purchase of Buckeye

powder for your Mapleton mines; that is, why you purchased it. A. Well, I was induced to handle it by the men. What I mean is, some of them claimed they wanted it and I got it to suit them.

Q. Then you purchased the Buckeye powder and gave out to your men as they wanted it? A. Yes.

Q. And during that time was other powder used in your mines? A. Yes, sir.

Q. Other powder was used? A. Yes.

Q. What powder? A. Du Pont.

7043 Q. Was it possible at your mines for a miner to get Buckeye powder, or du Pont, as he preferred? A. Yes.

Q. He could get which he preferred? A. Yes, but if he didn't order Buckeye I sent him du Pont, because I always had most of that on hand.

Q. Was there any other reason? A. No, I can't say there was.

Q. After you began the purchase of Buckeye powder for your mines, did you have any conversation or communication with any agent of the E. I. du

7044 Pont de Nemours Powder Company with reference to Buckeye powder? A. I can't recall that. I might be talking to an agent and not know him.

Q. Do you recall any conversation about Buckeye powder with anyone who claimed to be an agent of the du Pont Powder Company? A. Relative to what.

Q. I will ask the witness whether he can recall any conversation with reference to Buckeye powder had with anyone known to him to be an agent of the du Pont Powder Company? A. Well, now, I talked to Mr. Dooley and I have talked to others, and I talked with the agent of the du Pont, and others we did business with.

Q. I mean on the subject of Buckeye powder. A. I don't think I have. That is, running it down, that we shouldn't use it. I don't think I ever did.

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Q. In a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company, more commonly known as the du Pont Powder Company, the Buckeye Powder Company has given your name, W. E. Foley, as a customer of the Buckeye Powder Company which was induced by the defendants in that case; namely, the du Pont Powder Company, the Eastern Dynamite Company, and the International Smokeless Powder and Chemical Company, 7046
to abandon the purchase of Buckeye powder from the Buckeye Powder Company. Will you state whether or not these defendants that I have named, the three companies, or any agent or representative of them or any other person or corporation, to your knowledge ever induced you to cease or stop the purchase of Buckeye powder? (Objection overruled; exception allowed.) A. Well, sir, I will tell you. Your agent in Chicago used me a dirty trick, and I want you to understand that it was because of it——

7047

Q. What agent was that? A. The gentleman that died the last two or three years, Grover I think it is.

Q. Grover? A. I don't know whether that's his name, but he died in the last two or three years.

Q. Aren't you mistaken about that? A. I am not mistaken about the circumstance. I might be mistaken about the name. I found out then there was something wrong, but just what it was I didn't hardly know.

Q. Did you ever stop the purchase of Buckeye powder? A. I quit the business and stopped all powder.

Cross-examination by Mr. Abbott:

Q. Mr. Foley, you were under contract with the

du Pont Powder Company, were you not, during 1903 to 1909? A. I expect I was.

Q. Practically all the time? A. Yes.

Q. Do you know Mr. Waddell? A. Yes, sir.

Q. How long have you known him? A. Probably since 1903.

Q. Do you know Mr. Donnelly? A. Yes, sir.

Q. Do you know Dooley Brothers? A. Yes, sir.

Q. Do you know Mr. Moffatt? A. Yes.

7049 Q. Do you know what relation Mr. Donnelly and Mr. Moffatt and Dooley Brothers sustained to the du Pont Powder Company during 1903 to 1909? A. I took them as representing the du Pont people.

Q. I will ask you whether or not you had a conversation with Mr. Waddell just before he started his plant in 1903, in which you related to him a conversation you had with Mr. Donnelly? A. No, I couldn't. If I could I would.

Q. I will ask you whether, so as to refresh your memory, whether you didn't tell Mr. Waddell at that time that Mr. Donnelly, in a conversation with

7050 you, had told you that Mr. Waddell could never succeed with his plant, because the du Pont Powder Company had secured contracts, or had everybody in the State of Illinois tied with contracts, and that there was no one left for him to do business with? A. I can't say who it is, but the conversation is fresh to my memory. I can't say who it was. I may have made that remark myself, but I can't say Mr. Donnelly said it, nor Mr. Dooley, or anybody else.

Q. You remember such a conversation with Mr. Waddell? A. I can't remember the conversation.

Q. How many kegs of powder did you consume in your mines at Mapleton, Illinois, during the year 1903 to 1909? A. In all the mines?

Q. Yes, in your mines at Maplewood or your mines anywhere else. A. In all the mines.

Q. Yes, in the mines at Maplewood or any others in which you were under contract with the du Pont Powder Company to supply you with powder? A. I should judge about thirty kegs a day, speaking offhand.

Q. How many would you estimate that to be per year? A. I am giving you the busy season's figures upon that, and, of course, in the summer time of course it was very small.

Q. I would like to get your best judgment, Mr. Foley. I don't ask you for particulars in that subject, but just approximately the number of kegs you used per year, on a yearly basis. A. From August until April I think we would run eight hundred kegs a month. 7052

Q. And from April to—— A. Then probably we usually would not average a hundred from that until the first of August again, maybe two hundred, I couldn't say. I have got no records of it.

Q. You speak about a Mr. Grove, did you say? Do you remember his name? A. No, I can't remember his name but I know I went there to Chicago and talked to him in his office, probably Mr. Donnelly would know his name. He died in the last two or three years. 7053

Q. As a result of that conversation did you keep buying du Pont powder? A. No, sir.

Re-cross examination by Mr. Abbott:

Q. Your answer to this question is not intended to controvert what you said on your direct examination about that matter. A. What's that?

Q. I say it isn't intended to controvert what you said on your direct examination about this man and his conduct toward you. A. No, I just spoke of it as an incident in the powder business.

7054 *Edmund C. Donk—Direct*

Deposition of EDMUND C. DONK, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Donk, are you an officer of the Donk Brothers Coal and Coke Company? A. I have been President of it ever since its formation.

7055 Q. When was it formed, approximately? A. 1893 or 1894, or thereabouts.

Q. Is your company engaged in the mining of coal? A. It is.

Q. In your mining operations, do you have occasion to use black blasting powder? A. We do.

Q. Between the years 1903 and 1909, who made the purchases of black blasting powder for your company? A. No one made the purchases unless it was ordered by myself, or made direct by myself.

Q. Do you recall or not, whether between the years 1903 and 1909, your company, through you,

7056 purchased any black blasting powder of the Buckeye Powder Company? A. Yes.

Q. Do you recall what years those purchases were made? A. No, I couldn't give you the exact year.

Q. Well, approximately? A. If my recollection is correct, in the neighborhood of 1904 or '05, or something like that; I haven't charged my mind with it.

Q. After you purchased the powder of the Buckeye Powder Company, do you know or not whether it was used in the mining operations of your company? A. Yes.

Q. Was it? A. It was.

Q. Did you continue to purchase powder of the Buckeye Powder Company, or did you make any change? A. I got it from a number of people since dealing with them.

Q. Can you state about how long you purchased powder of the Buckeye Powder Company? A. No, not exactly; I suppose, probably five or six months. It probably extended over a longer period.

Q. After you ceased the purchasing of Buckeye powder, of what company did you purchase powder for your mine? A. If my recollection serves me right, we had trouble with the Buckeye—what they call Egyptian.

Q. Will you state why you ceased the purchase of 7058
Buckeye powder and purchased powder of the Egyptian Powder Company? A. My recollection of the cause of the change was, in the first place, that the Buckeye Powder people hadn't been serving us with as much satisfaction as previously, and the Egyptian Powder Company being formed, and there were three or four stockholders personal friends of mine, and I turned the business over to them.

Q. After you began the purchase of powder of the Buckeye Powder Company, Mr. Donk, did you have any conversation or communication with any 7059
agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder at all? A. Not that I remember.

Q. In a suit instituted in the United States District Court for the District of New Jersey, by the Buckeye Powder Company against E. I. du Pont de Nemours Powder Company and others, the Buckeye Powder Company has given the name of Donk Brothers Coal and Coke Company as one of the customers of the Buckeye Powder Company which the E. I. du Pont de Nemours Powder Company induced to abandon or stop the purchase of powder from the Buckeye Powder Company. Will you state whether or not the E. I. du Pont de Nemours Powder Company, or any agent or representative of

that company ever induced the Donk Brothers Coal and Coke Company to abandon the purchase of powder from the Buckeye Powder Company?

(Objection overruled; exception allowed.)

A. I would say that there is nothing to that. There ain't anybody induced me to quit that, unless I choose it; I never allow myself to be bamboozled with anybody, or by any concern or in-
7061 dividual.

Cross-examination by Mr. Abbott:

Q. Did any person ever approach you, with an offer of better prices than you had been paying for your powder? A. Yes, from time to time, but I never paid attention to that; before I would accept anybody's proposition, I wanted the product to be satisfactory.

Q. You did have offers of better prices? A. From time to time.
7062

Q. Are you under contract with any company at the present time for the purchase of your powder? A. We have contracts that can be terminated on 30 days' notice. The exact details I haven't in mind.

Q. How long have you been under contract with anybody for the purchase of black blasting powder? A. Three or four years, maybe more.

Q. Were you under contract with anybody to purchase black blasting powder from 1903 to 1909? A. Possibly I was; I couldn't tell you without looking up my records; it is likely that we have.

Q. Have you got those contracts with you now? A. No, sir.

Q. Are they in your office here? A. I don't know that, I should have to look it up.

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Q. Can you state whom the contracts were with, what company? A. No, only in a general way. I can give you a synopsis of how we have been buying our powder; I have been buying powder from the Miami Company for 15 or 20 years, and they were so unsatisfactory, that we had to pull away from them after they wasn't able to handle it to satisfy us to meet the price, we got powder from whom we best could, taking into consideration the quality, the delivery, and so forth, and the responsibility. Some of our men they preferred certain powders, taking, for instance No. 1 mine, and I think No. 2; they preferred du Pont powder. Rather than have a row with my men, I would get the powder from somewhere else, and I would say, "All right, I'll buy that powder." Then I, for awhile, bought du Pont powder from the Miami Company. After that, I believe we got hold of Mr. Waddell and got hold of some Buckeye powder. In the main it proved satisfactory. I didn't have much trouble with it, and as it went along, I had more grouches and more trouble and more kicks than a little; and then I changed to the Egyptian; and then they had a Powder Committee over there, and they said du Pont powder would suit them better than any other. "All right, I'll see about it," I said, and we had Mr. Spicer or some representaitve of the company, arrange for du Pont powder; one or two or three of them, I forget which; we had three mines. We are still using some du Pont powder and still using some Egyptian powder.

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Q. What agents of the du Pont Powder Company called upon you, from time to time? A. Mr. Spicer.

Q. Mr. Spicer did? A. Yes.

Q. He is at present connected with the du Pont Powder Company, is he? A. I suppose so; I

haven't seen him for about a year or a year and a half.

Q. Were you a stockholder in the Egyptian Powder Company? A. No, sir.

Q. You owned no stock? A. No.

Q. Did your company own any interest in it? A. No.

Q. Do you know at this time how much Buckeye powder you consumed during the time you were doing business with them? A. No, I couldn't tell
7067 you that; the amount of powder used would depend upon the operations of the property. What we did do in that period, I can't remember.

Q. Do you remember how much coal you raised during the year 1905? A. No, sir, I could guess at it; but I guess that ain't what you want.

Q. Isn't it a fact that during that period you held the record of the State for coal production? A. For a short time we held the record; I don't know whether it was that time.

Q. Your mine is a very large producer? A. Yes;
7068 it ain't a question of a mine, it's mines, there are three of them.

Q. Do you know Mr. Edwin H. Conrades? A. Yes, sir.

Q. What position does he hold in your company? A. Vice-President.

Q. Is he still Vice-President? A. Yes.

Q. Was he during 1903 to 1909? A. I think he has been Vice-President since he has been connected with the company; but he has nothing to do with the operation of the mines. The operation of the mines has been in my hands all the time.

Q. Do you know his signature? A. I think so.

Q. You say you do? A. I think I do.

Q. I show you a paper writing on what purports to be a letterhead of the Donk Brothers Coal Com-

pany, dated January 29, 1904, and I ask you to state whether or not you recognize the signature attached to that? A. Yes, sir, I recognize it.

Mr. Abbott: I offer the paper in evidence.

Said paper is marked "Exhibit P. 58," and read to the jury, as follows:

(Letter Head, Donk Bros. Coal & Coke Co.)

St. Louis, Jan. 29, 1904. 7070

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:

Your letter of January 25th to hand and contents carefully. noted. Your price is considerably out of line. There would be no use of sending further samples based on the price you quote us. You certainly are not taking into consideration the quantity of 7071
powder we handle, which is constantly increasing, owing to increase in our output.

Yours truly,

Edwin H. Conrades,
V. Prest.

Q. I show you another paper written on the letterhead of the Donk Brothers Coal Company, dated St. Louis, May 3, 1904, and ask you to state whether you recognize that writing? A. Yes.

Mr. Abbott: I offer the paper in evidence.

Said paper is marked "Exhibit P. 59."

7072 *Edmund C. Donk—Cross*

Q. I show you another paper writing on the letter head of the Donk Brothers Coal Company, dated St. Louis, May 10, 1904, and ask you to state whether or not you recognize the signature to that paper? A. All right, that's his signature.

Mr. Abbott: I offer the paper in evidence. Said paper is marked "Exhibit P. 60," and read to the jury as follows:

7073 (Letter Head, Donk Bros. Coal & Coke Co.)

St. Louis, May 10, 1904.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:

We have not yet received a reply to our letter of May 3rd. What about it? Have you dropped the matter? We are ready to
7074 give your powder another trial and should have 20 kegs each of F. and FF. and 10 kegs of C. Powder (50 Kegs) to do this. If you are inclined to send this powder on and make us a competitive price, we may be able to do some business with you.

Yours truly,

Edwin H. Conrades,
V. Pres.

Bill to Donk Bros. Coal & Coke Co., Donkville, Ill., Care The St. Louis, Troy & Eastern R. R., E. St. Louis, Ill.

Redirect examination by Mr. Katzenbach:

Q. Whereabouts are your mines located? A. No. 1 mine is within a mile and a half of Collinsville, on the St. Louis, Troy and Eastern Railway, and Mine No. 2, which is located at Mayerville, about 15 or 16 miles, also on the St. Louis, Troy and Eastern Railway.

Q. That is, about 15 or 16 miles from St. Louis? A. Yes; and then there's Mine No. 3 at Troy, Illinois, 18 or 19 miles from St. Louis,—also on the St. Louis, Troy and Eastern Railway. 7076

Q. The mines are in what State? A. Illinois.

Q. And in what county? A. I think 2 and 3 are in Madison, and part of No. 1, and another part in Madison and St. Clair, but the shaft, I believe, is in Madison.

Q. I will just ask you whether you mean the shafts are in Madison County and part of the mine extends into St. Clair County? A. Yes.

Recross-examination by Mr. Abbott: 7077

Q. I will just ask you now, if, upon refreshing your memory, you can give an approximate estimate of the number of kegs which you consumed in your mining operations of black blasting powder during 1903 to 1909, per year?

Mr. Katzenbach: That is objected to as incompetent and irrelevant and not cross-examination.

A. From 25,000 to 30,000.

7078 *Silas A. Shafer—Direct*

Deposition of SILAS A. SHAFER, a witness produced on behalf of the defendants, being duly sworn, read as follows:

Direct examination by Mr. Katzenbach:

Q. Mr. Shafer, where do you live? A. Assumption, Illinois.

Q. How long have you lived there? A. Since the 5th of May, 1872.

7079 Q. In what business are you engaged? A. In operating coal mines principally.

Q. Do you operate under your own name? A. No sir, the Assumption Coal Mining Company.

Q. Is that a corporation? A. Yes.

Q. Are you an officer of it? A. Yes, sir.

Q. What office do you hold? A. President and General Manager.

Q. How long have you been President and General Manager of the company? A. I have been President, I think, three years, and General Manager for about fifteen years.

7080 Q. Between the years 1903 and 1909 did your company use any black blasting powder in its mining operations? A. Yes, sir.

Q. Who made the purchases of black blasting powder for the company between those years? A. I did.

Q. You made all purchases? A. Yes.

Q. Will you state whether or not your company purchased any black blasting powder in its mining operations? A. Yes.

Q. Of the Buckeye Powder Company, known as buckeye powder? A. Not to my recollection.

Q. Have you made any investigation or examination of the books of the company in any way to ascertain that? A. I personally? It was made by the secretary and by the stenographer.

Q. Was there any record of any purchase? A. None.

Q. Between the years 1903 and 1909 what kind of powder did you use in your mining operations? A. Equitable powder.

Q. Between the years 1903 and 1909, did any agent of the E. I. du Pont de Nemours Powder Company ever have any conversation or communication with you respecting Buckeye powder? A. Not as I recollect.

7082

Q. In a suit instituted in the United States District Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company, and the International Smokeless Powder and Chemical Company, the name of the Assumption Coal and Mining Company has been given by the Buckeye Powder Company as a customer of the Buckeye Powder Company which these defendants that I have named induced to abandon the purchase of Buckeye powder. Will you state whether or not any of the defendants that I have 7083 named, or any agent or representative, ever induced the Assumption Coal and Mining Company to cease or abandon the purchase of Buckeye powder from the Buckeye Powder Company. (Objection overruled; exception allowed.) A. No.

Cross-examination by Mr. Abbott:

Q. In your answer to the last question do you mean to have it understood that you know all the persons who were agents or representatives of the parties named to you? A. No, sir.

Q. Answer the question. A. No, sir.

Q. You say you bought some Equitable powder? A. Yes, sir.

Q. Were you under contract for the purchase of that powder? A. No, sir.

Q. You were never under contract? A. No, sir.

Q. Were you ever under contract with anyone? A. No, sir.

Q. Where were your mines located? A. At Assumption, Illinois.

Q. Anywhere else? A. I was interested in other mines.

Q. Where? A. At Moweakua, Illinois.

7085 Q. Were you the purchasing agent for those mines? A. No, sir.

Q. Who was? A. Mr. Hall was the superintendent down there mostly.

Q. Did you do any of it? A. No, sir.

Q. I show you a paper writing on what purports to be the letter head of the Assumption Coal and Mining Company, dated Assumption, Illinois, April 29th, 1908, and I ask you to examine the same and state whether or not you recognize the signature attached thereto? A. Yes, sir.

7086 Q. You recognize that? A. Yes.

Q. Whose signature is that? A. That's my own.

Said letter is marked Exhibit P 76, and read to the jury as follows:

The Assumption Coal and Mining Company,
Assumption, Ill., April 29th, 1908.

Mr. R. S. Waddell,
Pres. Buckeye Powder Co.,
Peoria, Ill.

Dear Sir:—Our contract for Powder at Moweaqua must soon be renewed. We had some of your powder during the winter. Now at what price would you make a contract for another year? We might be induced to change. We see no reason why we should favor a Trust.

Yours very truly,
SILAS A. SHAFER.

Q. You refer in this letter, Mr. Shafer, to the fact that "We had some of your powder during the winter." Where did you have that powder you refer to in this letter? A. I am not sure. My impression was we had used some at Assumption, probably twenty-five or fifty kegs, but I have not been able to find any record of it.

Q. That was the powder you had in mind when you wrote this letter? A. I presume so.

Q. I will ask you to state, according to your best recollection, if you didn't purchase and pay for 7088
and use for the use of the Assumption Coal and Mining Company a total of seven hundred kegs of Buckeye powder? A. No, I don't think we ever did.

Q. I show you what purports to be a letter written on the letter head of the Assumption Coal and Mining Company, and dated Assumption, Illinois, and I will ask you to state whether or not you had any communication with the Buckeye Powder Company with reference to entering into a contract with the Buckeye Powder Company for the purchase of Buckeye powder. A. I think I did.

7089

Q. For what point were you negotiating at that time for a contract to supply powder? A. My impression is that it was for Moweakua.

Q. Did you succeed in entering into a contract with the Buckeye Powder Company at that time? A. I don't think we did, although we may have, but not to my recollection.

Q. How many kegs of powder did you consume at the Assumption Coal and Mining Company during the years 1903 to 1909, inclusive, per year, approximately? A. Approximately?

Q. Yes. A. Approximately two hundred or two hundred and fifty.

Q. Per year? A. Yes, sir.

7090 *Silas A. Shafer—Redirect—Recross*

Re-direct examination by Mr. Katzenbach:

Q. Will you state whether the property or mines of the Assumption Coal and Mining Company were what is known as long wall mines or room and pillar mines? A. Long wall mines.

Q. In long wall mines is there as much powder used as in room and pillar mines? A. No, sir.

Re-cross-examination by Mr. Abbott:

7091 Q. In view of the direct examination I desire to call the attention of the witness to another paper writing, written on the letter head of the Assumption Coal and Mining Company, dated May 22, 1908, and ask him to state whether he recognizes the same, or the signature thereto. A. Yes.

Q. Whose signature is that? A. Mine.

Q. Was the letter written by you? A. Yes, sir.

Mr. Abbott: I offer the letter in evidence. Said letter is marked Exhibit P. 77, and read to the jury as follows: (Insert B).

7092

The Assumption Coal and Mining Company,
Assumption, Ill., May 22nd, 1908.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen: On account of not having any business at Moweaqua we are not doing anything about the powder, but here we must have some powder of the same kind we use at Moweaqua. Must either haul a load down by team or get it direct from the mill. We use very little powder here as this is Long Wall work and is all undercut with the pick. But need 100 kegs now. At what price will you deliver 100 kegs here? And how soon? If satisfactory in price and time will telegraph you to ship. Yours Resp.,

The Assumption Coal and Mining Co.,
Per SILAS SHAFER.

Q. Referring to the letter Exhibit 77 for the plaintiff, I call your attention to the following language: "We use very little powder here, as this is long wall work, and is all under cut with the pit." To what mine did you refer? A. The mine at Assumption.

Q. And your inquiry for price for one hundred kegs which you needed at that mine related to the Assumption mine? A. Yes, sir.

(Counsel for the plaintiff makes the witness Plaintiff's own witness.) 7094

Direct examination by Mr. Abbott:

Q. Mr. Shafer you have just testified that you had a mine at Moweakua? A. Yes, sir.

Q. Do you use black blasting powder at that mine, or did you use it during 1903 to 1909? A. Yes, sir.

Q. What kind of black blasting powder did you use at that time? A. As far as I know, only the Equitable. 7095

Q. Were you under contract to purchase powder from the Equitable Powder Company, or other persons? A. I rather think they were.

Q. Have you those contracts with you? A. No, sir.

Q. Were you under contract during the whole period from 1903 to 1909? A. I don't know.

Q. Do you know what price was stated in the contracts? A. No, sir.

Q. Have you those contracts with you? A. No, sir.

Q. Do you know where they are? A. Yes.

Q. Where are they? A. At the office of Moweakua, Illinois.

7096 *Silas A. Shafer—Plaintiffs—Direct*

Q. At the office of the mining company? A. Yes, sir.

Q. Would you furnish the Commissioner with those contracts for insertion in this record? A. As far as I am able to.

Q. I will ask you to state whether or not you ever had any negotiations with the Buckeye Powder Company for the making of a contract for the purchase of black blasting powder for use in your mines at Moweakua? A. It might be possible, but
7097 I don't recollect it.

Q. I show you a paper writing purporting to be on the letter head of the Assumption Coal and Mining Company, dated Assumption, Illinois, June 6th, 1908, and I ask you to state whether or not you recognize the same and the signature attached thereto? A. Yes, sir.

Q. Whose signature is that? A. My own.

Said paper is marked Exhibit P 78, and read to the jury as follows: Insert "C."

7098 Assumption, Ill., June 6th, 1908.

Mr. R. S. Waddell,
Pres. Buckeye Powder Co.,
Peoria, Ill.

Dear Sir: Is it really true as charged, that you have gone into the Powder Trust and are now a part of that combination? It would appear that such is the case by the looks of your letter to the Moweaqua Coal Mining & Mfg. Co., dated the 4th. You made a price on the powder and we accepted your offer and now you back out. Why? I certainly expected a different move on you part. Is it possible that I have been deceived? You certainly knew what would be the freight rate here before you made me the quotation. And I certainly expect you to ship us the goods as you offered

to do. I rather suspect that this move was not made by you but by some one in your office. Let me hear from you and greatly oblige as well as relieve my doubts. Yours Resp.,

SILAS A. SHAFER.

Q. I show you another paper writing, purporting to be on the letter head of the Assumption Coal and Mining Company, dated June 9, 1908, and ask you to state whether you recognize the same and the signature attached thereto? A. Yes, sir. 7100

Q. You recognize that? A. Yes, sir.

Q. Whose signature is it? A. My own.

Q. And is that a letter you wrote? A. Yes, sir.

Said letter is marked Exhibit P 79, and read to the jury as follows:

Assumption, Ill., June 9th, 1908.

Mr. R. S. Waddell, Jr.,
Peoria, Ill.

Dear Sir: Yours of the 8th in regard to the powder for Moweaqua at hand. 7101 It does not matter so much as to the time on the contract for the powder as we still have plenty for the present little work, but after I have worked so hard to throw the business to your company and then have it thrown down on such a flimsy pretext, is not to my liking to say nothing about its being more, much more than that. I can afford to go elsewhere to get the powder, but can your father have me do so and pose as he has in the past, as being opposed to the methods of the powder combine? I am at a loss to find a reason for his course if that would be his course. Awaiting his reply I am

Yours Resp.,

SILAS A. SHAFER

7102 *Silas A. Shafer—Plaintiffs—Direct*

Q. I show you another paper writing on the letter head of the Assumption Coal and Mining Company, dated, June 19, 1908, Assumption, Illinois, and ask you to examine the same and the signature attached thereto, and I ask you to state whether you recognize the same. A. Yes, sir.

Q. Whose is it? A. Mine.

Q. And the letter is one you wrote? A. Yes, sir.

7103 Said letter is marked Exhibit P 80, and read to the jury as follows:

Assumption, Ill., June 19th, 1908.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen: What is the reason we do not hear from your Pres. Mr. R. S. Waddell as promised by you Mr. R. S. Waddell, Jr., Treas., on June 8th? We want a car of 800 kegs of CCC powder shipped the first week in July so that we will not be out of
7104 powder there. Will you kindly reply at once? Or shall I go to Peoria to attend to this matter? I am certainly unable to understand why you do not send the contract to Moweaqua to be signed up. You certainly cannot afford to go back on your plain offer and our acceptance of same. I shall expect an answer soon. Yours Resp.

The Moweaqua Coal Mining & Mfg. Co.,

Per SILAS A. SHAFER,
General Manager.

Q. I show you another paper writing on the letter head of the Assumption Coal and Mining Company, dated Assumption, Illinois, July 10, 1908, and ask

you to examine the same and the signature attached thereto, and state if you know whose it is. A. Yes.

Q. Whose it is, please? A. Mine.

Q. That is your signature and the letter was written by you? A. Yes, sir.

Said paper is marked Exhibit P 81 and read to the jury as follows:

Assumption, Ill., July 10th ,1908. 7106

Mr. R. S. Waddell,
Pres. Buckeye Powder Co.,
Peoria, Ill.

Dear Sir: Your letter just received. I talked with the one of our company yesterday who was with me in Bloomington and we think favorably of the project, he went down to the mines at Pana last night and this morning to Centralia to look after those and will go to Chicago to-night, so I forward your letter to him at Chicago. We will 7107
be in Bloomington again next Thursday when you might call on us at the Illinois Hotel where we meet the miners for a day or two. I find that we use more powder than I had supposed we did.

Yours Resp.,

SILAS A. SHAFER.

Q. Were you, or were you not under contract with any one for the purchase of the powder which you used in the mines at Moweakua? A. I presume we were. I am not sure.

Q. You are not sure? A. No, sir, I am not. I presume we were.

7108

Q. If you were under contract, have you any of those contracts at the present time? A. I presume they are in the office of the Moweakua Minning Co.

Q. Will you make a search for such contracts as you may have had during 1903 to 1909? A. I will instruct the superintendent to look after them.

Q. And if you find them will you forward them to the Commissioner? A. Yes, sir.

7109

Q. How many kegs of powder did you consume per year at your mines at Moweakua? A. I don't know. Several carloads. I don't know.

Q. By several how many would you think? A. Probably two or three carloads a year.

Q. As many as three? A. It might possibly be, I am not sure.

Q. How many kegs of powder are there in a carload? A. Usually eight hundred I think.

Cross-examination by Mr. Katzenbach:

7110

Q. The amount that you would consume would depend largely upon the extent of the mining operations for that year, would it not? A. Yes, sir.

IVAN B. GRANT, a witness produced on behalf of the Defendants, being duly sworn, testified as follows:

Direct examination by Mr. Katzenbach:

Q. Grant, did you ever have any connection with the Great Northern Fuel Company? A. Yes, sir.

Q. In what capacity? A. I was its General Manager from 1902 to the latter part of 1909, I believe.

Q. Where were the mines of the Great Northern Fuel Company located? A. At Novinger, Adair County, Missouri.

Q. Did the Great Northern Fuel Company use any black blasting powder in its mining operations? A. Yes, sir.

Q. Between the years 1903 and 1909, who made the purchases of black blasting powder for the Great Northern Fuel Company? A. I did.

Q. Between the years 1903 and 1909, did you purchase for the Great Northern Fuel Company any 7112
powder known as Buckeye powder, made by the Buckeye Powder Company? A. I did, yes, sir.

Q. Will you state when you purchased Buckeye powder? A. Well, no, I can't exactly; I was using an Austen powder purchased from the Tenk Hardware Company, and after that I signed a contract with the Buckeye Powder Company, along somewhere, I should judge, in the latter part of 1902, possibly in 1903. We used it for about a year, I should judge, all told, or a year and a half; I don't have any records with me.

Q. Did you use any of this Buckeye powder in 7113
the mines of the Great Northern Fuel Company? A. Yes, for possibly eighteen months, from one to two years.

Q. You say that was purchased under contract? A. Yes, sir, part of it.

Q. After you had used this Buckeye powder in the mines, did you, during the time you were general Manager, make any change of powder? A. Yes, sir.

Q. Will you state any facts or circumstances relating to this change of powder? A. Well, sir, the first trouble we had leading up to a change, I had a committee of miners wait on me, and informed me they wanted du Pont powder. I told them they

couldn't have it, because I was under contract with the Austen people. They told me I would have to make some arrangements to get du Pont powder; that they would burn up what powder we had in the magazine, and that they wouldn't burn any more Austen powder. I then began negotiations with the du Pont men; I don't know who it was that came up there; I think I wrote for the first man to come, and I talked with him, and finally cancelled our contract with the Austen people, who were very nice
7115 about it. We had some time to run, and I told them our men had refused to work unless they got du Pont powder, and they cancelled the contract, and I entered into a contract with the du Pont Powder Company and continued as long as I was with the Great Northern.

Q. You changed from Austen to du Pont? A. Yes, sir.

Q. State why you didn't continue with the Buckeye Powder Company. A. My men wouldn't use it; they refused to use it.

7116 Q. After the Buckeye powder was used in your mine, did you ever have any conversation or communication with any agent of the E. I. du Pont de Nemours Powder Company with reference to Buckeye powder? A. While it was being used there?

Q. Yes. A. Yes, I wrote down there and asked them to send an agent up when my men threatened to strike.

Q. That was the only communication you had with them? A. Yes, sir.

Q. Did you have any conversation or communication with any agent of the du Pont Powder Company with reference to Buckeye powder? A. No, I think not; I have no recollection of anything of that kind.

Q. In a suit instituted in the United States Dis-

7117

trict Court for the District of New Jersey by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company, the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, the Buckeye Powder Company has given the name of the Great Northern Fuel Company as a customer of the Buckeye Powder Company induced by the defendants to cease purchasing powder of the Buckeye Powder Company; will you state whether or not these defendants, or any agent or representative of these 7118
defendants, ever induced the Great Northern Fuel Company to cease the purchase of powder from the Buckeye Powder Company? (Objection overruled, exception allowed.) A. They did not.

Cross-examination by Mr. Abbott:

Q. Will you state again what position you occupied in connection with the Great Northern Fuel Company between 1903 and 1909? A. General Manager.

7119

Q. During that entire period? A. I believe so, yes.

Q. Did the Committee of Miners that waited upon you making a demand for du Pont powder, give any reasons why they wanted du Pont powder? A. Yes, sir.

Q. What were those reasons? A. Well, the reasons were that they liked it better. I was a new man in the field; there were three companies there before I was, or two companies: the Rombauer and the Kansas City——

Q. There were two companies? A. Yes, and they had been burning du Pont powder all the time, exclusively, and I guess the men drifted over there to my mine, and they claimed they had better success with the du Pont.

Q. You are sure you had a complaint about the Buckeye powder, are you? A. Yes, sir.

Q. Did you ever make a statement to anybody to the contrary? A. Did I do it?

Q. Yes. A. That I did not?

Q. Yes. A. No, sir.

Q. Did you ever make a statement that the Buckeye powder was very satisfactory? A. I might have, at one time; it might have been satisfactory at one time.

7121 Q. Did you ever state that it produced far better results in your mine than any other powder? A. Possibly.

Q. Was it true? A. If I made it, it was.

Q. Will you say you did make it? A. No. The chances are that I told my men that; I would imagine that is so.

Q. Upon what theory would you tell them that? A. Because I wanted them to use Buckeye powder.

Q. Would you make a mis-statement? A. I would take any legitimate means when I was tied

7122 up with a powder company that I didn't know whether or not they would let me loose or not.

Q. I will ask you to look at that signature, and state whether or not that is your handwriting? A. Yes, sir, that is my handwriting.

Said paper is marked "Exhibit P-57 for identification."

Q. Who was the President of the Great Northern Fuel Company during the time you were Manager? A. Mr. Keefe.

Q. What relation, if any, did Mr. W. S. McCall hold? A. While I was Manager?

Q. Yes. A. I don't think any.

Q. What relation did he hold from 1903 to 1909? A. I don't think any; I was superintendent up to

1903, I think, when McCall went out, and Mr. Keefe became superintendent, and I became General Manager. Previous to that time, I think he was the head of the company, that is, the active head of the company.

Q. Wasn't Mr. McCall President of the Great Northern Fuel Company in 1905? A. I think not; no, sir, I think it was 1903 I succeeded as General Manager.

Q. If he signed himself as President of the Company at that time, he mis-stated the facts, did he? 7124
A. Well, I wouldn't say that either, because I haven't looked up the date; I think it was the first of 1903 that he retired; I think I can produce the document showing the time he retired, and I was appointed; not this morning, but I can do it, if necessary.

Letter was offered and received in evidence as Exhibit P-57 and read to the jury as follows:

"Novinger, Mo., April 4th, 1905.

7125

Mr. E. C. Burrows,
St. Louis, Mo.

Dear Sir:

In reply to your letter of the 3d inst. beg to advise that since receiving your powder our mines have practically been shut down. Also all of the other mines in this field. Work has fell off here to about two days per week. However, what men have used the Buckeye Powder seemed to be very well pleased with it. At our mine #31 which is the hardest coal we have, the slack has been reduced about 15%. The difference at our mine #1 is not so great. Please accept our thanks for your kindness when you was at the mills, and I am personally of the opinion that we

will be able to use your powder right along. However, will report more fully after we have used more of it.

Yours truly,

I. B. GRANT,
Superintendent."

Q. About how many kegs of powder did your mine consume per year during the years 1903 to
7127 1909? A. I should judge in the neighborhood of a car every couple of months; it would average that, I should judge.

Q. With what—per year, that would amount to about how much? A. Well, say a car every two months; that would be 800 kegs; that would be 4800 kegs, wouldn't it?

Q. About 4800 kegs? A. Somewhere in that neighborhood. There were times I don't think we burned that much, and sometimes we burned more than that.

7128 *Re-direct examination by Mr. Katzenbach*:

Q. Mr. Grant, you stated that you were desirous that Buckeye powder should be used in the mines. Why were you desirous of that; what were the reasons? A. The reasons that I wanted to force Buckeye in that field?

Q. Yes. A. Because I didn't want one company to have a monopoly of the field; I didn't think it was good business policy.

Q. Therefore, you were willing to make the statement that Buckeye powder was satisfactory? A. Yes, I wanted to keep the Buckeye in the field; I thought we needed them.

And thereupon, on the 21st day of January, 1914, the defendants rested.

PLAINTIFF'S REBUTTAL.

DAVID S. BREWSTER, called as a witness by the plaintiff in rebuttal, being duly sworn, testified as follows:

By Mr. Abbott:

Q. Where do you reside at the present time? A. Chicago.

Q. Where did you reside during the years 1904, 7130
1905 and 1906? A. During 1904 and a portion of 1905, at Wilmington, Delaware; and in 1906, in Chicago.

Q. Since then in Chicago; you have been in Chicago since? A. Yes.

Q. What is your business? A. I have been in the high explosives business, connected with the Trojan powder people.

Q. How long have you been connected with the explosives business? A. 22 years.

Q. Where did you begin your first connection with the powder business? A. Joplin, Missouri. 7131

Q. With what company? A. The Hercules Powder Company.

Q. When you were in Wilmington in 1904-1905, where were you employed? A. In the sales department.

Q. Of what company? A. The du Pont Powder Company.

Q. And what were your duties in the office? A. I kept the records for the competitive end of the business.

Q. What was that department known as, what was the name of it? A. The competitive division.

Q. Did you have anything to do with the organization of that division? A. I made it up, yes, sir, in 1903; began in August, 1903.

Q. I will ask you whether in the spring of 1905 you had anything to do with making an investigation concerning the prices for black blasting powder which obtained between the companies that were not then in the du Pont Powder Company, that were conducting business in the central district of the United States? A. I made a report from my records as to the prices that were being obtained at that time, yes, sir, by competitors.

7133 Q. From what data did you obtain the information regarding that report that you made? A. From data in the competitive division.

Q. And what was the nature of that data? A. Do you want a full——

Q. (Interrupting) Well, describe it as fully as you think is necessary. A. Well, for each State, for instance Illinois, all competition, both black powder and dynamite, was kept in one set, headed in a file, a drawer for each State, and in that drawer was a town card, and behind the town card was a trade card denoting the name of the customer, the estimated monthly consumption, the

7134 price that they were paying for the material, and the date and name of the salesman who made the trade report.

Q. These sheets, then, contained information, did they, concerning prices for black blasting powder and dynamite that were made by the various companies that were not then owned by the du Pont Powder Company; is that right? A. Yes, sir; that is a fact.

Q. In the first question, in the first place, then, Mr. Brewster, I will ask you who it was that requested you to make up this report? A. Mr. J. A. Haskell.

Q. And under what circumstances did he make that request to you? A. He asked me to make such

a report, that it might be submitted to the executive board.

Q. How long did it take you to make that report? A. I think, as I remember, the latter part of March I began it, and it took until along the fore part of May.

Q. When you made that report what did you do with it? A. Gave it to Mr. Dale Bumstead and Mr. Eugene du Pont, and the head of the western division, in which I worked.

Q. After you gave it to them do you know what 7136
became of it? A. They revised it, as I remember, and it went to the executive board, as I was told.

Q. After that do you know anything about what became of the report? A. I do not, no, sir.

Q. Well, I will ask you to start with, Mr. Brewster, whether you know anything about a 95 cent price made to the Willis Coal and Mining Company on May 5, 1905. A. No, sir.

Q. You don't know as to that. I will ask you to take this Exhibit 1248 and look it over and state how many names on that list you can tell that you 7137
know anything about so far as the prices which are indicated there are concerned.

The Court. (To the witness.) If you come across any that you know, just mention it.

Witness: Now what was the question?

(Question repeated.)

A. (After examination of the Exhibit.) No, sir.

Q. Do you remember whether or not shortly after your report was made and filed any change was made in the prices of the du Pont Company? (Objection overruled.) A. Yes, sir.

Q. Do you know anything about any steps that were taken by the du Pont Powder Company, or any of its officers, about the time you filed this report, with reference to making a price of 95 cents in certain districts of the United States? A. Yes, sir.

Q. From whom did you get that information? A. In 1905?

Q. Yes. A. Before leaving Wilmington, the sales board sent a telegram to the Chicago du Pont agent
7139 and the Laflin & Rand agent——

Q. You spoke about the sales board. Were you on the sales board at that time? A. No.

Q. Who was on the board? A. Mr. Martinas, Mr. Farraday, Mr. John Matthews, Mr. Dale Bumstead, and Mr. Eugene du Pont, Mr. Patterson, and Mr. Patterson and Mr. Haskell. That is about all that I remember. There might have been one or two more, but I do not remember them.

Q. From whom did you get your information in regard to this telegram? A. It came to my desk in
7140 the office.

Q. Now, then, what was that telegram that was sent out?

By Mr. Button:

Q. One minute. Where was your desk, where were you—in the west? A. Wilmington, in the Market House, if you are familiar with that.

By Mr. Abbott:

Q. What date was this? A. In the early part of May.

Q. What year? A. 1905.

Mr. Button: We object to his stating the contents of any telegram.

The Court: I am assuming that this is to tap his source of information.

Mr. Abbott: Yes, sir.

The Court (to the witness): This was in the office of the du Ponts, this telegram was received.

The witness: The information came to my desk.

The Court: No, I said this telegram.

The Witness: No, I don't know about the telegram, no, sir. 7142

The Court: Well, then, don't talk about telegrams.

Q. Well, what was this information you had on your desk? (Objection overruled.) A. It was information from the inside office, Mr. Bumstead's and Mr. Eugene du Pont's office, that a 95 cent price had been telegraphed to Chicago for black powder.

Q. And any other place? A. Chicago is all that I know of.

Q. Do you know anything about the contents of that telegram? A. It was authorizing a 95 cent price. 7143

Q. A general 95 cent price? A. A general 95 cent price——

Mr. Katzenbach: I object——

Mr. Button: I object.

Q. I will ask you to state whom that telegram was sent to? A. C. H. Vehmeyer, the Laflin & Rand representative; Ed. C. Rice, or E. S. Rice, the du Pont representative.

Q. Do you know anything about whether such a telegram was sent to any other branch of the du Pont Powder Company anywhere in the United States? A. Through the Western Division, yes, sir.

7144 *David S. Brewster—Rebuttal—Direct*

Q. What other branch office——

Mr. Button: How do you know that?

The Court (to the witness): You must know that. You must state what you know yourself.

The Witness: That is what I am doing.

Q. To whom? A. To——

Q. How do you know it; did you see it sent? A. No; I didn't see it.

7145

By Mr. Button:

Q. Did you see the telegram? A. I did in Chicago, yes.

Q. Did you see the one in St. Louis? A. No, sir; I didn't go to St. Louis.

By Mr. Abbott:

Q. Did you have any conversation subsequent to the time this telegram was sent to Chicago with Mr. Vemeyer regarding that telegram? A. Subsequent?

7146 Q. Yes, subsequent to that time? A. No.

Q. Did you have a conversation at any time with Mr. Vehmeyer in regard to that telegram? A. Yes.

Q. When was it you had this conversation? A. The following day after it was sent.

Q. I will ask you, Mr. Brewster, to state what the facts were at the time when you made your report so far as any prices which had been made to consumers of black blasting powder by the Buckeye Powder Company. (Objection sustained.)

Q. Well, Mr. Brewster, I will ask you whether or not you found you had any information in these various reports or other documents which you examined when you made up your report concerning prices which were made by the Buckeye Powder Company to consumers of black blasting powder. (Objection overruled.) A. Did I have other in-

formation? Q. No, any information; did you find anything in the records relating to those matters? A. As to prices the Buckeye people were getting?

Q. Yes, sir. A. Yes, sir.

Q. Now, then, what were the facts which you had in your possession at that time concerning the prices the Buckeye Powder Company was making to the consumers of black blasting powder? (Objection overruled.) A. The prices that the Buckeye Powder Company were getting at that time, according to the report based on the information 7148
furnished by the salesmen, indicated that the Buckeye Powder Company were getting a bigger price than the du Pont people.

Q. What was the price they were getting at that time? (Objection overruled.) A. They were getting $1.15 and $1.20, as I remember.

Q. That was the time when you made your report? A. Yes, sir.

Q. What information did you have at that time concerning the prices which the du Pont Powder Company were charging for their powder to consumers of black blasting powder in the same dis- 7149
trict? A. Except general knowledge, I did not handle that end of it. I did not handle anything but competitive reports.

Q. I will ask you also to state whether or not you know anything about any prices that were made from time to time in competition with the following companies: The Equitable, the Austin and the Miami? (Objected to.)

Q. Was there at any time, then, within your knowledge, any price made to any consumer of black blasting powder in competition with the Equitable, Austin or Miami Companies? A. No, sir.

Q. Do you know anything about any prices that were made to consumers of black blasting powder

which were supplied by the American Powder Company? A. No, sir.

Q. Do you know anything about prices which were made by the du Pont Powder Company in competition with the United States and Egyptian Powder Companies? A. Except as a rule. I don't know as to the prices; I know as to the rule that was followed.

By Mr. Button:

7151

Q. Wait. Whose rule? Where did you get the information?

The Court: Let us have the source of information.

A. The sales board, the du Pont people. (Motion to strike the answer sustained.)

Q. You have spoken of a rule. I would like to have you say from whence you obtained information concerning that rule? A. The general understand-

7152 ing that we were to get all the competitive business we could.

Q. From whom did you get that general understanding? A. From the sales board.

Q. You mean the members of the sales board? A. That is what I was in business for.

Q. Yes. But I am trying to find out now whether this information came to you from the members of the sales board or whether you were present at the sales board meetings. A. I was never at a sales board meeting in my life.

Q. Then you got your information from what source—the members of the sales board?

A. If you will permit me, I will explain. Can I do that?

Q. From whom did you get the information? A. From the order of the sales board, to get what competitive business we could.

Q. Was that order in writing? A. I would not say how it was; I don't remember.

Mr. Abbott: That is all.

Cross examination by Mr. Button:

Q. Where do you live now? A. Chicago. 7154

Q. What is your business? A. Explosives.

Q. With what company? A. The Trojan Powder Company.

Q. What was Mr. Waddell's connection with the Trojan Powder Company? A. I could not tell you.

Q. Did he have any connection with it? A. I was not connected at that time.

Q. Then you know there was a time when he was connected with it? A. I do not, no, sir.

Q. Did you ever hear it? A. I have.

Q. How long do you understand he was connected with the Trojan? A. I don't know, sir. 7155

Q. What was his capacity with the company? A. I don't know.

Q. Did you ever hear? A. Never.

Q. You do not know anything about what his connection with the Trojan Powder Company was? A. No, sir. I have already answered to that.

Q. Where did you hear he had any connection with it? A. I say I don't know that he was connected with it.

Q. You say you heard he was. Who told you? A. Mr. Bronson.

Q. Who is he? A. He is the manager of the Trojan Powder Company.

Q. What did he tell you? A. He told me very little.

Q. Do you know when Mr. Waddell quit the employ of the Trojan? A. No, sir.

Q. When did you first know Mr. Waddell? A. I first knew Mr. Waddell about eighteen years ago.

Q. In Cincinnati? A. Yes, sir.

Q. And you worked for the du Pont interests for how long? A. Sixteen years.

Q. When did you quit them? A. In 1907, January 1st.

7157 Q. From 1903 to 1907, won't you tell us just what your positions were with the du Pont Company? A. From 1903?

Q. Yes. A. In August, 1903, I went from Chicago to Wilmington and organized the competitive end of du Pont's business—the competitive end. And I stayed there until November 11th, 1905. I resigned then. They would not accept my resignation and they sent me back to Chicago, where I stayed for a year, till 1906, and resigned again December 1st, 1906, effective January, 1907.

Q. Who helped you organize this competitive business? A. Who helped me to?

7158 Q. In Wilmington. A. At that time Mr. Maney, a man by the name of Maney.

Q. Just you two? A. That's all.

Q. Who was your superior officer in that respect? A. Mr. J. A. Haskell.

Q. You reported directly to him? A. Every month; I made a report every month.

Q. And you spent your time in Wilmington? A. All the time, yes.

Q. You had an office there with them, did you? A. Right in the sales department.

Q. These reports were in writing, were they? A. Always; nicely gotten up on a machine

Q. And one a month? A. One a month, every month.

Q. This report that you have mentioned about the Buckeye prices was made in what month? A. Which report do you mean? 7159

Q. The one you have been telling about in such detail. A. As I remember, it finished in May, 1905.

Q. Was it a long report? A. Yes, it was a big report. It covered all the competition.

Q. You got your information for that report out of records in the office? A. Out of records that were kept right at my desk in the files——

Q. The trade reports? A. No, sir; cards made from the trade reports. 7160

Q. From information sent in by salesmen? A. Yes, they said they were salesmen.

Q. Well, don't you know whether they were or not? A. I didn't know any of them, no.

Q. How long had you been in the business? A. Sixteen years.

Q. And you did not know any of them? A. I didn't meet them. They didn't come to Wilmington.

Q. You did not know any of them? A. I won't say I did not know any of them. 7161

Q. You just said so. Did you or not know any of them? A. Yes, I knew some, connected with the Chicago business.

Q. Who made these extracts on these cards from the trade reports? A. The lady stenographers.

Q. Under your direction? A. Yes.

Q. How many trade reports were there there? A. Several thousand.

Q. What territory did this report cover? A. It took as far west as Omaha, Denver, St. Louis, Cincinnati, and as far north as Minneapolis.

Q. Won't you name the states? A. West, east to Pittsburgh.

Q. Won't you name the states instead of the cities

—what states were embraced in this report? A. Will you give me a map?

Q. I have not any. They won't let me put one in.

Mr. Abbott: Maybe we will.

Q. (Mr. Button continuing.) Can you not name the states without having a map? A. No, not handy.

7163 Q. It would be too much work? I don't know that we need any map. Why can you not name the states? A. I want to get in order.

Q. Does it cover the Eastern states? A. No, just east of Pittsburgh.

Q. How far south did it go? A. It took in Texas.

Q. That was considered to be the Buckeye territory, was that the idea, in which they were selling? A. I don't know where they sold. They sold all over as I understand.

Q. Well, you did know at that time, did you not? A. I could tell, yes, sir.

7164 Q. Was not the object of this report to show what the Buckeye Powder Company was doing? A. Yes, sir.

Q. Then of course it was confined to the territory in which the Buckeye operated, was it not? A. Let me understand you. What did you say?

(The question was repeated by the stenographer.)

A. What was confined to it?

Q. The report you made. A. This report covered all the territory—let me make it so you will understand it. This report covered all the territory west of Pittsburgh except the West Coast and north to Minneapolis and south to Texas.

Q. Then the whole territory from Pittsburgh to

the West Coast, say to the Rock Mountains— A. Denver, Colorado. West of that belonged to the West Coast.

Q. And it was all for the purpose of showing what the Buckeye Powder Company was doing? A. For every competitor that was in the district.

Q. Oh, that was it? A. Yes.

Q. What other competitors were there? A. As I remember them, I will give them to you. The Excelsior Powder Company, Kansas City, with a factory close to Kansas City; the Senior Powder Com- 7166
pany, close to Cincinnati; the Miami Powder Company, which was close to Xenia, Ohio; the Egyptian close to Marion, Illinois, and the Buckeye, which was at Peoria; the Austin, which was close to Cleveland, and the Equitable, close to Alton, Illinois. Now, that is the black powder. The dynamite——

Q. We do not need to go into the dynamite. The United States? A. Yes, the United States was down near Terre Haute somewhere.

Q. Did you mention Burton? A. Never. The Burton was not doing business in my day. 7167

Q. These companies were all competing for business at that time? A. Yes, sir.

Q. And you had charge of the records that pertained to them, did you? A. To the competitive records, yes, sir.

Q. The competition had become pretty active, had it not, pretty fierce, during that time, say in 1905 and 1906? A. They were all working for business, of course.

Q. And to such an extent that it was pretty active? A. No, the prices were pretty fair, as I remember; there was not much cutting.

Q. Well, what did the general price get to, say in 1905 and 1906? A. $1.05, $1.10, $1.15, they made most any price necessary to get the business.

Q. Then there was no general 95-cent price? A. Yes, there was.

Q. Which was it? A. The one I speak of was a general 95-cent price.

Q. You mean that the duPont Company was selling its powder to everyone at 95 cents? A. In specific territory; yes, sir.

Q. What territory? A. Chicago, for instance.

Q. To everybody? A. A general price, as I stated to you, was made at 95 cents to cover Chicago territory.

7169

Q. What do you mean by Chicago territory? A. Well, in Chicago territory was Illinois, Indiana, Wisconsin and North Dakota, Minnesota. I think that about covers it.

Q. During what period did this very general and widespread 95-cent price, duPont price, continue? A. I could not tell you. I left there in 1905.

Q. When did it begin? A. 1905.

Q. What time in 1905? A. In May, as I remember.

7170

Q. Did it not last until you got out to Chicago? A. I don't know. What do you mean by when I was out to Chicago—to live out there?

Q. You went from Wilmington to Chicago and stayed a year? A. In November this was now.

Q. I don't know when it was. A. I told you it was in November. I made two trips to Chicago, one in May, right after this price was made, and one in November, to live there. Now, what else do you mean?

Q. You went from Wilmington, where you had charge of this competitive division, to Chicago, where you stayed a year in the employ of the duPont Company? A. That was in November, now.

Q. 1906? A. 1906.

Q. Very good. Was it in effect then? A. I paid

no attention to the black blasting powder when I went back to Chicago. My business was dynamite only.

Q. So you don't know. Well, what was the latest date at which you know that this 95-cent price was in effect? A. In May.

Q. You simply know that one date? A. In May, 1905, was the time it was put in effect.

Q. And that is the latest you know anything about it? A. Yes.

7172

Q. Do you mean to say that the duPont Powder Company was selling all its powder in that territory at 95 cents? A. No; I mean to say nothing of the kind. I don't know what they sold it at.

Q. What do you mean to say? A. I don't know what they were selling it at.

Q. What do you mean by their having a general price then? A. I mean this: That if I give you direct and explicit instructions to put a price in effect for a certain territory, certain scope of territory, that implies that you sell to that territory at that price.

7173

Q. And in this broad territory that you are mentioning you say that there was a general 95 cents price, do you? A. I don't, sir; I say that I know only that it went to Chicago to stated territory which included Chicago.

Q. That is all of these States that you have mentioned? A. No, sir; I have taken you here in Montana, from there down to Texas; that is not in St. Louis territory.

Q. Chicago territory is not? A. No, sir.

Q. What does the Chicago territory mean? A. I don't know now what it is.

Q. What was it then? A. I have named it to you: Illinois, Indiana, Wisconsin, North Dakota, Iowa and Nebraska, I believe.

Q. Do you mean to say that your Chicago office had salesmen out through that territory authorized to sell powder in any one of those States at 95 cents in this period? A. I don't know what they did with the price; no, sir, I didn't make such a statement as that.

Q. Is not that what it means when you say that a general 95 cent price was given? A. I didn't say that; I don't know what they did.

7175 Q. I would like to know what you mean by that? A. I say a telegram was sent putting the 95 cent price in effect; I don't know what they done with it.

Q. Now then who sent that telegram? A. I don't know, sir.

Q. And your entire knowledge in regard to putting the 95 cent price into effect is gained from your reading of that telegram, is that it? A. No, sir; when I went to Chicago Mr. C. H. Vehmeyer, who had been with them twenty or thirty years——

Q. Wait a minute. We don't wish for anything of that kind.

7176 Q. Now then, Mr. Brewster, did you have any communication, did you ever have from Wilmington in regard to this 95 cent price, or did you see any outside of this telegram? A. Just as I sit at a desk over here tending to my duty and the Sales Board have their meeting and I enter the minutes when they come from the meeting; I get my part of it, that man gets his part and the other man gets his and we each know what is going on as is appearing in the minutes as they come out to us in this form and I know what is going on in there the same as you know what is going on in this Court Room.

Q. Yes, I do. A. Yes.

Q. Did you ever have a communication that came from Wilmington on the subject except this telegram on the Sales Board? A. Me, personally?

Q. Yes. A. No, sir; the files were there for me to look at.

Q. What files? A. I would not have personal knowledge.

Q. What files? A. The files that we kept to keep track of all the particulars of all the records.

Q. These trade reports? A. No, the file that contains all the information and the approval of the Sales Board of a price authorized to take effect, that would be in the files.

Q. That is the record of the trade board? A. No, sir; all letters written to you, for instance, as the customer, and we have them all in one file in which——

Q. What did these letters refer to during this period? A. To business connected with the company, it was the subject matter.

Q. That is, they referred to prices, didn't they? A. Referring to anything that pertained to the trade.

Q. Did they refer to prices? A. Part of it; yes, sir.

Q. And letters were coming in in May, June and July and all through 1905, weren't they, in regard to prices from Chicago? A. This file was a year or two old; some of them.

Q. Answer my question: Were not the letters coming in from Chicago all through that year in regard to prices? A. Yes, sir.

Q. The Sales Board sat there to authorize prices on application, didn't they? A. Yes.

Q. And during that year they performed that function, didn't they, all through 1905 while you were there? A. Yes.

Q. If an agent in Chicago wanted a price that was below the authorized price, he had to apply for it, didn't he, and have the Sales Board pass on it? A. Yes.

7180 *David S. Brewster—Rebuttal—Cross*

Q. And he did that all through 1905? A. I don't know after that report was made, I don't know what was bid.

Q. Now, during all this time, I understand your testimony to be that the du Pont Company had information that the Buckeye Company was selling its powder at $1.15 and $1.20, is not that your testimony? A. As I remember; yes, sir; the price was about that.

7181 Q. Are you sure about that? A. I have answered your question; I have not got the record in front of me; I am answering from memory.

Q. Are you pretty sure about it? A. I am answering from memory and that is as far as I will go.

The Court: Answer his question.

The Witness: I can't answer it.

The Court: You will have to answer it.

The Witness: I can't answer it except to say I don't know.

The Court: He wants to know whether you

7182 feel sure from your memory?

The Witness: Oh, from my memory? Oh, yes, I feel sure from my memory.

Q. Pretty sure that the prices in there were $1.15 and $1.20 to anyone? A. No, sir; they varied.

Q. What were the limits? A. I don't know.

Q. What was the price the Buckeye Company madé the Willis Coal and Mining Company in 1905 as disclosed by this record? A. I don't know, sir.

Q. Will you pick out one customer on this and state what the Buckeye price to that customer was in May, 1905? A. No, sir.

Q. You can't do it? A. No, sir.

Q. Can you look this list over and state whether it is not true that in May, 1905, the du Pont Company was selling the powder in the Chicago district

to ten times as many names as are on here? A. No, sir, I couldn't tell you.

Q. Will you try to answer that? A. I would not; I would not make the effort because I don't know.

Q. Can you look over it and see whether you think it is a complete list of the customers du Pont Company in the Chicago district in 1905? A. I wish I could but I can't.

Q. Well, you haven't looked at it. A. Yes, I did a while ago.

Q. You looked at one page of it. A. I have no 7184
idea what list of customers they have in that State or in that district.

Q. About how many customers were served by this Chicago office of the du Pont Company? A. I don't know.

Q. About three or four thousand? A. I don't know, sir.

Q. You were there, weren't you? A. In the Chicago office?

Q. Yes. A. I had nothing whatever to do with the black powder end of the business when I went 7185
back to Chicago.

Q. You did when you were in the Sales Department? A. I had charge of dynamite only.

Q. You were part of the Sales Department in Wilmington? A. Yes, sir.

Q. Now, what do you say from your knowledge gained in Wilmington as to whether these 400 customers, how they compare with the total number of customers in the Chicago district? A. I would not know; I have no material matter from which to form an estimate on.

Q. How many trade reports did you go over to make out this report? A. Several thousand came in there.

Q. Several thousand customers? A. No; dupli-

cates; whenever a man went to the same customer three times a week he made a report on it.

Q. But you never got any knowledge from your examination as to how many customers there were in this territory out of your sales knowledge? A. No, sir; never fixed any number in mind.

Q. So that you could have an idea and say whether it was 400 or 4000? A. That is right.

Q. Are you equally accurate in your recollection of the range of prices that the Buckeye made? A.
7187 Yes; I think I know the prices.

Q. Do you know of any one customer in the Chicago district to whom the du Pont Company ever sold any powder at 95 cents? A. No, sir.

Q. You don't? In your examination of these files, did you read this letter at that time in them, sent on by Mr. Rice? (handing paper to witness). A. Sent on where, please, sir?

Q. Sent on to Wilmington. A. Yes. Now, what is it you want to know about it?

Q. I want to know if you looked that over dur-
7188 ing the time you were in Wilmington? A. I could not know that, that has been so long ago.

Q. Won't you look at this Exhibit A-525 and state whether that shows that there was a general 95 cent price authorized for that locality? At that time? (Handing paper to witness.) A. There is no—I don't know as it would be—there is no name here to which that has reference, no company, that is, no consumer.

Q. The Consolidated Indiana Coal Company; it is in Indiana. Mr. Rice authorizes a letter that encloses it? A. In Indiana?

Q. That is one of the States you mentioned, isn't it? A. Yes, I would rather think it was at that time out of Mr. Rice's jurisdiction; Mr. Spencer was following up the United States competition at

that time; they didn't want Rice to go down in that territory.

Q. In June, 1905, just a month after the authorization of the general price that you are talking about—that is, this is June, 1905, you recollect? A. Yes.

Q. Now this letter from Mr. Forbes, purchasing agent of the Consolidated Indiana Coal Company, to Mr. Rice says: "Please allow me to thank you for your courtesy in taking up this matter of reduction in price on powder with your home office, and 7190
to state that I note you decline to meet the cut price of 95 cents." In June, 1905, if that letter is a correct copy, then, your statement is incorrect, Mr. Brewster? A. I don't know anything about that letter, I have told you——

Q. I am assuming that this letter is correct, written at the time. If it is, your statement that there was a general authorized 95 cent price there at that time is incorrect? A. That trade is in Indiana, and in that part of Indiana possibly it may have——

7191

Q. I don't want what they may have done, what do you know about it? A. I don't know.

Q. You included Indiana as one of the States where this price prevailed which you say was a general price to meet the conditions there? A. To prove my statement, I will make another statement——

Q. No, sir, you will answer my question. If this letter is incorrect, your statement is incorrect. A. Positively no.

Q. They are both correct? A. Both could be correct; yes, sir.

Q. How? A. And I will explain why.

Q. All right, go ahead. A. Indiana was in charge of Mr. Spensley who was after the United States competition. Mr. Rice may have thought he could

meet them best down in Indiana and the company would not give him the price of 95 cents to work Indiana on.

Q. Where would he get the authority? A. I don't know.

Q. Where would he have to go to get the authority in June, 1905, to meet the 95 cent price? A. They would not want Mr. Rice to make a price of 95 cents perhaps.

7193 Q. I understand you to say Mr. Rice had charge of that trade in May, 1905? A. Maybe so, maybe the company did not want—I don't believe that the Indiana trade was under his control at that time.

Q. You had forgotten that you had testified a few moments ago that Indiana was one of those States that had that general price? A. It is and Mr. Rice didn't have authority to work Indiana at certain times.

Q. And that is your explanation? A. That is my explanation.

7194 Q. The only one you have? Were the Egyptian and the United States and these other companies making prices through there? A. They had business there; yes, sir, through that territory.

Q. They were meeting the low prices, weren't they? A. I don't remember now what the price was.

Q. Your report covered them all? A. Everything.

Q. What do you think the price was of the Egyptian, we will say? A. Why, around Marion, it was about $1.14 or $1.15.

Q. During 1905? A. Up to the time that I made this statement; how far into 1905 it went, I don't know.

Q. The Excelsior likewise up to $1.15 and $1.20? A. The Excelsior I think got more money for their powder.

7195

Q. Then they were paid $1.25? A. They were off to themselves, they could get more money.

Q. That would be $1.25? A. I don't remember just what it was.

Q. You don't remember that as well as the Buckeye price? A. Yes, I do; just about the same; $1.20, $1.25, depending on the locality.

Q. How high was the United States? A. They were about $1.05 as I remember.

Q. Do you think your memory is pretty good on all these things? A. I think it is.

7196

Q. And just as good or just as bad as it is about the Buckeye? I take it that your recollection is all alike so far as its accuracy goes in regard to all these companies? A. I think I have got a fair recollection; yes, sir.

Q. My question was whether you had a better recollection of any one of them than you have of the others. A. I don't know that I have.

Re-direct examination by Mr. Abbott:

7197

Q. Did anybody during the time after you had submitted this report and previous to the time when this telegram was sent out to Chicago ever make a statement to you as to the purpose or policy with reference to the then price of 95 cents which was—

Mr. Button: I object to that.

The Court: You see that is so general and anybody——

Mr. Abbott: I mean any officer of the du Pont Powder Company.

Mr. Button: We think that is not re-direct.

The Court: Well, it should be some officer —to whom or to whose department it would go.

Q. Well, I will ask you then if Mr. Haskell or Mr. Bumstead or Mr. Eugene du Pont made any such statement to you? A. Yes, sir.

Q. Now state what it was that they stated to you and state which one of these gentlemen it was that made that statement to you. A. Well, the statement was made by Mr. Ferriday for one and Mr. Bumstead and Mr. Haskell and Mr. Patterson.

Q. Well, what did Mr. Haskell say to you? A. I won't attempt to say.

7199

Q. Well, why?

Q. (By the Court.) Do you mean that you have an objection other than the fact that you do not recollect?

A. Yes, that is my objection that I don't recollect the words used; I wouldn't attempt to use it.

Q. Do you remember what Mr. Ferriday said to you? A. I covered that in that one statement for all of them.

Q. Can you give the substance of what Mr. Haskell said to you? A. No, I wont.

7200

The Court: The point is whether now you can definitely say what a particular one of these persons named by you, said to you.

A. No, I won't go back five or six years and quote anybody's statement that length of time.

Q. That is because you don't recollect the exact language? A. I don't recollect the statement; I can give you the intent of the statement.

Q. Well, by "intent" do you mean the substance of it? A. The intent was——

The Court: No, no, the question is whether you mean by the use of the word "intent" the substance of the statement; that is, are you using the two words synonymously.

A. No, sir, I don't—I can't quote the statement, therefore I will make no attempt to quote it.

Q. Well, now, what do you mean, using your own definition of the term "intent"; what do you mean by that? A. The intent of the price that was made.

The Court: No, no, you used the word "intent." He asks you now what do you mean by that; how do you interpret—what meaning do you give to that word "intent"?

7202

A. I mean for a purpose—object in view—intention.

Q. Well, did Mr. Haskell state to you then his intent and purpose in having that price fixed?

Mr. Button: We object to that as leading.

The Court: In the first place, let the witness say what Mr. Haskell said, he is not required, of course, to say it verbatim. You can give the substance.

7203

Q. Well, can you do that, Mr. Brewster? A. Yes, sir.

Q. Well, then, do so.

Q. Do you know what he said to you in substance? A. In substance the——

Q. You do recall? A. Yes.

Q. I will ask you to state what it was he said in substance? A. That the competitors could not make powder at a profit of ninety-five cents.

Q. Anything else? A. Nothing else.

Q. Did he state to you anything in connection with the Buckeye Powder Company at that time? A. All the same—all competitors the same.

Q. Now, who were included within this term of 'competitors'?

Mr. Button: Did he give a list of them?

A. Embodied in the list—the statement I gave him of all the competitors.

Q. And that referred—will you repeat that list again? A. There was the Excelsior; there was the Senior; there was the Buckeye; there was the Egyptian. And the Equitable, the American and the Miami.

Q. Have you seen this report that you made Mr. Brewster, since you made it? A. The report?

7205 Q. Yes, this report which you say you made up at Mr. Haskell's—— A. No, sir.

Q. Mr. Brewster, will you tell us what Mr. Eugene du Pont said to you about the purpose, if anything—about the purpose of making that ninety-five cent price? A. No, sir.

Q. You mean that you will not tell us? A. I cannot tell you, I don't know.

Q. You don't remember? A. No, sir.

Q. Well, now, then what did Mr. Bumstead say to you about that matter? A. In direct quotation?

7206 Q. No, to the best of your recollection, as a substance? A. To the best of my recollection, this price is low enough to get the business.

Q. What business did he speak of? A. The competitive black powder business at that time.

Q. Now, what did Mr. Ferriday say to you? A. Mr. Ferriday said nothing to me at that time; it was not in his district, his district was the Eastern division, mine was the central.

Q. Then you didn't get any information from him regarding that matter? A. Not direct information bearing upon that subject directly, no, sir.

Recross-examination by Mr. Button:

Q. Mr. Brewster, where were the conversations you had with Mr. Haskell and Mr. Bumstead? A. It was general talk.

Q. Where? A. In the Wilmington office, in the sales office; I forget the name of the street; the old sales office there.

Q. In your office? A. The offices were all together; that is separated by board partitions; where I had a desk, part of them were, and part of them were in Mr. Haskell's room.

Q. This conversation with Mr. Haskell first, where did that occur? A. There were several conversations I had with Mr. Haskell at my desk, and one in his room. 7208

Q. When was the conversation? A. I won't say; I don't know.

Q. Well, was it in May, 1905? A. I think so; yes.

Q. Are you sure about that? A. Quite sure; yes, sir.

Q. When was the conversation with Mr. Bumstead? A. Just about the same time that I gave him the statement. That was, as I remember, early in May.

Q. Where was that conversation? A. In his room, next to the general sales room.

Q. What was Mr. Bumstead's position at that 7209 time? A. Assistant director of sales.

Q. In charge of the central division? A. In charge of the central division.

Q. And Mr. Haskell was over him? A. Was the head of the sales department.

Q. Then you were under Mr. Bumstead? A. I was.

Mr. Button: That is all.

Mr. Abbott: That is all.

7210 *Robert C. Bruce—Rebuttal—Direct*

ROBERT C. BRUCE, called as a witness in behalf of the plaintiff in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Bruce, where do you live at the present time? A. Sarasota, Florida.

Q. Where did you live during the years 1903, 1904 and 1905? A. Joliet, Illinois.

7211 Q. What business were you engaged in at the time? A. In the stone, coal and powder business.

Q. What kind of powder did you use? A. In 1903 I used Buckeye powder——

Q. I mean as to the character of the powder; whether it was blasting powder? A. Blasting powder, and also the E. I. du Pont or Hercules dynamite.

Q. You have answered the question as to the kind of powder you used, saying that you were buying powder then of the Buckeye Powder Company? A. Yes, sir.

7212 Q. And buying dynamite of the du Pont Powder Company? A. Yes, sir.

Q. With whom did you have your business for the purchase of the dynamite you purchased of the du Pont Powder Company? A. With Mr. E. C. Rice and Mr. Ed Rice of the du Pont people.

Q. Where was Mr. E. C. Rice loacted? A. In Chicago, Masonic Temple.

Q. What was his position, if you know, at that time? A. Which Mr. Rice?

Q. You said Mr. E. C. Rice. A. Mr. E. S. Rice.

Q. What was his position, if you know? A. He was general manager, as I understood it, of the Chicago office.

Q. Of what? A. Of the du Pont Company.

7213

Q. Did you at any time have any negotiations with Mr. Rice, or in his office, with reference to the purchase of black blasting powder; and, if so, describe what that was? A. I don't fully understand the question.

Q. Well, were you ever approached by any person in connection with the du Pont office at Chicago to induce you to buy black blasting powder of the du Pont Company? (Objection overruled). A. Before I had taken over the agency for the Buckeye powder I was buying powder from the Laflin & Rand people; but after taking on the Buckeye powder I had several conversations with different representatives of the du Pont people in regard to taking the agency of the Buckeye powder, buying the powder from them again——

7214

Q. About when was it you had a conversation with the representative of the du Pont Powder Company, if any, concerning the purchase of black blasting powder of that company? A. I will say it was in the fall of 1904.

Q. With whom did you have that conversation? A. With Mr. Ed Rice.

7215

Q. Who was Mr. Ed Rice? A. He was a brother of E. S. Rice and he had charge of the——

By Mr. Button:

Q. Are you speaking of your personal knowledge as to what he had charge of? A. Personal knowledge; yes.

Q. Where did you get it? A. From letters written to me from the du Pont offices, signed by their representatives and respective officers.

Q. What was it he had charge of? A. He had charge of the agencies, or, to put that right, he had charge of the consignment agencies of the du

Pont Powder Company out of Chicago; in other words, the agencies from which the powder and dynamite was placed on consignment.

By Mr. Abbott:

Q. You have testified that there were negotiations with you for the purpose of getting you to take the agency of the du Pont powder; is not that correct? A. Yes, sir.

7217 Q. At what point? A. Joliet, Illinois.

Q. And it was that kind of an agency you have just mentioned, a consignment agency? A. The consignment agency was on dynamite, while the powder was not; the powder was direct sale.

Q. I will ask you to state whether you had a conversation with Mr. E. S. Rice at any time with regard to the continuance of the purchase by you of dynamite. (Objection overruled.)

Q. Answer that. A. Yes, I had such a conversation.

7218 Q. State what that conversation was. A. The conversation was brought up——

The Court: No. You must be more specific. You see you cannot ask about any conversation he had with Mr. Rice, but some specific conversation.

Q. Did you have more than one conversation with Mr. Rice? A. I am speaking of one certain conversation.

The Court: I want you to be more specific. It is not that you cannot show any conversation—and when I use the word "any" I mean any particular one—wherein the question of dynamite was considered, but

simply whether he had a conversation with Mr. Rice in which Mr. Rice said unless he gave up Buckeye powder he could not have the agency of the dynamite; that is the only thing that is rebuttal.

Mr. Abbott: Very well. I will put the question in that way.

Q. I will ask you whether you had a conversation with Mr. Rice in which he said that if you did not cease using Buckeye black blasting powder he would refuse to sell you dynamite? (Objection overruled). A. I had a conversation with Mr. Rice—— 7220

The Court: Say yes or no, and then you can explain it.

Mr. Abbott: Yes; answer that yes or no.

A. Yes, sir.

Q. Now you can explain.

The Court: You had better fix where and when, now. 7221

Q. When was this conversation? A. As near as I can remember, in the latter part of the year 1904.

Q. Where was it? A. In the office of the du Pont Company, in the Masonic Temple in Chicago.

Q. Now, what was the conversation? A. The conversation was one in which Mr. Rice asked me to give up the agency, or give up buying Buckeye powder——

Mr. Graham: What did Mr. Rice say?

The Court: Yes.

A. In which Mr. Rice intimated——

Mr. Graham: We object to that.

The Court: What he said, just put yourself in Mr. Rice's place and say what Mr. Rice said to you.

Q. State all the circumstances in connection with it.

Mr. Graham: Let him finish the conversation first.

Mr. Abbott: Certainly. I think the witness should be advised, if your Honor please, that he does not have to remember the exact language.

The Witness: I am trying to put it in the language, in order to bring out the points.

The Court: No, put it in his language, mentally taking a picture of you being there and what took place before, keeping that in your mind, and when you come to this subject, then say what he said.

The Witness: He asked for a direct conversation, and I had to bring this up in order to bring out that one point.

The Court: Bring yourself down to this point, and then if it is necessary to explain what he said previously you will be asked another question.

A. Mr. Rice stated to me that unless I quit buying the Buckeye powder that they would cancel my agency for the du Pont dynamite.

Q. Did you at any time have another conversation with Mr. Rice? A. Not with Mr. E. S. Rice.

Q. With whom was the other one? A. That was with his brother, Ed Rice.

Q. Where was that? A. That was also in the office in Chicago.

7225

Q. When was it? A. It was along about the same time of year.

Q. Was there anything further said by Mr. E. S. Rice to you at this conversation that you have just detailed with reference to your relations to the Buckeye Powder Company or the relations of the du Pont Powder Company to the Buckeye Powder Company? (Objection overruled.) A. Yes, sir.

Q. Then, I will ask you, Mr. Bruce, whether Mr. Rice told you at that time that the du Pont Powder Company would spend hundreds of thousands of dollars, if necessary, to put Mr. Waddell and the Buckeye Powder Company out of business, or any similar statement? A. He made a statement——

7226

Mr. Button: One minute.

The Court: Can you say yes or no to that?

A. Yes, sir.

Q. Now state just what was said as near as you can recall. A. Mr. Rice stated to me——

7227

Mr. Graham: On that particular point?

Mr. Abbott: Yes——

A. (Continuing:)—that the du Pont people could and would put the Buckeye people out of business, regardless of the amount of money to be spent. I don't think there was a specific amount stated.

Mr. Abbott: That is all.

Cross examination by Mr. Button:

Q. What was the date of the suit that the du Pont Powder Company brought against you, when did they sue you?

Mr. Abbott: We have not inquired about any suit.

The Court: No, but this goes into the *res animus.*

Q. When was a suit brought against you or your concern? A. I don't remember the date.

Q. About the date? A. I don't remember the date or the year.

Q. Some two or three years ago? A. More than
7229 that.

Q. About 1908? A. I would not say for sure what the date was.

Q. A suit was instituted, was there not? A. I think there was; yes, sir.

Mr. Button: That is all.

Redirect examination by Mr. Abbott:

Q. What was this suit about, Mr. Bruce? A. A suit with regard to dynamite bought and for which I refused to pay until certain commissions which
7230 were due me for dynamite sold on the Chicago Drainage Canal under an agreement with Mr. Oliver, then general manager of the Wilmington office, which they tried to prove at that time were not coming——

Q. What was the result of that suit? A. It was settled out of Court.

Q. Have you any animus or feeling of any kind against Mr. Rice on account of that suit? (Objection overruled.) A. No, sir.

Q. Do you know anything about whether Mr. Rice himself had anything to do with instituting that suit? A. No, sir.

Recross examination by Mr. Button:

Q. You paid a considerable sum of money to the

du Pont Company as the result of that suit, did you not?

Mr. Graham: Yes or no.

The Court: Considerable is not definite——

Q. Well, seven or eight thousand dollars? A. No.

Q. What amount?? A. I could not state the amount.

7232

Mr. Button: That is all.

Redirect examination by Mr. Abbott:

Q. You never objected to paying what was honestly due them? (Objection overruled.) A. No, sir.

R. S. WADDELL, called as a witness for the plaintiff in rebuttal, having been heretofore sworn, testified as follows: 7233

Direct examination by Mr. Abbott:

Q. You heard the testimony yesterday of Mr. Pierce, did you not? A. I did.

Q. And you also heard the testimony of Mr. Olin, which was given some weeks ago, as a witness for the defendants? A. Yes.

Q. Something was said by Mr. Pierce yesterday with reference to certain bed plates, and the statement was made by him that there was a crack in the bed plate. Will you tell the facts in regard to that matter. (Objection overruled.) A. There was in the bed plate of wheel mill No. 3 a small chilled crack, which was about 18 inches in length,

scarcely observable to the eye. It was a hair line. But as a means of saving any shock that might come from an explosion to that mill and protecting it from spreading, increasing the crack, we put a band around the marginal plate which was 7 inches in thickness, a steel plate. We put a 7 inch band of wrought iron around that and fastened it with draw-bolts. We put it on very hot, red hot, and it shrunk on, tightening that, protecting the plate, making it serviceable.

7235 Q. Did you at any time have any difficulty with the bed plate after that? A. Not the slightest.

Q. Mr. Pierce also made some reference to a cylinder of the engine which had been cracked. What are the facts in regard to that matter? A. The cylinder was not cracked. It was a bed plate under the cylinder that was slightly cracked.

Q. Did it in any way interfere with the efficiency of the engine? A. No.

Q. Was it ever repaired to your knowledge after the plant passed from your possession? A. No;

7236 we ran it four or five years without paying any attention to it.

Q. In regard to the manner in which you kept your charcoal, it was stated by Mr. Pierce that you kept it in something like a corn-crib. I will ask you to state what the facts were in reference to the manner in which you kept your charcoal. A. A part of that building in which we stored the charcoal had small cracks to allow the air to pass through. We had had an experience in putting charcoal into a tight building, where it could not receive air. We had had a fire from spontaneous combustion of the charcoal. After that we constructed our building giving slight air vents; but they were not wide cracks that would let in moisture, and the roof extended out over the sides so as

to thoroughly protect it. I should build another one just like it.

Q. Mr. Pierce stated that the boilers were not properly constructed, that you did not have enough of them, because it required time to clean the boilers and that you had to have shut-downs in order to do that cleaning. What were the facts in regard to that matter? A. We cleaned the boilers for four or five years, shutting down at midnight on Saturday night, and at noon on Sunday we had cleaned the boilers and had started up Sunday evening. 7238 We did not require three or four days, but three or four hours, as an ordinary rule.

Q. Complaint was made about the character of your soda storage house. I wish you would state what the facts were with reference to your storage house and the character of the buildings. A. The storage house was a brick building with 18-inch walls, laid up with cement, a very solid, permanent building, with a six-inch concrete floor, laid on the ground or on cinders, a very substantial building, and put outside the powder line, that is, not in the line of buildings. 7239 It was on the hillside above, to protect it from fire. If nitrate of soda was stored in a wood building, or where it comes in contract with charcoal or wood, any kind of carbon, during a fire, if water is thrown upon it makes a violent explosion, just as it would if it were then finished powder, and we would be prevented from using water on the line we had for protecting our buildings from the hydrant in case of fire if our soda was stored there. So we stored it on the hillside above, in a fire-proof building.

Q. That soda house was kept, maintained, by Mr. Olin after the plant passed from your possession? A. Yes, as long as I knew it, a year and a half afterwards.

7240 Q. With reference to the horizontal press which Mr. Pierce stated had a crack in it somewhere, which he never saw, tell us what the facts were with reference to that matter? A. No one ever saw a crack in it. There was no crack in the cylinder at all. There was a minute sand hole that we were not able to see with the eye. We could find it with a glass. Under severe pressure, a pressure of 600 tons, the heaviest pressure that was on the cylinder, when we were using oil, it would let out
7241 a vapor,—the gasoline or the lighter parts of the oil, would come from this hole. Our men ordinarily stopped it by taking the peon of a hammer and hitting it. They closed it up.

Q. Where was this press purchased? A. It was purchased of the Allentown Foundry Machinery Company.

Q. What was the factor of safety of that press? A. Seven.

Q. And how much pressure would that allow before any injury would result? A. I ran it up to a
7242 thousand pounds on the gauge, and the limit we always used, the highest limit was 6,000 pounds. I ran it up to 10,000 pounds.

Q. Was this factor of safety guaranteed? A. Yes, by the Bethlehem Steel Company.

Q. As to those gear wheels, Mr. Pierce stated that the heads of some of them were too light. What are the facts in reference to that? A. The gear wheels?

Q. Yes, gear wheels at glaze. A. The glaze barrels, he said the heads were too light. The heads had been ordered from the same people that made the heads for glaze barrels for the Egyptian Powder Mills, where Mr. Pierce had operated; but we took out the heads that that company had delivered us and put in ones of more than double strength, the ones that were in there when I sold the plant.

Q. Some criticism was made of the condition of the wheel mills with reference to the clutches, motors, and I-beams. I wish you would describe what the facts were in reference to those matters. (Objection sustained.)

Q. Then, what was the fact so far as these clutches were concerned? A. It is necessary for mills operated like Mr. Pierce has been accustomed to operate, by a main shaft, to have a clutch to throw in the power, but it is wholly unnecessary where you have a motor, where you can pull a switch. We had lines stretched along for fifty feet above or below our motor, so that a man approaching a mill could take a rope and he could shut his motor off, such as they did in the kind of mills where they work from a driving shaft. 7244

Q. Was that method of handling that machinery, wheel mills, continued after the plant was purchased by Mr. Olin? A. We only had a clutch on one mill, that was on No. 4. That came with the mill from Prox & Brinkman at Terre Haute. We had had a clutch in, but we did not use the clutch. We used the motor. 7245

Q. Was there any change made in the method of operation of these various wheel mills after the time you disposed of the plant to Olin? A. No. I ran it a year for Olin without making any changes.

Q. In regard to the separator, a great deal of testimony has been given both by Mr. Olin and by Mr. Pierce with reference to your separators. I wish you would describe to the Court and jury exactly what these separators were, how they were arranged, and what, if any, changes were made by Mr. Olin after he took possession of the plant, in the separators. A. Both of them were boxes about 16 inches high on the side. The Buckeye separator was 32 inches wide and 100 inches long. Our screens in the Buckeye separator were one above

another, slipped in at the back end, the screen surface was 32 inches by 96 inches, two and one-half feet by eight feet, perforated metal. The side perforations were exactly the same size used for all powder mills for sizing powder. The box that Mr. Olin sent us was 24 inches wide instead of 32, and 48 inches long instead of a hundred. His screen surface was just one-third the square inches of the screen surface we had in the Buckeye. Both separators were driven by a shaft, with eccentrics on
7247 the shaft, with a one and one-quarter inch throw; that is, they moved the box sideways an inch and a quarter from the surface, five-eighths from the center each way. Both of them were run at the same speed. Mr. Olin used in his separator wire cloth, and the wire cloth, the same sized mesh of the diameter of the holes that I had in the perforated metal. Our metal was very thin, made of zinc, 20-gauge, and the size perforations were exactly the same; that is, 500/1000 of an inch for CC; 400/1000 of an inch for C; 300/1000 of an inch for
7248 F, 200/1000 of an inch for FF; 125/1000 of an inch, or an eighth of an inch for FFF, and then the dust below that. The powder was dropped on the end of the top screen and shaken down over that screen and passed out at a spout for that special screen. The next sized grain passes off the next and goes off as a separate chute, into a separate bin. So there are six bins and there is a bin for each screen that goes off, separating the different sizes, and it is an utter impossibility to take a coarse grain that has passed off of an upper sieve and put it into a finer grain. The finer grain would not travel eight feet, it being shaken all the time, sifting, and passed off with this coarse grain. There is a possibility always of some fine grains being carried on the top of coarse grains and being carried over, but that is trivial.

Q. What was the object, if you know, of the installation of this new separator by Mr. Olin? (Objection overruled.) A. That separator was sent to the mills by Mr. Olin about March, the first of March, 1909. He bought the mills September 19, 1908. It was a small separator to be installed for the separation of rifle powder. He never separated a grain of blasting powder on anything but the Buckeye separator during the year I remained with the Western Powder Company.

7250

Q. Then he continued to use the same separator which you had for the making of black blasting powder? A. Exactly the same for every pound he made during that year. He commenced with rifle powder the first of May.

Q. You have stated that the plant was purchased by Mr. Olin, I believe, on the 18th of September, 1908. You took possession then? A. Yes, sir.

Q. When did he begin running? A. About the 10th of October, 1908.

Q. Was anything done in any way whatever for the purpose of putting the plant into a different 7251
condition between the time Olin took possession and the time he began running? A. Nothing but cleaning it up and cleaning the boilers and getting everything ready to run. There were no repairs put on.

Q. Mr. Olin stated on his examination that he preferred another method of unloading soda from that which you had because it was a more economical arrangement. Will you state what the facts were with regard to your method of unloading soda in common use in powder mills? A. That depends upon the location of the mills with relation to the railroad track, whether you have storage below the track or above it. Our plant was on a level higher than the railroad tracks. We had a switch in. We had to go up the hill or else around the hill into

the powder mills. There was only one thing we could do—to go up—and we used an incline, which was very cheap. Our car from the soda house came down. It was a flat top car. The lower part of it was higher than the upper, so as to bring it to a level, and when it arrived at the railroad car it was on a level with the car door, and we trucked the soda, it comes in 200 pound bags, right on to that car, and stood the bags up, and we would take up 12 to 18 bags up to the soda house, rip it open and dump it. I think it was exceedingly economical.

Q. Do you know when the method that Mr. Olin subsequently put in for that purpose was installed? A. Yes, sir.

Q. When? A. About 1911.

Q. What, in your judgment, was the advantage, if any, of that method over the method which you had had? A. I think it was very much more expensive and not so satisfactory. It required more handling.

Q. Mr. George Westerly, who was one of the witnesses who testified here by deposition, testified that he bought one hundred kegs of Buckeye powder in 1907 of an agent by the name of Foster. Did you ever have an agent by the name of Foster? A. No; I never heard of him.

Q. Mr. Lawrence Higbee testified that a Buckeye agent, not naming him, went around and sold powder to the men after he had bought some powder of the Buckeye Powder Company. I would like to ask you whether or not any person was authorized to act for the Buckeye Company as agent to make any such sales as that, to make sales to the men in the employ of operators? A. No.

Q. Very well, there was no agent of the Buckeye Powder Company that sold any powder under those circumstances? A. No, we never had a man there.

Q. The names of Jones and Peppard have been mentioned here in connection with a number of depositions as persons who were agents of the Buckeye Powder Company and who from time to time made sales to those persons. What are the facts with regard to any agency of Jones and Peppard, so far as Buckeye Powder is concerned? A. Jones and Peppard were two coal miners. They were cousins to each other. They had a little coal mine in one of the hills near Peoria and during the summer months when they did not operate their mine 7256
they went around and tried to sell powder at other mines in that locality. Beginning about the 1st of May, 1905, I paid Jones $3 a day, until, I think, the 1st of July, 1905, about a month and a half or two months; and Pepper was with us I think three months at $3 a day. After that, after they ceased, and during that time, they would go to each of these little mines in East Peoria, trying to sell powder. I gave them a net price, so much at the mill, and they made all they could make above that. In order to insure our getting paid for it and to carry 7257
the account, do the bookkeeping, we charged the powder at what they sold it directly on our books against the customer. If they sold it at $1.10 and we had given them a dollar price f. o. b. the mills, they made the ten cents, and when we collected that we would give that extra commission to Jones or Pepper. We never had to pay them anything. We gave it all away. They visited these mines and sold these little lots of powder about which we had to take back to settle up, or get it shipped back to the mill.

Q. You heard the testimony of Mr. Thrush, did you not, given on the stand a few days ago? A. Yes.

7258 *R. S. Waddell (in Rebuttal)—Direct*

The Court: You had better give his Christian name. There were several Thrushes.

Mr. Abbott: This was Mr. Alec Thrush.

Q. (Continuing): You heard his testimony with reference to a conversation which he said you had with him, in which you stated that you desired to employ him for certain purposes in a certain mine on a certain basis, did you? A. Yes.

7259 Q. Now I would like to ask you to state what are the facts with reference to any conversation of that character you had with him. A. I employed Mr. Thrush at $1 a day to go about the mines of Applegate & Lewis after his day's work was done, to assist other men, other miners, in the proper use of Buckeye powder. He was a very successful miner with that powder. I agreed to pay him a dollar a day. He was employed for thirty days. I paid him $30 for that work, and Mr. Thrush then sent me——

Q. Wait just a moment, please. Mr. Thrush's statement to the effect that you employed him two

7260 months is or is not correct? A. No, it is not. Thirty days, thirty dollars.

Q. I show you a paper writing marked Plaintiff's Exhibit 1421 and ask you to look at it and state whether you know what it is. A. (After examination) That is the voucher.

Q. State whether you know what it is. A. Yes, I know.

(Paper was received as an exhibit and marked Plaintiff's Exhibit 1421, and read to the jury as follows):

Accounts Payable.

Buckeye Powder Company, In favor of
Mining and Blasting Powder, Name—A. Thrush
Monroe and Main St. Peoria, Ill.
Address———Hanna City, Ill.

1906.	Description	Invoice No. Amount	Total	Acc't. No
Oct. 22	For introducing Buckeye Powder in mines of Applegate & Lewis Coal Co.	30.00	G. E.	7262
	$30.00	Oct. 22, 1906.		

Received of Buckeye Powder Company Thirty dollars in full of above account, A. Thrush.

* * * * * *

Accounts Payable.

Buckeye Powder Company,

Month of Oct. 1906 No. 678
Voucher Record Folio. Distributed. Amount $30.00
Cash Book Page. Audited Check No. 2373 7263
In favor of
A. Thrush.

Division.	Acc't. No.	Amount.	Total.
Gen'l Expense.			

Q. This employment of Mr. Thrush in that capacity was with the consent and knowledge of the owners of the property, was it? (Objection overruled.) A. At the request of Applegate & Lewis.

Q. Did you have any further conversation with Mr. Thrush at or about the time you made this payment to him which has been referred to here? A. Yes.

Q. What was that conversation?

7264 *R. S. Waddell—(In Rebuttal)—Direct*

The Court (after argument): Of course it must relate to some particular conversation.

Q. Well, any conversation with Mr. Thrush relating to the employment of Mr. Thrush in Applegate & Lewis' mine. A. Yes; I had such a coversation.

Q. What was that conversation? A. Mr. Thrush said that he did not think I was paying him enough and said if I would give him $50 a month—what his brother was getting from Dooley Brothers, that
7265 he could make an arrangement with his brother to let one-half du Pont powder and one-half Buckeye powder be used in that mine. I told Mr. Thrush I would not pay a nickel and I didn't require his services any longer. We ceased at that time. I did not make any offer to him of any commission. I quit.

Q. You heard the testimony of Mr. Rice, who was on the stand in behalf of the defendant a few days ago, did you? A. Yes.

Q. You heard his testimony with reference to a
7266 certain conversation which he alleged he had with you at Kansas City in 1901 or 1902, I believe? A. Yes.

Q. I will ask you to state, then, whether at that time you had any persons or parties at that handicap meeting? A. Yes.

Q. How many? A. I took thirty men with me, shooters, to the Kansas City tournament.

Q. Do you know whether Mr. Rice had any persons or a party of persons at that time as his guests? A. He had about sixty from the Chicago district.

Q. What kind of cars were there that were used on this line that ran to the place where the handicap meeting was held, and from there to Kansas City? A. They were simply street cars, very short

cars. That was the end of the line, the stub end of the line, at the bridge where we held the tournament.

Q. And how were the seats arranged in those cars? A. A seat on each side.

Q. With an aisle in the center? A. An aisle in the center.

Q. What was the condition of those cars with respect to their being crowded or otherwise whenever you traveled on them? A. All that could 7268
hang on to the car were there all the time, when we were going home in the evening, about 700 men, moved by one little railroad.

Q. Did you yourself participate in the handicap? A. Yes; I shot in all the handicaps.

Q. Did you have your own shooting paraphernalia with you? A. Yes.

Q. And carried it back and forth with you? A. Yes, as all sportsmen did.

Q. Did you or did you not sit in one of these seats with Mr. Rice? A. No; I didn't mix with Rice at all. 7269

Q. Did you at any time while you were on a car such as you have described, or any other car, have any conversation with Mr. Rice whatever? A. No, none.

Q. Will you state what is the condition of the coal producing trade within a radius of ten miles of Peoria, if you know? A. Within ten miles of my mills the total consumption of powder every year would be 12,000 kegs.

Q. Within a radius of 20 miles, what would it be? A. 50,000 kegs.

Q. Within a radius of 30 miles, what would it be? A. 55,000 kegs.

Q. Within a radius of a hundred miles what

would it be? A. That would take in the Springfield district, which is outside the Peoria district.

Q. Then, within a radius of 75 miles.

The Court (to the witness): Within a radius of so many miles but excluding that which falls within some other district than the Peoria district.

A. 85,000 to 95,000 kegs a year.

7271 Q. And that is all told, whether under contract or otherwise? A. Yes.

Q. Do you know how much of that was under contract during 1907? A. Yes, sir.

Q. Was it possible, Mr. Waddell, under conditions which have been stated by Mr. Haskell, the testimony which has been read to you, that you could have operated your mills at a profit with that business, had you secured all of it? (Objection overruled.) A. No. For this reason: May I explain?

7272 Q. Yes. A. Mr. Haskell was wrong in stating that my soda was contracted at a low price. It was not. I could not make powder and sell it at a profit within the Peoria district at 95 cents.

Q. Did you make any effort to operate your mills to their capacity during that period, Mr. Waddell? (Objection overruled.) A. I operated the mills to the utmost capacity that I was able to market my powder at all times, from the time I started until I sold out.

Cross examination by Mr. Button:

Q. In speaking of this nitrate price, as far as you went, what percentage of nitrate—95 per cent or 96 per cent—were you referring to? A. Nitrate of soda?

Q. Yes. A. I was speaking of 96 per cent. There is a difference ordinarily of 2½ cents or 3 cents between 95 per cent and 96 per cent nitrate of soda.

Q. Which were you speaking of? A. 96 per cent, the maximum price being $2.75 in 1907, and I think I have had a quotation as low as $2.25 in the fall of 1907 or late summer.

Mr. Button: I think that is all. 7274

DEFENDANTS' SUR-REBUTTAL.

DALE BUMSTEAD, called by the defendants as a witness in sur-rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Button:

Q. Where do you reside? A. Chicago.

Q. You are an employe of the du Pont-de Ne- 7275
mours Powder Company? A. Yes, sir.

Q. Were you in the years 1905 and 1906? A. I was in the employ of the company, but not in Chicago during those years.

Q. Where were you during those years? A. In Wilmington.

Q. What was your position? A. Assistant director of sales.

Q. Of any particular division? A. Of the Central Division.

Q. Do you know a man by the name of Brewster? A. Yes, sir.

Q. What is his name? A. David S. Brewster.

Q. Was he working there then, or a part of that time? A. Yes.

Q. In what position? A. Clerk in the office.

Q. Did he organize any competitive division there himself? A. I am sure I don't know as to that.

Q. Was he under you? A. He was.

Q. Was Mr. Eugene du Pont there also? A. Yes, sir.

Q. What was his position? A. He was also an assistant director of sales.

Q. Was he under you? A. He was associated with me.

7277 Q. In May, 1905, or thereabouts, do you recollect some 95 cent prices being made in the Central States? A. I do.

Q. Was that a general price? A. No, sir.

Mr. Abbott: I object to that in that form. I think the witness ought to be interrogated with reference to the number.

The Court: This is sur-rebuttal. You will have to be more specific; you cannot be as general as that.

Mr. Button: I had understood that Mr.
7278 Brewster testified it was a general price.

Q. Then, was this price made to everybody in any particular State? A. It was not.

Q. Was it made to everybody in Illinois and Indiana? A. It was not.

Q. Was there any telegram sent by you or any one, to your knowledge, authoriging any such general price at that time? A. No, sir.

Q. Or at any other time? A. No, sir.

Q. Did Mr. Brewster have a conversation with you at Wilmington some time about May, 1905, about the purpose of some alleged 95 cent price, in which in substance you stated to him that this 95 cent price was low enough to get the business of the competitive black powder companies, and so forth? A. No, sir.

Q. Nothing of that sort? A. I recall nothing of the sort.

Q. How were these prices made; that is, the 95 cent price—such as were made; what was the *modus operandi* there? A. The field representatives of the company made application to the assistant director of sales in charge of any division of business for permission to makea price. The assistant director of sales presented the matter to the sales board, and the sales board in turn decided whether or not such application would be granted. 7280

Q. Were these 95 cent prices, such as were granted, granted in accordance with that machinery? A. They were.

Cross examination by Mr. Abbott:

Q. Were you the only person in connection with the business of the du Pont Powder Company at Wilmington who would have authority to send out a telegram in reference to these prices? A. No.

Q. Who else would have that authority? A. Mr. Eugene du Pont and my superiors. 7281

Q. Who? A. Mr. Eugene du Pont, my associate, or my superior.

Q. And who were your superiors? A. My superiors were Charles L. Patterson and J. A. Haskell.

Q. Do you know whether either of these other gentlemen whose names you have given here sent out any such telegram at that time? A. I do not.

Q. And you say absolutely that it was not a general price that prevailed in these States? A. It was not a general price.

Q. It was made only to specific customers? A. Yes.

Q. You testified in the Government case, did you not? A. I did.

Q. Do you remember testifying as follows: "Q.

7282 *Dale Bumstead—(In Sur-Rebuttal)—Cross*

What territory did the price of 95 cents prevail in? A. It prevailed in Illinois and Indiana. Q. Illinois and Indiana? A. Yes, sir. Q. What was the price per keg in other territories, other districts? A. The price per keg in other districts I cannot recall, except possibly the State of Iowa, and that was $1, as I recall it." Did you so testify in the Government case?

Mr. Button: I would like to see that.

7283 Mr. Abbott: Here it is, in the Government record.

C. Can you answer that question? A. Not directly.

Q. Why not directly? Can you not answer that question? A. I think I made that statement. The statement that the price prevailed does not mean that the price was general.

(Motion to strike out sustained.

Q. Did you have anything to do with requesting
7284 Mr. Brewster to make a report on competitive conditions about that time, May, 1905? A. No doubt.

Q. Did he make such a report at your request? A. He made many reports.

Q. Did he make a specific report at your request concerning competitive conditions which prevailed about 1905? A. He made many reports.

Q. Well, to whom? A. He made many reports to me.

Q. Did he make a certain specific report, which took him a period of several months, at that time? A. I don't see how I can answer that, unless—

The Court: At one particular time——

A. (Continuing:)—you tell me——

Q. Mr. Abbott (continuing): From March, 1905, to May, 1905? A. I reply that he made a number of specific reports.

The Court: During that period?
The Witness: The time, please?
Mr. Abbott: I beg your pardon?
The Witness: The time within which you wanted to know?

Q. How often was he required to make a report? 7286
A. Whenever I asked for it.

Q. How often did you ask him? A. I am sure I don't remember.

Q. Can you give an idea? A. No.

Q. Why can you not? A. Because I asked him for reports frequently.

Q. Tell me how frequently. He was under your control, you say. Tell us how frequently? A. Whenever I wished a report as to such conditions I asked him and he gave it to me.

Q. Now, you can tell us about how often you asked him to make such reports? A. I cannot. 7287

Q. Not at all? A. Not at all.

Q. I show you Plaintiff's Exhibit 1437 and ask you to state whether that is the report you asked him to make? A. I believe that is a report which I asked him to make.

Q. Have you seen it? A. Briefly.

Q. Have you examined it recently? A. I have examined it briefly.

Q. How recently have you examined it? A. Yesterday evening.

Q. And that in your judgment is the report and the only report he made concerning competitive conditions from March, 1905, to May, 1905? A. Not the only report.

7288 *Dale Bumstead—(In Sur-Rebuttal)—Redirect*

Q. Have you examined other reports he made during that period? A. I have not.

Q. Then do you say that there are no other such reports? A. I do not say that there are no other reports, because I am convinced that there must have been many other such reports during that period.

Q. Did you request him to make other such reports during this same period? A. I don't know.

7289 Q. Do you know whether this is the complete report? A. I do not.

Q. You do not know whether parts of it may have been detached? A. I do not.

Q. You stated, I believe, that you had no conversation with Mr. Brewster with reference to the result of this report, concerning competitive conditions, which he turned in about May 1st, 1905? A. I don't think I made that statement.

Q. Then I will ask you, did you have any conversation with him concerning a report which he made about May 1st, 1905? A. I recall no conver-

7290 sation with him.

Redirect examination by Mr. Button:

Q. You were quoted some of your testimony in the Government case as to what territory a 95 per cent price prevailed in, which seems to be found at page 154 of the record in recross examination. Now, I ask you if you did not testify as follows in regard to the 95 cent price on your direct examination, as you recollect? "How low has the price of black powder gotten in your district since you have been there? I mean how low has the price which your company has charged gotten? A. Ninety-five cents per keg in carload lots of eight hundred kegs or more. Q. Who was the most responsible for getting the price

down to that point? A. I think the honors were divided. Q. Between whom? A. Between the American Powder Company, the Buckeye Powder Company, the Miami Powder Company, the United States Powder Company, and others." Is that what you said in regard to the 95 cents price? A. It is.

Q. Then you were asked on your cross examination: "Q. What territory did the price of ninety-five cents prevail in"—— That was read to you by Mr. Abbott. Did you refer at that time to any general ninety-five cent price? A. I did not. I referred to the 95 cent prices that had been quoted. 7292

(Motion to strike out denied.)

Q. When did you first go to Chicago and take charge? A. I first went to Chicago and took charge in the latter part of 1906.

Mr. Button: That is all.

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JONATHAN HASKELL, recalled in sur-rebuttal by the defendants:

Direct examination by Mr. Button:

Q. Mr. Haskell, in May, 1905, were you head of the sales department of the du Pont Powder Company? A. Yes.

Q. At that time was there a clerk in the office at Wilmington by the name of David S. Brewster? A. Yes.

Q. In your department? A. Yes, sir.

Q. At that time was any telegram sent from that office to the Chicago office or the St. Louis office authorizing a general 95 cent price in some of the Western States? A. There was not.

7294 *Jonathan Haskell—(In Sur-Rebuttal)—Cross*

Cross examination by Mr. Abbott:

Q. Might not a telegram have been sent by some other person in connection with the Powder Company and not yourself? A. The invariable practice at that time was for the assistant director of sales to send to the branch offices information regarding prices.

Q. And he would be the only person authorized to do that? A. The only person.

7295 Q. And who was he? A. Mr. Bumstead was in charge of the Illinois and Indiana territory at that time.

Mr. Abbott: That is all.

Thereafter a statement of average monthly prices of nitrate of soda was received in evidence, under stipulation of counsel, as Plaintiff's Exhibit 1429.

Thereafter a document produced by the defendants as a report of David S. Brewster, was received in evidence, under stipulation of counsel, as Plaintiff's Exhibit 1437.

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Thereafter certain documents, being summaries from the books of the Buckeye Powder Company were received in evidence, by stipulation of counsel, and marked as the Plaintiff's Exhibits 1432, 1433, 1434, 1435, 1436.

Thereafter certain maps offered by the defendants were received in evidence, under stipulation of counsel, as Defendants' Exhibits to inclusive.

Thereupon plaintiff rested.

Thereupon defendants rested.

Stipulation 7297

Thereupon the defendants moved the Court to direct the jury to return a verdict for each of the defendants, which motion was denied as to the defendant the E. I. du Pont de Nemours Powder Company, but was reserved as to the defendants Eastern Dynamite Company and International Smokeless Powder and Chemical Company.

Thereafter the respective counsel addressed the jury. 7298

Thereafter, upon the conclusion of the opening statement to the jury by plaintiff's counsel the defendants' counsel moved the Court to require the plaintiff to make an election as to whether the plaintiff under his declaration would rely upon the first or the second section of the Act of Congress of July 2nd, 1890, commonly known as the Sherman Act, in seeking a recovery, and after argument said motion was sustained.

To which ruling of the Court the plaintiff by its counsel then and there excepted and said exception was allowed. 7299

Thereupon plaintiff elected to rely upon acts declared to be unlawful by Section 2 of said Act.

Judge.

7300 *Court's Charge*

February 24, 1914.

And, thereafter, counsel for all the parties having concluded their addresses to the jury, the Court instructed the jury as follows:

CHARGE OF THE COURT.

Gentlemen:

7301 Before I address myself to the jurors, I desire to say to counsel on both sides that I appreciate their courtesy and their forbearance during this long trial.

And now, gentlemen of the jury, to you also I desire to express my appreciation of your faithful attention to this case, although it has been an unusually long time in trying. I find it necessary to give considerable attention to some branches of the case, but I have not had the time to compress it as much as I should like; so that I bespeak your patience during the additional time that must be
7302 spent in stating the law of the case, and in any endeavor to help you to apply the law to the testimony.

Counsel were purposely given unlimited time to discuss the testimony and to lay before you their contentions as to what facts have been proven, their relationship and significance. This has been done, partly, that nothing in the voluminous testimony that has been given and the relationship of the large number of documents and exhibits introduced which counsel considered as important, should be overlooked, and also to relieve the Court from going extensively into the matter of the disputed questions of fact. In so doing a number of days have been occupied by counsel and I am glad I can say

truthfully that their labors have been very helpful to us all and that they have relieved me of much work in dealing with the testimony. Nevertheless, as I have said, it will be necessary for me to deal considerably with some branches of the testimony to be helpful to you when you take this case under final deliberation, and I desire therefore at the outset to define the difference in our functions, and so say to you that in our system of jurisprudence the Court finds and states the law and the jury finds the facts. You will take the law as the Court 7304
states it, regardless of any personal views that you may have as to what it should be. If the Court errs in its statement of the law, the party aggrieved thereby has his remedy by taking appropriate exceptions and obtaining a review founded thereon by resorting to the higher courts, and there is nothing in the conduct of the case by counsel that suggests that there will be any dearth of exceptions if any of them consider that the court has erroneously stated the law. If, however, you should attempt to follow a different conception of the law, there is no remedy for the aggrieved party, as there 7305
would be no way of determining that you did so or what you did.

In the realm of disputed facts, however, you are the sole judges and it will be your duty to apply the law as the Court states it to the facts as you find them.

You are also the sole judges of the credibility of the witnesses and the weight that is to be given their testimony. The Court, in dealing with the testimony, will not attempt to quote the language of the witnesses, but will endeavor to give the substance and effect of it, and if the Court in so dealing with it should fail to give it the proper effect or should assume some things as admitted or not

disputed, or if some of the witnesses should have impressed the Court more than they have you, or if the Court gives some fact or group of facts a greater significance than you think they deserve, or if the Court should omit reference to some fact or group of facts which to your mind have significance as indicating where the truth is, you are not to be constrained to follow the views of the Court in such matters or any other views that you may think it has in the premises, but it will be your duty
7307 to give the witnesses such credence and their testimony such weight, and the facts found by you such effect, as you, in the exercise of your conscientious judgment think they deserve.

The plaintiff in this suit bases its action upon the 7th Section of the Act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," which was approved July 2, 1890, and is popularly known as the "Sherman Anti-Trust Act," and this section reads as follows:

7308 "Sec. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

The pertinent phrases here are "things forbidden" by the Act, and "injured in his business or property sustained by reason thereof."

The forbidden or unlawful things referred to in

this Section are found in Sections 1 and 2 of the act and which sections, so far as they are pertinent here, read as follows:

> "Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal."
>
> "Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine 7310
> or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor."

As construed by the United States Supreme Court the first section denounces the undue limiting of trade and the second section denounces the undue increasing of trade.

The unlawful thing of the first section—the undue restraint of trade—can not be done by one per- 7311
son, as the method or means which falls within its denunciation is contract, combination or conspiracy, and which of necessity require two or more persons.

The unlawful act of the second section—to "monopolize or attempt to monopolize" may be done by one person alone and by other means than contract, combination or conspiracy, though it may also be done by two or more persons, and by means of contracts, combinations or conspiracies.

While these sections, considered separately, proceed on different lines, they have one common ultimate purpose, namely, the protection of the free flow of commerce, and this purpose must be well kept in mind during the entire consideration of the

7312 *Court's Charge*

case. This protection is obtained by the first section forbidding the undue restriction or limitation of trade by two or more acting in concert, and by the second section forbidding the undue increasing of the trade in the hands of one, or a few persons acting in unison.

The plaintiff's grievance is, that the defendant has violated the second section of the Anti-Trust Act and which, as already noted, makes the monopolizing "or attempt to monopolize" any part of the
7313 trade among the several States unlawful; and, that in consequence thereof it has been injured in both its business and its property. The suppression of competition is the dominant idea of the monopoly sought to be prevented by this act and where this condition results there is monopoly, no matter what steps were used to bring it about. Such unlawful monopoly, however, is not the only thing sought to be prevented by this section. To attempt to monopolize is also embraced in its legislative purpose, and an attempt to monopolize includes any means
7314 purposely adopted for and manifestly adapted to the accomplishment of such a monopoly.

As this second section, however, is but supplementary to the first section, and to make certain that the purpose of the first section be not evaded, but fully carried out, it follows that it is not every step which makes for monopoly that is within the prohibition of this section. It is only when the purpose of such step or its necessary effect is to stifle or to directly and substantially restrict competition that such step is an attempt to monopolize within such section.

Mere size or dominancy, or both together, do not constitute the monopoly here sought to be prevented. If either or both are the result of honest enterprise and normal methods of business develop-

ment, the law is not violated; but if such dominancy is the result of unfair methods, that is, suppressing competition, or of the attempt to suppress competition, the statute is violated. An illustration of a monopoly that would not be within the legislative purpose of the Anti-Trust Act is afforded by a reference to the remote past history of the du Pont powder enterprise. The du Ponts began making and selling powder in 1802 and for a long time, until 1820, they had no competition. During all this time they had a monopoly of the 7316
powder business in this country. This monopoly came to them legitimately because they were the pioneers in that business and during such period no one competed with them.

In order to maintain this suit, the plaintiff must prove by a preponderance of the evidence that the defendant has been guilty of an attempt to monopolize, within the prohibition of the Anti-Trust Act, and also that in or by such attempt the plaintiff was actually injured in its business or property.

Damages can not be assumed. They, as well as 7317
unlawful attempts to monopolize, must be proved; proved by a preponderance of evidence both as to the cause and amount.

Furthermore, the plaintiff must prove the charge it has laid against the defendant in the declaration substantially as there laid, and to this charge I now turn. Before doing so, however, let me emphasize that the declaration is not evidence of any of the matters therein alleged. That constitutes but the plaintiff's accusations. I especially refer to this and give you this instruction because the charges therein contained are so voluminous, and they have been read and analyzed so frequently during the arguments of counsel, that at times it has been difficult to say what are allegations and

7318 *Court's Charge*

what is evidence, and as I, in my endeavor to help you in considering the charges therein made, am compelled to analyze or give the substance of them, I desire to say, at the outset that the charges are not evidence, and that as I proceed I will so endeavor to differentiate between what are the accusations and what is evidence which is offered in support of such charges. The suit is brought by the Buckeye Powder Company and has proceeded to trial against three defendants. The evidence, how-
7319 ever, fails to support any participation by the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, and my instructions to you that you return a verdict of no cause of action in their favor.

Generally and compactly stated, the declaration charges that the remaining defendant, the E. I. du Pont de Nemours Powder Company, with certain named persons (alleged to be co-conspirators) having obtained "a practically complete monopoly in interstate trade in powder and other explosives, • • • engaged in a combination and conspiracy
7320 to unreasonably restrain and monopolize said trade throughout the United States and foreign countries," and that in carrying out its monopolistic purposes, it conspired to coerce the plaintiff to yield its independence as a competitor and join with the defendant on its terms, in the furtherance of such unlawful purpose, or to drive it out of such business, and that it eventually succeeded in accomplishing the latter, to the plaintiff's damage.

More particularly, the declaration charges, first, that a conspiracy to monopolize the powder trade existed previous to the year 1902; that before that year certain (unnamed) manufacturers and vendors of powder, by means of many agreements limiting the output of the parties thereto, apportioning

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the trade among themselves, and arbitrarily fixing the prices of powder, measurably succeeded in establishing a more or less complete monopoly of said trade in their own hands and continued to be an unlawful combination for the purpose of restraining interstate trade and commerce; second, that in said year 1902, "with the intent and purpose of securing a more complete monopoly and a more effective control of the powder trade in the United States," the E. I. du Pont de Nemours Company, subsequently changed to the E. I. du Pont de Nemours & Company, was incorporated under the laws of the State of Delaware; that such Delaware company thereupon, in order to prevent interference with its plans to completely monopolize the powder trade in the United States, absorbed or acquired control of the plants and tangible properties, theretofore partially controlled by or co-operating with it to monopolize the said trade, and that of the corporations owning and operating the same; third, that on the 19th of May, 1903, in order "to make said control absolute," the E. I. du Pont de Nemours Powder Company, the present defendant, was organized under the laws of the State of New Jersey; that thereupon it acquired, by purchase from the Delaware Company, its property by which the defendant acquired absolute control of the property and business of sixty-four (64) named corporations which it caused to be dissolved, "and removed from the business of manufacturing and selling powder and other explosives," and that by such purchase the said defendant "became possessed of a controlling interest in the capital stock of eleven other named corporations, including the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company," and fourth, that, by reason of these matters, the defendant and

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a number of persons named as co-conspirators, "acting as co-conspirators with the defendant, succeeded in establishing within themselves, and have ever since maintained, a practically complete monopoly in interstate trade in powder and other explosives, amounting to about 95 per cent of said entire trade, and ever since have been and now are engaged in a combination and conspiracy to unreasonably restrain and monopolize said trade throughout the United States and foreign countries, have suppressed competition and have fixed prices of powder and other explosives arbitrarily and unreasonably, and have driven independent competitors out of business, or have coerced them into a sale to or union with said unlawful combination in unreasonably restraining trade and commerce among the several States of the United States and with foreign countries."

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This is a substantial recital of what the plaintiff alleges is the conspiracy that was begun prior to and effectually carried forward by the incorporation of the du Pont companies of 1902 and 1903.

7326 Now, as to the evidence, at the outset let me say it is conceded that the defendant is engaged in the manufacture and sale of powder in interstate commerce.

The evidence shows that the du Ponts, whether in the form of co-partnerships or corporations, have been in the business of manufacturing and selling powder since the year 1802; that until 1899 such interests were held in co-partnership and thereafter as corporations; that the defendant was organized on May 19, 1903, and took over the du Pont business properties and interests, and has continued to carry on the du Pont powder business ever since.

The evidence also shows that as far back as 1872 different manufacturers and vendors of powder formed an association part of the purpose of which

was to apportion the powder business of the country among the members of such association and to fix the prices of such commodity.

The evidence also shows that at the time of the incorporation of the defendant a similar association, embracing even a larger number of manufacturers and vendors of powder, with similar objects, existed and was in operation, and that the du Pont interests were members of such associations during the different periods of their existence and that they participated in the management and in the fruits 7328 thereof. The evidence also shows that both the du Pont Company of 1902 and that of 1903, the latter being the present defendant, were members of the trade association last referred to, and that the defendant continued a member thereof until June 30, 1904, when such trade association was dissolved.

The defendant concedes in this suit that such trade associations were unlawful combinations within the Anti-Trust Act, but it contends that the dissolution of the association on June 30, 1904, such unlawful combinations came to an end and that no 7329 such combination existed thereafter, and that from that time only lawful competitive conditions existed.

Upon the part of the plaintiff it is contended that the mere dissolving of the trade association in 1904 does not control; that by reason of the trade associations that had existed before the incorporation of the defendant and the latter of which was carried down for a little more than a year thereafter, the defendant obtained an unlawful status and acquired a power in the powder trade to which it was not lawfully entitled; that having obtained and still possessing the fruits of the unlawful combination, it must be held to be but a mere continuance of the attempt to monopolize the powder trade be-

gan and carried forward by such associations regardless of the fact that such associations through the operation of which it secured this undue prominence in the trade had been dissolved.

The evidence shows that after the incorporation of the defendant it acquired the entire stock of the Laflin & Rand Powder Company, which had been a member of the several trade associations referred to and which except for the restraints imposed by the said associations was independent of the du Pont
7331 interests, and that through the acquisition of the Laflin & Rand stock it also obtained the control of a number of other corporations in which it had theretofore held but a minority stockholding interest. With the purchase of the Laflin & Rand stocks the principal stockholders of the Laflin & Rand entered into a contract with the purchasers, which inured to the benefit of the defendant, that they would not for a period of twenty-five years engage in the business of manufacturing powder. Except for this purchase of the Laflin & Rand, it and the other
7332 corporations last referred to would have become, at and after the dissolution of such trade association, independent operators and competitors, but this independence was lost completely by such purchase of the Laflin & Rand stocks and as, in these matters, substance and not form is controlling, the effect of the purchase of such stocks in increasing the power of the defendant as a factor in the competitive field of the powder business was as great, if not greater, than if such stocks had not been purchased and such corporations had been allowed to continue their independent existence, and all of them, together with the defendant, had continued under the restraints and limitations imposed upon them by such trade association.

The evidence also shows that the defendants made

an arrangement through one Sullivan, with the American, Miami and Aetna Companies, known as the "Fay Companies," whereby a previous agreement between the defendant and the Fay Companies, making an allotment to them of certain trade, with penalties in case of over sales, which ended on June 30, 1904, the date of the dissolution of the last association, was continued for an additional period of nine months.

At this time and down to 1906 there existed an agreement made in 1897 between certain American 7334
manufacturers of powder—the du Pont interests being one of them—and certain foreign manufacturers of powder relative to the apportionment of the powder trade in the United States and some of the other world powers.

The Sullivan-Fay agreement and this agreement with foreign manufacturers of powder directly and necessarily restrained trade and, like the trade association agreement, tended to and were in law attempts to monopolize the trade in powder.

It is true that Thomas C. du Pont and Pierre S. 7335
du Pont, two of the three principal promoters of the said 1902 and 1903 companies and whose connection with the du Pont powder business began in 1902, had no knowledge of the plan and methods of the trade association which existed at the time the 1902 company was formed and with which the other du Ponts had theretofore been connected, and that the knowledge they had concerning such plans and methods was that obtained by them between about the time of the organization of the Delaware Company and the dissolution of the Association on June 30, 1904.

It is also true that these gentlemen, in 1906, dissolved such foreign agreement, paying a considerable sum of money to do so, and that they also in

that year brought to an end the contract which had been made by the du Pont corporation of 1899 with the King Powder Company, through the King Mercantile Company, whereby the defendant took over the King Company's output for a period of years not then expired, and for the cancellation of which contract they paid the sum of $100,000. These instances are cited by the defendant as evidence showing that these gentlemen took prompt steps to disentangle the defendant from these unlawful con-
7337 tracts because they were undoubtedly in restraint of trade. For such steps these men are, of course, to be commended, but the question of the legal status of the defendant as one attempting to monopolize the powder trade is not changed materially by the cancellation of these two agreements.

By the taking over of all the physical assets which had been gathered in by the Delaware Corporation of 1902, and by the subsequent absorption of the Laflin & Rand corporation with its physical assets and through it the control of the other corporations
7338 already referred to and the acquisition of a large part of its trade in powder obtained under contracts with consumers while such trade association lasted, very much of the status of the defendant, fixed by the benefits derived through the old trade associations, still obtained and continued, notwithstanding the dissolution of the trade association on June 30, 1904.

True, with the dissolution of such association some of its members became independent manufacturers and therefore competitors, and while all the benefits obtained from the trade associations which the defendant and the Laflin & Rand interests enjoyed during the continuance of such associations did not inure to the defendant by its taking over of the Laflin & Rand interests, yet that influential

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position which the du Pont interests always had during the continuance of each of these trade associations, and which it was entitled to regardless of its connection with such associations, was very much augmented after the dissolution of the last Association because of its absorption of the Laflin & Rand interests, and this was such a unifying of previously existing independent interests, as to make the status thus obtained as clearly if not as effectively an attempt toward monopolization, as existed when all of the members of this association, while maintaining independent legal existences, were tied together by contracts which were unquestionably undue restraints of trade making for a monopolization and which therefore constituted an attempt to monopolize.

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The defendant, therefore, at the time of the organization of the plaintiff company which took place and, during the entire time the plaintiff carried on its business, was acting in violation of the Anti-Trust Act as attempting to monopolize the trade in powder which subjected it to be dissolved as such by direct attack on the part of the United States Government.

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The fact that the status of the defendant was such, however, that under a direct attack by the Government it would be dissolved as an unlawful combination in restraint of trade and an attempt to monopolize, would not alone make it liable in an action for damages. Such a suit can be maintained only for injuries sustained by reason of such attempted monopolization, so that in a suit for damages the defendant is entitled to more defenses than would be available in a suit brought by the Government for dissolution, and the plaintiff in such a suit has more to prove than is necessary to obtain a decree in the Government suit. It becomes import-

ant, therefore, to inquire into the relationship which the defendant bore to the powder trade generally at the time when the plaintiff asserts its promotor first declared his intent to engage in the powder business and its subsequent relationship toward such trade generally, and to the plaintiff in particular, during the years 1903 to 1908, within which period the plaintiff claims it was being injured by reason of the acts of the defendant and which it alleges were unlawful and within the operation of the Anti-
7343 Trust Act, as attempts to monopolize the powder trade.

The mere fact that the defendant owes much of its growth and power in the trade to unlawful acts of the past, and that it continued to enjoy the fruits of some of such unlawful acts, does not make it liable in damages in a suit of this character.

This suit is unique in many respects. The plaintiff, as a corporation and as a competitor in the powder business, is due to the efforts of R. S. Waddell, its chief witness in the suit. He organized it
7344 shortly after he separated himself from his employment with the defendant with which and its predecessors he had been identified for about twenty years. His services, while in the employment of the du Pont interests, brought him in touch with their business policies and operations in the vending of powder. He knew of the existence of the trade associations and of such of the restraints and limitations put upon its members as related to the apportionment of the trade and the fixing of prices. The comparative size of the defendant's capacity for output in relation to other powder manufacturers, and its influence as a factor in the trade generally, were known to him where he severed his connection and when he conceived and began to carry out his purpose of entering into such powder field as a com-

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petitor. The plaintiff does not occupy the same position as a competitor in existence during the period that this influence was being developed and who may have been, during the course of such development, as well as after it had reached the height of its power, injured in its business or property by reason thereof, but is here as one entering the competitive field when such growth and influence have been established. To it, this influence and power of the defendant when it, the plaintiff was launched into the powder field, is not in itself actionable, even

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though that status is due in part to methods which are prohibited by the Anti-Trust Act, and before the plaintiff can recover it must establish that the defendant used its power in the trade oppressively, not necessarily against the plaintiff alone, but at least in the conduct of its business generally; that is, that it used such methods as, backed by its influential position, tended to the suppression of open competition and to obstruct the free flow of commerce—the trade conditions sought to be secured and protected by the prohibitions of the Anti-Trust

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Act, and that it, the plaintiff, was injured by reason thereof.

The plaintiff asserts in its declaration that the defendant during the period from 1903 to 1908 did use methods which are forbidden by the Trust Act in its efforts to secure business, which for our purpose have been called the overt acts and to which we will now direct our attention.

The overt acts alleged, as they concern the plaintiff (and now) please note that I am not referring to the evidence, but the plaintiff's charges) divide themselves naturally into two classes, those which preceded and those which followed the beginning of the plaintiff's business.

First, as to those immediately preceding the in-

corporation of the plaintiff; these concern alleged attempts to frustrate the location of an advantageous site and to prevent the securing of the proper machinery for the manufacture of powder. The former relates, of course, to that period during which Waddell says he was seeking a site upon which to locate plaintiff's plant, and the charge in that behalf is that an attempt was made to prevent Waddell from carrying out the contemplated organization of the plaintiff and to prevent it from securing any or a favorable site for a plant, all with the purpose of retaining and perpetuating a monopoly in the powder business. The methods by which this purpose was to be accomplished are said to be the dissuading of Waddell from entering into the business, and failing in that the offering to join him in conducting such business upon condition that he would place defendant in control of the plaintiff's business and affairs, and failing in that, seeking to have plaintiff's plant located in a sparsely settled region where the market for black blasting powder had not reached any extensive development, and failing in that, to prevent him from securing a location by putting detectives upon his track as he journeyed about looking for a site, creating opposition through the inhabitants in the neighborhood of a proposed site and by bidding up the price of the property sought for such purpose without intending to make use of it itself, but to prevent the entrance of an independent competitor for the powder trade.

As to the attempt to frustrate the plaintiff's securing of proper machinery, the plaintiff alleges (note I am still dealing with the plaintiff's charges) that the defendant, by threatening to refuse to purchase powder-making machinery of any of the manufacturers thereof who would not give the defendant and its associates the exclusive right to such

machinery, induced many of them to refuse to sell their machinery to the plaintiff, and that plaintiff was compelled to deal with other manufacturers and to pay a higher price for its machinery than was usual and customary and largely in excess of the cost of like machinery to the defendant and its associates.

Now, as to the evidence:

There is evidence in the case which shows several interviews between Mr. Waddell and Mr. T. C. du Pont following Mr. Waddell's offering his resignation and declaration of intent to go into the powder business, and also that detectives were employed by the defendant who shadowed Mr. Waddell for a short period. 7352

As to the forestalling plaintiff in securing powder-making machinery. The only evidence on this head is the deposition of Jacob E. Schoemel, agent of Pros-Brinkman Mfg. Co., which shows that that company had a contract with the Indiana Powder Company whereby such manufacturer of machinery agreed not to make machinery for any one but the Indiana Powder Company and one other manufacturer named and in consideration of which the Indiana Powder Company agreed to take $5,000 worth in repairs to or new construction of machinery a year for a period of five years, or to pay such manufacturer twenty per cent., as profit, for any part of said $5,000 worth of work a year which they should not take. At the time this contract was made, June 3, 1902, as well as when Waddell first sought to obtain machinery for his plant, the Indiana Powder Company was owned by the defendant. 7353

There is no evidence whatever which would justify you in finding that the defendant hired detectives to track Mr. Waddell for the purpose of

forestalling him in the purchase of a site, and to create opposition among the people to the location of plaintiff's plant in any place by instilling fear or otherwise, or by bidding up the price of any property plaintiff might have desired to acquire so as to prevent the entry of a competitor into the black powder business. The fact, however, that detectives were employed by the defendant to shadow Mr. Waddell after he had severed his connection with the defendant, and after his declaration to em-
7355 bark in a competitive business, is a circumstance to be considered by you in connection with the other testimony in the case upon the alternative questions whether it shows a hostile purpose upon the part of the defendant against Mr. Waddell's contemplated enterprise with the view of suppressing competition, or whether it was but a step taken by the defendant in the protection of its legitimate interests, namely, to prevent their employes from being taken from them by this prospective competitor, which letter is the explanation offered on be-
7356 half of the defendants. As to such contract restraining the making of machinery, there were other manufacturers of powder machinery at this time, and while the fact of this contract does not sustain the plaintiff's allegation that many of such manufacturers of machinery were induced by the threats of the defendant not to purchase such machinery from any of such manufacturers who would not give it and its associates the exclusive right to such machinery, and while at the time of the making of this contract the Buckeye Powder Company was not yet in existence and the likelihood of its becoming a competitor was not known and therefore the making of such a contract can not be said to have been conceived with the view of specifically forstalling the plaintiff in securing such class of

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machinery, yet the existence of such a contract is to be considered by you on the general attitude of the defendant toward prospective competitors on the question whether it was a part of a general purpose of monopolizing the trade, that is, the suppression of competition. As to the negotiations that took place between Mr. Waddell and Mr. T. C. du Pont preceding Mr. Waddell's leaving the employ of the defendant; you have the testimony of both of those gentlemen, also the copies of the several proposed agreements relating to the defendant's joining Mr. Waddell in his contemplated entry into the manufacture of powder, and it is for you to say, in the light of all the circumstances surrounding such negotiations, whether thew show a purpose to prevent Mr. Waddell entering into the business as a competitor, or a desire on the part of the defendant to protect its legitimate interest while at the same time helping one of their old employes to become a manufacturer and vendor of powder.

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As to the overt acts succeeding the advent of the plaintiff as competitor (I now again turn to the plaintiff's charges); one is that the defendant and their co-conspirators, to prevent fair and open competition, and with intent to coerce plaintiff into a combination with them, "or to drive it out of business and thereby stifle competition in said district (called the central) entered into a conspiracy with each other whereby all the co-conspirators," except the defendant, agreed to retire as competitors for the trade of said district, thus leaving the defendant "a clear field to carry on a war of extermination against plaintiff and drive it out of business"; that said conspirators arranged to proportionately pay the defendant all losses which it might sustain in carrying on such war; that thereupon the defen-

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7360 *Court's Charge*

dant appointed what is called the "Peoria Committee" to conduct such fight against plaintiff, and, in order to make such fight affective, all the other defendants, pursuant to said arrangement, withdrew their agencies from the City of Peoria and ceased to seek any of the trade in said district, taking in lieu thereof allotments of trade elsewhere to compensate them for the trade thus yielded, and that thereupon the defendant engaged in a determined and "disastrous warfare against
7361 the plaintiff to destroy its business and prevent it from acquiring any new business and to drive it out of business entirely, as more particularly hereinafter set forth."

(Note that I have been again quoting from the declaration, in substance.)

While there is evidence that on May 27, 1903, there was, as part of the Advisory Committee of the Trade Association then in existence, a committee known as the Peoria Committee, there is nothing in the record that would justify the conclusion that
7362 such committee was either organized for or authorized to conduct a fight against the plaintiff. It does appear in the minutes of advisory committee of the date mentioned that interested parties were advised that they might discontinue the present agency agreements as far as they might apply to the former customers of their agents at Peoria; but that, it will be observed, relates to the discontinuing of certain arrangements relating to agencies, and not to any action by the committee. It will also be noted that according to this allegation about the withdrawal of agencies from Peoria that while it charges that the defendant and its co-conspirators entered into this conspiracy, it only charges that "the other defendants withdrew" from the competition, and also that the particulars of

such warfare were left to subsequent allegations. The evidence does not show that the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, the other defendants at the time the declaration was drawn, had any agencies in Peoria. The testimony of Mr. Wardell is that the powder manufacturers who had agencies at Peoria about the time that the plaintiff began to get ready for the business of manufacturing and vending powder were the defendant, 7363
the Phoenix, Hazard, King, Laflin & Rand, and 7364
American companies, and that all of the agencies in Peoria were withdrawn at such time except the du Pont. In the testimony of Mr. Moffat who also gave a list of the agencies at Peoria about this time, the Equitable Company is mentioned as having an agency there, it being in charge of Dooley Brothers, who, as stated by Mr. Waddell, were the agents of the Phoenix Company. There is no evidence that I recall of the withdrawal of the Equitable Company. Of these, the Phoenix, King, Amer-
ican, and Equitable companies are not named as co- 7365
conspirators and the Hazard and Laflin & Rand companies, as well as the Phoenix, were then owned by the defendant. The evidence on behalf of the defendant also tends to show, as to such of the alleged co-conspirators as were owned by it, namely, the Phoenix, Hazard and Laflin & Rand companies, that the withdrawing of their respective agencies and consolidating them with defendants was for the purpose of economizing the cost of handling the business of that district and was a mere administrative policy. On this matter of the consolidating of these agencies we have the alternative questions to consider, that is, the one raised by the plaintiff that it was a step in the conspiracy directed against it and intended to pre-

7366 *Court's Charge*

vent it from obtaining such an entrance into that field as it was by law entitled to, and which it would have secured if the competitive conditions in that district were normal; and the other, raised by the defendant, whether the withdrawing of the individual agencies and consolidating them with that of defendant was solely for the purpose of economizing the cost of handling the defendant's trade for that district, and therefore lawful, because a competitor has a right to protect his own interests by such methods. In determining these questions you will consider the evidence that I have just referred to in the light of the circumstances surrounding such consolidation of agency, and any evidence as may bear upon them.

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As to that part of the charge now being considered, namely, that the co-conspirators agreed with the defendant to reimburse it for any losses that it might incur while carrying on this alleged trade war against the plaintiff, it is my duty to say to you that there is no evidence whatever in this case that would justify such a finding.

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Of course, as to the Hazard and Laflin & Rand Companies, which at this time yet maintained their separate legal existence though their stocks were owned by the defendant, whatever losses would be sustained by the defendant (if any), as the result of the alleged fight for commercial supremacy in the Peoria district, would in a sense be made up by the Hazard and Laflin & Rand if these by reason of their withdrawal from this district were enabled to make a profit in other districts. The alleged methods taken by the defendant in carrying out this alleged warfare will now be considered. (Please note I am again referring to the charge and not the evidence). The plaintiff charges that as a part of such methods the defendant, to prevent and suppress competition, organized and maintained a

bureau of information and through it instituted a system of espionage upon the business and private affairs of persons engaged in legitimate occupations, whereby it obtained a collection of rumors and information of every kind concerning the trade in powder and the various consumers and manufacturers thereof which was tabulated in three divisions, one designated as the "White Division," containing the names of consumers and manufacturers loyal to the defendant, one designated as the "Yellow Division," containing the names of 7370 those who were friendly but non-trustworthy and who would need watching, and the third, called the "Red Division," containing the names of independent manufacturers and consumers classified as enemies of the defendant's monopoly; that defendant's agents were required to seize every opportunity to annoy, embarrass and injure such independents in their business, stir up strife betw employers and employees, encourage litigation, create false and malicious rumors concerning their solvency, and generally to do what would discredit and embarrass them; that it was the practice of 7371 such bureau to spread broadcast certain of the information and rumors thus collected where they would do the greatest damage to such independents, "in order to force them to ally themselves with said defendant and co-operate with it in obtaining its monopolistic control of the powder trade or drive them out of business entirely;" that plaintiff and its customers were classified in such red division, and that the bureau employed agents "to prevent it from acquiring any portion of the powder trade and to prevent consumers of black blasting powder from purchasing the same from it and to induce its customers to abandon it, and to injure and destroy its credit, by creating distrust

among its creditors by circulating false and malicious rumors regarding its solvency, and by circulating false and malicious statements concerning the quality" of its powder, and by stirring up discontent among the miners and strife between miners and operators to induce miners to refuse plaintiff's powder, intending to secure such business; that influential miners were employed to influence the workmen by boycott of plaintiff's powder; that cash, intoxicating liquors, household goods and
7373 clothing were distributed among such miners to secure their influence with their fellow workmen to effect such boycotts; that in consequence of such conduct certain consignments of plaintiff's powder were rejected and further purchases discontinued; that the defendant sent spies into the plaintiff's mills to learn its secrets and to tamper with its processes; that it employed agents of railroads to give defendant names and addresses of plaintiff's consignees, and thereafter induced them to reject consignments made to them by offering to furnish them powder below any price that the plaintiff
7374 might offer, and below the actual cost of the powder if necessary to secure their trade.

Other steps or methods taken by the defendant, alleged by the plaintiff to be part of its plan to monopolize the powder trade and to ruin plaintiff and drive it out of business (Please note I am still dealing with plaintiff's charges, and not evidence) were the inducing of consumers to give it, the defendant, their exclusive trade in black blasting powder, thereby taking them out of the market, and this it is said was done, first, by contracts for a period of from one to five years; second, by granting them secret rebates; and, third, by special cut prices far below a fair and living price, and below any profit whatsoever; and as to such contracts;

that they were secured, at different times, by promises of special privileges and priority in delivery, by threats to deprive customers of other grades of powder and explosives not made by plaintiff, by misrepresenting capacity of plaintiff's mills, by circulating false and damaging statements of accident at such mills, by false and malicious statements of the quality of plaintiff's powder, by offers of financial assistance to consumers, and by stirring up strife among the employes thereof.

Plaintiff also alleges that the terms of these contracts were made strictly confidential because defendants knew that they were contrary to the Anti-Trust Act; that such contracts also provided for secret rebates based upon annual purchases; that where a customer was under contract with the defendant when plaintiff began business, defendant, in order to take the consumer out of free competition, voluntarily increased the rebates named in such contracts, such rebates to go into effect immediately, upon the consideration that such contract would be continued at its expiration for another period of years; that the amount of the rebate and the increase of it were not regulated by any law of supply and demand, but were determined solely by the purpose to secure all of the customer's trade and withdraw him from the open market until the plaintiff had been coerced into submission or forced to retire from business. 7376 7377

As to cut prices (and I am still dealing with plaintiff's charges, and not the evidence); that such were issued for the benefit of the consumers where they could not be induced to enter into such contracts, and as such offer was kept open to them at all times they were permitted to take advantage of such cut prices at any time and defendant obtained the trade of such customers as effectively as

if they had entered into such contracts; that defendant in some cases contracted to supply powder for less than its actual cost, and that it was enabled to do that because its losses would be made up by the other defendants and their co-conspirators; that defendant did not issue any regular or fixed price list, but that a Sales Board, composed of the defendant's Director of Sales and his assistants, from time to time fixed prices arbitrarily; that in those states or territories where defendants
7379 and their co-conspirators were in full control of the trade the prices always realized a substantial and sometimes excessive profit, but in those states or territories where they or some of them were competing for business prices were determined solely to prevent all manufacturers, not parties to the conspiracy, from obtaining any or a fair proportion of the trade, and not with the purpose of obtaining business for itself at a fair profit, in order that the defendants and their co-conspirators might fix any price they should thereafter see fit without regard
7380 to the consumer's interests; that plaintiff was forced for more than five years to meet prices so fixed by the defendant in endeavoring to obtain and retain enough business to keep its mills operating and to obtain its fair share of the trade in such states and territories, but that it was unable to do so; that plaintiff was unable to make any offer to supply powder at a price below which defendant would not go, and that where the consumer's business was submitted to competitive bidding defendant would persistently reduce its price so as to underbid plaintiff and deprive it of such business, sometimes making sales at an actual loss; that ultimately plaintiff was compelled through such means to surrender the business of such consumer; that by reason of such practices plaintiff suffered irre-

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parable loss, not only of the fair profits which would have come to it from such contracts which it was thus prevented from securing, but of the opportunity of keeping its mills in continuous operation, and that because of such policy and practices in most cases the defendant ultimately succeeded in inducing the purchasers of black blasting powder to enter into such contracts, thereby gradually removing the danger of competition in said states and territories by absorbing more than 95 per cent of the powder trade.

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Now as to the evidence:

The evidence shows that defendant had a bureau of information within its sales department, whereby it kept in touch with the trade and which regulated the prices at which its powder might be sold. This bureau was composed of the heads of the different divisions of the sales department and to which trade reports were sent from the defendant's agencies throughout the country. Such a bureau of information in itself is not unlawful and whether it is a step in the alleged conspiracy here depends upon whether the use made of it was unlawful. If 7383
its purpose was merely to acquaint the defendant with the condition of the trade from time to time, and no other use was made of it than the protecting and furthering of its legitimate interests, and it was not used with the purpose of harrassing or oppressing its competitors or to obstruct the free flow of commerce in the powder business, it was lawful. If, however, its use went beyond this and such bureau was made the means of interfering with or obstructing the free flow of commerce in powder, with the view of unduly increasing its trade, then it would be unlawful and a step in the effort to monopolize the trade. To determine what was the purpose and the use made of this bureau of infor-

mation, the evidence as to the methods employed and the use made thereof has to be considered by you. A given method or act or series of acts may be perfectly innocent in itself and yet may be used as an instrumentality of carrying out an unlawful purpose. Do the facts bearing upon this question convince you that they were used as alleged by the plaintiff?

There is no evidence, gentlemen, that would sustain the allegations made by the plaintiff that the
7385 defendant spread broadcast any of the information of facts or rumors which it obtained through the trade reports of its agents in such places or among the trade where it would result to the damage of any of its competitors, or that the defendant sought to destroy or injure the plaintiff's credit, or that it did anything to create distrust among the plaintiff's creditors, or that it circulated or fathered false rumors of the plaintiff's solvency or that of any of the other competitors, or that it tampered with the plaintiff's processes of manufacture, or
7386 that it misrepresented the capacity of plaintiff's mills, or that it circulated false and damaging statements of accidents that occurred at the plaintiff's mills, or that it circulated false and malicious statements concerning the quality of plaintiff's powder, or that cash, intoxicating liquors, household goods and clothing were distributed among miners to secure their influence with their fellow workmen to effect boycotts, or that it employed persons to enter plaintiff's mills to ascertain its business secrets, or that it made offers of financial assistance to consumers of powder to secure their orders or business, or that it sold its product below actual cost, or that there was any arrangement between defendant and the Eastern Dynamite Company and the International Smokeless Powder and Chemical

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Company or any of the alleged co-conspirators whereby they would reimburse the defendant for the losses sustained by it in selling its powder below cost, and my instructions to you are, as to these particular allegations, that they have not been established, and you will therefore disregard them entirely in your further consideration of the issue here being tried.

Of course, as the defendant had a controlling interest in the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, it would follow that if these two companies carried on a profitable business the defendant would be benefitted by such profits to the extent of its stockholders in such companies, and such profits would help to make up any loss that it might sustain if it sold its powder below cost.

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Furthermore, the evidence negatives the plaintiff's contention that as a result of the alleged overt acts the defendant succeeded in absorbing more than 95 per cent of the powder trade. The fact is that the defendant's percentage of both its capacity of production and the trade actually supplied by it was less at the time the plaintiff sold its plant than when the latter began to do business, and that the percentages of both sales and capacity of production of the other manufacturers correspondingly increased during said period.

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There is testimony in the case which shows that there was opposition among the mine operatives to the introduction or use of the plaintiff's powder, and that as a result the Buckeye powder was not used in some instances and the use discontinued in other instances and that tests were made of the efficiency of both the Buckeye and defendant's powders. The character of these tests has been testified to, as well as the methods of making the tests, and

the result thereof. That some strife existed among the miners of certain mines, or between them and the operators, seems to be borne out by the testimony, but the question here is whether that was due to improper activities chargeable to the defendant.

Under the contracts subsisting between the operators and the miners, the latter had the final say as to what powder should be used. This resulted in many instances in considerable contention between the mine operators and the miners, and some-
7391 times between the miners themselves.

The evidence shows that any grivance that arose in certain mines was considered by a pit committee, so-called, representing the miners, and with which committee the operators conferred in the matter of such disputes.

One of the instances relied upon by the plaintiff as proof that certain improper influence was exerted against the plaintiff's powder is what has been frequently called in this case the "Thrush Incident," and which occurred at the Hanna City mines of
7392 Applegate & Lewis. That is in Illinois. At this mine there was considerable contention and strife over the use of both the plaintiff's and defendant's powders. Before the advent of the plaintiff the du Pont powder had been used for a number of years at these mines, but for a few months preceding the contest here referred to the Buckeye powder had been in use more or less. It was to the interest of the owners of the mines, if the plaintiff's powder was as satisfactory as the defendant's, to use the plaintiff's powder, as the mines were within four miles of the plaintiff's mill and they would not be required to purchase as many kegs at a time as was required in handling the defendant's powder. Mr. Lewis, one of the owners of such mines, and their superintendent, Mr. Robert Morton, testified that

they had had good results with the plaintiff's powder. As per their testimony, they had less screenings in the use of such powder than theretofore, and as it was to the pecuniary advantage of the operators to have as little screenings as possible, that result induced them to adopt plaintiff's powder. For a time both the plaintiff's and defendant's powders were used, each having its particular advocates among the miners. The contest among the miners over these powders reached such a stage, however, that the owners had considerable difficulty in their purpose of having the plaintiff's powder used at their mines, a number of the miners protesting against its use. This resulted in a test being ordered by the miners' union. While this test was going on each of the powders had a paid representative among the working miners, one acting in the interest of the plaintiff's powder and the other in the interest of the defendant's. Alec Thrush, representing the plaintiff's powder, received $1.00 a day for a period of time. The period is in dispute between Mr. Thrush and Mr. Waddell. William J. Thrush, a relative of Alec Thrush (I understand he was a relative, although he may have been a distant one), working in the interest of the du Pont powder, received five cents for each keg of such powder that was used there. Both of these Thrushes were members of the Pit Committee and therefore in an influential position. Robert Morton, the superintendent, testified to the character of the test which proceeded for some days, and his evidence tends to show that the test was not fairly conducted on the part of the representatives of the du Pont interests, they aiding the effects produced by the defendant's powder by undercutting the coal in the solid. The result was that the test was discontinued on the order of Mr. Morton and the owners

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abandoned their attempt to keep the plaintiff's powder in their mines and the du Pont powder took its place.

Another instance of alleged improper influencing of miners against the plaintiff's powder is that which is said to have taken place at the Great Northern Fuel Company's mines, at Novinger, Missouri, in 1905. This case is better known to us as "the Spicer incident." At that time the plaintiff was supplying such mines with its powder under
7397 a contract which it had with the owners thereof.

Mr. Spicer was a salesman for the du Pont interests and he is charged with having fomented opposition among the miners against the Buckeye powder by falsely charging that it was a non-union powder.

William S. McCall, president of the Great Northern Fuel Company, testified that previous to the Spring of 1905 he had used the powders of the Excelsior, du Pont, Austin and Buckeye companies, and that he first began to use Buckeye powder in 1905, preceding which he had used du Pont and
7398 Austin powders in the order named; that he obtained a more favorable price from the Buckeye Company and made a contract with it; that he stopped using Buckeye powder about the middle of October of that year; that the miners refused to use anything but du Pont, but that the principal cause was that he wanted cheaper powder and that he got du Pont ten cents a keg cheaper; that he had learned that Rombauer, a competitor in that same field, was getting his powder cheaper, and that plaintiff failing to respond to his overtures for lower prices, he took up the matter with Mr. Spicer, in Kansas City, and told him that if he knew of any way by which he could get the miners to ask for du Pont powder he would sign a contract with

him at the ten cents lesser rate; that Spicer said that he would go to Novinger and see what could be done; that he said to Mr. Spicer that he understood that Buckeye was union and du Pont non-union powder; that Mr. Spicer said that could be easily fixed; that shortly thereafter he got a letter from the secretary of the miners' local union, and that a strike resulted; that some time thereafter he signed up with Mr. Spicer at St. Louis for du Pont powder; that he said to Spicer that he had done a good job in getting them away from that 7400
contract and saving them ten cents a keg. The contract thus entered into was dated November 1, 1905, and shows that the Great Northern Fuel Company was to purchase all the black blasting powder to be used at its mines in the Novinger district for one year, and that the price in carload lots of 800 kegs was $1.45 per keg, subject to a rebate of 40 cents a keg.

Two contracts with similar terms to the one mentioned were subsequently entered into, the first bearing date of November 5th, 1906, and the second November 5th, 1907, thus consecutively covering a 7401
period of three years.

Samuel W. Stephens, a mine foreman at the Great Northern Fuel Company's mines, and Joseph F. Rutherford, a miner at such mines, and secretary of the miners' local union, testified that this Mr. Spicer and one Mr. Phillips, an official of the miners' union, came to the mines and told them that Buckeye was non-union powder and that du Pont was union.

John Kelly, a mine foreman at the same mines, testified that some man came to the mines and said that he represented union powder and that Buckeye was non-union. As a result such charge opposition arose against plaintiff's powder which

resulted in a strike and which continued until the owners of the mines substituted du Pont powder for that of the plaintiff.

Mr. Spicer, in his deposition, when he was called by the plaintiff, in answer to a question put to him on behalf of the plaintiff whether he had ever approached any one with reference to influencing miners to accept his powder and to make a demand for it upon the operators, said: "I cannot recall at the present time;" and upon being asked whether he
7103 would say that he did not, he said: "I think I will let the answer go as it stands." Subsequently, when he appeared in person before us as a witness for the defendant, he said he never employed any miners to use their influence to put du Pont powder into any mine; that at the time he discussed the matter with Mr. McCall about his taking du Pont powder, he was not aware that the Great Northern Fuel Company was under contract with the plaintiff; that he was not in Novinger at any time in 1905, and that he had never been there until February,
7104 1907; that he had not seen any of the men who testified that he had made the charge of non-union powder against the plaintiff's before the time they gave their testimony. He was present at the time they so testified, and he detailed the way by which he was identified by Stephens and Rutherford. He said that in the year 1905 the du Pont powder was boycotted at the Novinger mines because it was non-union; that subsequently, after having had some talk with Mr. McCall, he applied to the du Pont Company to obtain the authority to make a contract at $1.10 and later signed a contract at $1.05. The question of veracity is here raised between Mr. Spicer and Messrs. Stephens and Rutherford as to whether Spicer was the man whom they identified as the one who came to the mines and made the

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charge that Buckeye was a non-union powder. You remember the testimony as to how the identification was made by these men, and how much weight is to be given to identification made in such manner is for your determination. That some one came there and made such charge is the effect of the testimony of Messrs. Stephens, Rutherford and Kelly, and that the du Pont powder replaced that of the plaintiff as result of such strike is undisputed.

As to the two specific instances which I have just detailed, the Thrush and Spicer incidents; in 7406
the case of the Thrush incident it is apparent that the opposition to the Buckeye powder was being managed by one who was paid to represent the interests of the defendant's powder, and the question arising from this incident is whether the efforts here made to exclude the Buckeye powder firm the Applegate & Lewis mines were prompted solely by the purpose of protecting the trade which the defendant had had with such mines before plaintiff succeeded in securing such trade, or a portion of it, or whether such efforts were prompted and carried 7407
out with the purpose of oppressing these alternative questions there is involved also whether the methods employed in behalf of the defendant's powder were such as were justified in view of those employed by the plaintiff in its endeavor to retain the trade which it had secured in supplying such mines with its powder.

As to the Spicer incident; the question there is whether Spicer, the agent of the defendant, was responsible for the false charge that plaintiff's powder was a non-union powder and for instigating the opposition of the miners to the plaintiff's powder based on such charge. If you find that he was not there is nothing in the incident that could be found as an attempt to monopolize. If you find that he

7408 *Court's Charge*

did so instigate the opposition, resulting as it did in a strike, whether the motive for so doing had its origin in Mr. McCall's desire to be rid of his contract with the plaintiff or not, it was securing trade for his principal unfairly, and the next question for you to determine is whether it was done for the purpose of suppressing competition.

As to the charge that the defendant employed railroad employees to make telegraphic reports or other kind of reports of the plaintiff's shipments,
7409 and which information was used to get consignees to reject plaintiff's shipments, there is no proof that the defendant was able to have the consignments of plaintiff's powder cancelled by reason of any information obtained from railroad employees concerning such consignments, or that they ever succeeded in getting such information from such employees, but there is evidence in the case that one named Piatt, who was an agent of the defendant, sought to hire Harry Paige, commercial agent of the C. B. & Q. Railway, to give him (Piatt) information concerning the shipments of the plaintiff's
7410 powder, offering to pay for such information at a named fate—$5.00 a letter, as I recall it. This was pre-emptorily refused by such agent, and as I recall it it is the only proof of any attempt to secure such information. This, of course, was a reprehensible act. What does such an act, in the light of all the circumstances surrounding it, and keeping in mind other facts in the case bearing upon the keen competition that took place between the defendant's and plaintiff's powders in that district, indicate? The plaintiff was a newcomer in a field already occupied. Except as to new business, it is inevitable that in order for the plaintiff to place its output it would draw some of the custom that theretofore had been flowing to the defendant or some

other competitor. All of them had a right to compete for such business. None of them had the right, however, to use any but lawful methods. To retain one's own customers obtained by lawful means or to secure new ones is lawful, provided no unlawful means are used. The mere ascertaining to what person or place a competitor's product is being shipped is a legitimate means of keeping tab on the trade, and if a particular competitor has been making inroads upon the established trade of another, such other may properly keep a surveillance 7412
over the conduct of such new competitor; but, while this is lawful, it may be readily noted that an unlawful use of such information may be made.

As to the charge that the defendant refused to sell other explosives, such as dynamite, to consumers of black blasting powder unless such consumers also bought their black blasting powder of the defendant, there is but one instance in which proof has been offered in support of this allegation, as I recall the same, and that is the case of the firm of Bruce & Burdick. Robert C. Bruce, a member 7413
of such firm, testified that during 1903, 1904 and 1905, he was engaged, at Joliet, Illinois, in the stone, coal and powder business; that he was an agent as well as a purchaser, in 1903, of Buckeye powder and du Pont dynamite; that before that he had been using and handling Laflin & Rand powder; that subsequently, in 1904, in a conversation with Mr. Elliott S. Rice, the Chicago agent of the defendant, at the latter's office in Chicago, Mr. Rice said to him that unless he stopped buying Buckeye powder they would cancel his agency for their dynamite. This Mr. Rice denied, further saying that he did not know that Bruce & Burdick became customers of the Buckeye Company during

1903 to 1908. This, of course, raises a question of veracity between the two witnesses, and if you should find that the Bruce version is the correct one, still there will be the question of whether it is part of a general plan and purpose to injure the plaintiff in its efforts to secure business, or whether it is merely to protect the interests of the defendant.

The refusal of a manufacturer of several commodities to sell any of them to a customer unless he
7415 handle all, is not in itself illegal, nor, standing alone, evidence of that degree of unfair competition which comes within the antitrust act; however, neither this fact, nor any other single instance, is necessarily to be treated as standing alone, but may, if the testimony in the case warrants it, be considered in connection with other acts for the purpose of determining whether it was a mere isolated, disconnected instance, or a part of a general scheme and purpose to haras and oppress a competitor.

7416 Now, as to the alleged contract system of the defendant to tie up the trade, etc. There is evidence that the defendant and its predecessors employed contracts as one of the means of securing trade. There is nothing in the form of contract used by the defendant that is a violation of the Anti-Trust Act, and such contracts considered separately are not violations of such act. Manifestly, a single contract, though it cover the demand of the largest consumer of powder, and by its necessary effect remove a large part of the trade from the open market, would not be stamped as a monopolization, or, standing alone, afford any basis which would justify the inference that there was an intent to use it against a competitor; nor would the fact that here and there similar contracts were

being made justify such an inference, but if such contracts were numerous or only used in territory where the competition was severe and to which the opposing competitors were restricted because of the freight rates which are such a large factor in limiting the area within which a particular manufacturer can successfully compete, and the purpose of that method was to tie up the trade so as to remove it in a large degree from the free and open competition, and the result of such methods was to remove large portions of such trade 7418
from open competition, then such contracts would be attempts to monopolize. There is a conflict between Mr. Waddell's testimony and that of witnesses on the part of the defendant as to when this means was first employed. It is clear,, however, that such contracts were in general use some years before the incorporation of the defendant and the entrance of the plaintiff into the powder business. The making of long time contracts at special prices, that is, figures below the prevailing prices in particular districts, would be an ef-
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fective means of tying up the particular trade thus contracted and of removing it from the open market while such general prices lasted and were being enforced. A good illustration of the effectiveness of contracts as restraints of trade is afforded by a part of the period when the trade associations was a controlling or influential factor in the powder trade. The inducement to a consumer to enter into such a contract, as well as the effectiveness of such a contract in a commercial sense, so far as the manufacturer is concerned, however, would depend upon how stable such so-called prevailing price then was and how firmly it was then thought it would be maintained during the period of the contract. With a trade association composed of a

7420 *Court's Charge*

sufficient number of manufacturers to maintain a general price such contracts would be more likely to receive favorable consideration by large consumers than if there were no trade association or only a weaker one. If competition was not restrained by such trade association, but was free and uncontrolled by any but the normal laws of trade,, the inducement to enter into such contracts, namely, the feeling of certainty that a price higher than that which was to be made in the contract was
7421 likely to be maintained, would not be so strong, and normally a less number of contracts would be made throughout the trade generally than if artificial means, such as grow out of trade associations, were exerting a controlling effect upon the general prices of a particular commodity.

In the report made by Mr. Waddell to Mr. Pierre S. du Pont, dated October 22,, 1902, while Mr. Waddell was still in the employ of the defendant, he, in dealing with the volume of the defendant's sales by contract, showed that about one-half of the de-
7422 fendant's output was through contracts and further, that by June 30th, 1903, contracts representing about one-third of such output would expire.

The du Pont interests, before the incorporation of the present defendant, as well as the other members of the old trade associations, had a number of such contracts many of which had not expired upon the organization of the defendant and which devolved upon the defendant as well as many other assets and obligations of the old du Pont interests. While the association lasted, which, as you remember, continued down to June 30th, 1904, such contracts were a part of the instrumentalities in restraint of trade, and unlawful, and if a large part of them were maintained thereafter they would continue to be unlawful notwithstanding the trade

association had been dissolved; and if such contracted trade, or a large part of it, could be kept for the benefit of the defendant by renewals of such contracts, or by rebates made to the consumer to induce him to keep giving his trade to it, such holding on to the trade would as effectually remove it from open competition as it did while the trade association lasted, and would be evidence of an attempt to monopolize the trade. How effectively such contracts, or the retaining of the trade once contracted as evidence of attempts to monopolize 7424
will depend, of course, upon their number and the volume of the business thus removed from any given market; but so far as the plaintiff is concerned, the effectiveness of such contracts as evidence of such attempt to monopolize depends upon how much of such contracted or retained trade was in the district in which its mill was located, and where, because of the freight rates, it was practically confined in securing a share of profitable business.

The evidence also shows that the Hazard Company, which the defendant's predecessor then 7425
owned, and the Laflin & Rand Company, which the defendant subsequently acquired, as well as the defendant itself, were also authorized to make a number of such contracts and to grant the rebates to a number of other consumers in the Peoria and Springfield coal fields, and where the plaintiff would normally find its more profitable market by reason of its close proximity to consumption. The so-called Rice list of contracts, 98 in number, made in 1903 and 1904, shows that all but a very few of them, were made with consumers of black blasting powder in such coal fields.

These contracts all inured to the benefit of the defendant, and through them it appears that a very

large part of the trade in black blasting powder in such coal fields was removed from open competition just before and about the time that the plaintiff entered as a competitor in the powder trade. Most, if not all of them, that is, of the contracts, were renewals of older contracts, and the prices at which they were authorized to be renewed were for the purpose of retaining such trade. This fact, however, does not alter their status. It merely requires the scrutiny to be applied at an earlier period.

7427 The plaintiff had a right to enter into the powder business and to locate its mills where it pleased. The defendant, as a manufacturer of long standing, and of business reputation, also had the right to maintain its existence and secure trade by legitimate effort. At this time, however, it had obtained a large part of the trade by means which, considered in their entirety, necessarily and directly restrained large parts of the trade in those districts. The plaintiff contends that many of these contracts were entered upon and the privileges were extended to such consumers of powder as are shown by such

7428 Rice list of contracts for the very purpose of preventing competition from getting a foothold in that district and for which they were entitled to strive on a free footing with other manufacturers of powder. Do the facts sustain such contention? If they do the contracts would be unlawful under the Anti-Trust Act. If, however, in the light shed upon them by the circumstances constituting their environment these contracts did not amount to an attempt to monopolize the trade, it will be necessary for you to consider them in connection with the subsequent acts of the defendant that had relation to the trade found in those districts some of which have already been referred to.

As to rebates: It seems to have been the custom

of the defendant's predecessors and other manufacturers of powder during the existence of the Trade Association, and continued thereafter by the defendant, and even carried on by the plaintiff, to offer and allow rebates to consumers of powder, the rebate increasing as the consumption increased. There is a justifiable ground for giving a discount for prompt cash payment as against slow payment, and so would be the policy of giving one who consumes largely the benefit of a lower rate offset to the greater expense of handling smaller trade by the manufacturers; but as this increasing of rebates in proportion to the increased volume of purchases may be made the means of securing all or by much the greater part of a consumer's trade, as it is to the interest of such consumer to concentrate his purchases so as to get the larger rebate, such system must be studied, not by considering each contract separately, but in connection with other steps or methods employed in securing trade, if they have any relation to each other, because such a system may be made an effective means of removing large portions of trade from the open market. So that while contracts providing for rebates made with a number of such consumers spread over a number of States might not be unlawful, yet a concentrating of many in a given district may evidence an attempt to monopolize. This may be so even though the aggregate of the trade removed from the open market in such limited district is less in volume than that of the rebate contracts spread over a large territory. It is not the mere volume of the trade thus removed, therefore, that is controlling on this question, but it is the proportion of the amount consumed in a particular district that is removed by such system of rebates or contracts that is to be considered, for, as already noted, the freight

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rates are an important factor as to the area that a single plant can cover if the competition is keen. To such a manufacturer the removing of the trade from the open market in the districts so remote from him that normally they are beyond his reach, would have little effect, whereas the removal of a very large part of the trade in the district within which he is practically confined in his operations might prove disastrous.

Now, inasmuch as a series of contracts granting
7433 rebates, even though found in a given territory, may or may not be evidence of attempts to monopolize, we are required here again to determine what was the purpose in employing that means. Was it merely the normal reaching out to secure such measure of the business as would normally belong to the defendant, if the market were kept free and open to all, or was it for the purpose of hemming in the competitors who must find the bulk of their trade in such restricted market, so as to make them dependent not upon the laws of trade that prevail when competitive conditions are free and open, but
7434 upon the will of the defendant through whose contracts such market was restricted.

As to the alleged cut prices to remove the trade from regular competition: The defendant, having become possessed of the plants of other companies, was by reason of such purchases in a position to supply a larger demand of the powder trade than before. It had a right to take any usual method known in business conducted normally to preserve all of the trade which these different companies brought to it. It had a right to run its mills at any capacity it saw fit, even though the running of such mills at their fullest capacity would require it to find additional markets. It had a right to do all these things even though it knew that in so doing

keener competition for the trade would result. In competing for such trade, however, it was confined to the use of lawful methods of business. If by reason of its size or its superior facilities, it could manufacture its product cheaper than a competitor, it had the right to avail itself of such advantage, either by taking the extra profits that such advantage gave or to underbid its competitors with their own trade. It would have no right, however, to keep such of its trade as had been acquired by illegal means from being openly and fairly competed for. It would have no right to use its superior advantages, whether derived through a number of plants or old contracts, in an attempt to monopolize the trade; and it would not have the right under the guise of ordinary methods in business to designedly underbid a competitor, with the purpose of so crippling it as to force it out of business or to make it a negligible factor in opposing a purpose to monopolize. The crucial question of the defendant's conduct in this central district in which the plaintiff was located is, therefore, what was the defendant's purpose in using the methods to secure the trade in that district. Was it merely to protect its interests as a producer and vendor of powder or was it to inflict such injuries upon the Buckeye or other competitors in that district as to make it impossible for such competitors to cope with it there because of their lesser financial strength and more limited area in which they could do a profitable business; so that in the end, be it soon or long drawn out, they would have to yield their independence or withdraw their opposition as competitors and permit of the defendant's acquiring such a dominancy in the trade as to amount to monopoly.

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From Exhibit 1219, which is the statement showing the yearly gross price obtained for black blast-

7438 ing powder in the sixteen different districts in which the defendant operated, it appears that in the Chicago district, which was the one in charge of Mr. Rice from whom we obtained what is called the Rice list of contracts, ninety-eight in number, and to which reference has heretofore been made, the average price for black blasting powder in 1903 was $1.22, in 1904 $1.15, in 1905 $1.04, in 1906 and 1907 98 cents, and in 1908 $1.08. This shows that in the Chicago district, of which the Peoria and
7439 Springfield coal fields were part, the prices gradually were reduced until and including 1907. The evidence also shows that in May, 1905, the defendant cut the price of powder in favor of certain consumers to 95 cents. The names of these, about eighty-seven in number, together with the dates of such cuts, appear in exhibit 1248. The plaintiff contends that this was a general price made, while the defendant contends that it was not a general price, but applicable only to particular consumers upon special application made in their behalf through its agents in charge of the particular field.

7440 David S. Brewster, a witness called by the plaintiff, testified that he, in 1904 and part of 1905, was employed by the defendant in its Wilmington office in the sales department, directly under Mr. Bumstead who was assistant sales director, and that Mr. Haskell was at the head of that department; that he kept the records of the competitive end of the business; that in the spring of 1905, at the request of Mr. Haskell, for the use of the executive board, as he called it, he made a report from his records as to the prices obtained by the defendant's competitors; that his records consisted of cards made up from several thousand trade reports sent in by the salesmen covering a number of states west of Pittsburgh, but not including the west coast; that

the sales board acted upon requests for prices, and that he would get such parts of the minutes as related to his duties, and that in that way he would know what was going on so far as affected his department; that subsequently a telegram was sent to Chicago to Mr. Ed C. Rice or E. S. Rice (he wasn't sure which), the du Pont representative there as he named them, and to Mr. Vehmeyer, the Laflin & Rand representative, advising them that a 95 cent rate was authorized; that while he did not see the telegram before it was sent he did see it subsequently when he was in Chicago. He gave the names of the Excelsior of Kansas City, Senior near Cincinnati, Miami near Zenia, Ohio, Egyptian near Marion, Ill., Buckeye of Peoria, Austin near Cleveland, Equitable near Alton, Ill., and United States near Terre Haute, Ind., as defendant's competitors at that time, but that he knew of no prices made to any consumer in competition with the Equitable, Austin and Miami Companies; that at that time, as he remembered it, there was not much cutting; that the general prices were $1.05, $1.10 and $1.15; that they made most any price necessary to get the business; that the documents from which he made up his report for Mr. Haskell indicated that the Buckeye Powder Company was getting a larger price than the du Ponts; that, as he remembered it, it was getting $1.15 and $1.20 a keg; that a 95 cent price was a general price in specific territories—he naming Illinois, Indiana, Wisconsin, North Dakota, Minnesota, Nebraska and Iowa; that at the time the 95 cent rate was authorized, Mr. Haskell said that the competitors could not make powder at a profit at 95 cents; and that Mr. Bumstead said that that price was low enough to get the competitive black powder business. 7142 7143

Messrs. Coyne, Haskell, Patterson and Bum-

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stead denied that there was any general 95 cent rate authorized; and the effect of the testimony of the defendant's witnesses in that behalf is that such prices were made only on special application presented through their representatives in the field, and were passed upon by the sales board on their merits, and either granted or denied as it was considered necessary to protect their trade. Mr. Bumstead denied that he sent any such telegram as was referred to by Mr. Brewster or that he had any

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knowledge of such a one being sent; and that he never said that the 95 cent price was low enough to get the business of the competitive black blasting powder companies. Mr. Coyne said that the defendant lowered its price because it knew that many reputable powder companies were selling at 95 cents, and further that as their average price in the Chicago district in 1906 and 1907 was 98 cents, that was an indication that the major portion of it in that district was sold at 95 cents; and Mr. Bumstead mentions the American, Buckeye, Miami and

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United States Companies as being responsible for that price.

Exhibit 1437, entitled "A resume of Buckeye Powder Company," was produced on the demand of the plaintiff for the Brewster report; and while Mr. Bumstead identifies it as a report made by Mr. Brewster at about the time the report called for was made, it would appear from his testimony that that was not the only one that he made at that time. This report purports to give the names, location and annual consumption of customers of the Buckeye Powder Company in the several districts in which it did business, the greater number of which appear to be in Illinois. It also gives the differences in price and freight between the Buck-

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eye Powder Company's shipments and those of the defendant.

An examination of these four exhibits, namely, the Rice list of contracts, the list of consumers to whom the defendant gave the 95 cent rate, the Brewster report, and the statement of average prices for 1903 to 1908 of the defendant's sales, will be helpful in getting some understanding of the trade conditions that prevailed in the Chicago district during 1903 to 1908.

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The Rice list, which concerns matters of earlier date, shows, as you remember, the contracts (98 in number) that were made in 1903 and 1904 between the du Pont interests and the consumers of powder in the Peoria and Springfield, Illinois, coal fields and adjoining territories. Of these, 58 expired in 1906, 21 in 1907, and 8 in 1905. The plaintiff did some business with a number of these consumers, Applegate & Lewis, Clark Coal & Coke Company, and the Maplewood Coal Company being familiar names of that number, and concerning which there is quite some testimony in this case.

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The Brewster report, to which we have just referred, and following which the 95-cent rate was authorized, gives the names of ninety-odd consumers as customers of the Buckeye Powder Company, of which about fifty (50) are in Illinois; and the 95-cent rate list shows that between May 5, 1905, and October 8, 1907, 87 contracts, founded upon a very much larger number of authorizations, however, were made at that rate by the defendant with consumers in the Chicago, St. Louis, Cincinnati, and Kansas districts, forming or being a part of the Central States, of which 46 were in Illinois, 32 in Indiana, 7 in Ohio, and one each in Kansas and Missouri. Out of this total number of 87 only four appear to be with persons given on the Rice list, so

7450 that almost all the consumers to whom the 95-cent rate was given are in addition to those found on the Rice List. It further appears that of the alleged customers of the plaintiff on such Brewster report—about 20 in number as I recall it—were or became the defendant's customers, though the plaintiff did some business with some of them thereafter. By this method of securing trade, therefore, the defendant succeeded in excluding from the open market a very large part of the trade of these dis-
7451 tricts, and its purpose in so doing is of important determination upon the question raised in this case whether the defendant was guilty of an attempt to monopolize the powder trade.

Exhibit P-1219, already referred to, which is the comparative statement of the average gross price of powder sold by the defendant in its sixteen different districts during the years 1903 to 1908, shows that in the Chicago district the price dropped from $1.22, in 1903, to 98 cents in 1907, and that it increased to $1.08 in 1908. During the time that the
7452 plaintiff was actively seeking trade the prices in the Chicago district fell year by year, but this seemingly was the same result as appears from such exhibit generally speaking, as in the other districts of the country. That the price varied in the different districts, and that there were economic conditions that would warrant this difference in price in these different districts are matters that admit of but little dispute. These prices were also differently affected in the several districts by different competition. That some controlling causes worked in the lowering of the prices in all of these districts between 1903 and 1907, inclusive, is manifest by an inspection of this exhibit, as is also the fact that a rise took place in the year 1908 in all of such districts except that termed the "Duluth District,"

where the price remained the same as in 1907. There is dispute as to the cause of this rise in the Chicago District, the plaintiff contending that it was due to the fact that by 1907 it had been practically forced out of business, and that its inability to further cope with the defendant in the struggle for business was made manifest to the defendant, and thereupon the latter arbitrarily advanced the price in the following amounts: 98 cents, $1.05, $1.10 and $1.15, different periods, and that such latter price was maintained for a long period thereafter. The de- 7454
fendant contends that the condition of the plaintiff had nothing to do with the rise in price in 1908, but that it was due solely to the increased price of nitrate of soda, which was an important ingredient in the formula for making powder. If the rise in price is due to the cause alleged by the plaintiff, then the question arises, what significance is to be given to its reflecting upon the past competitive conditions and the attitude of the defendant? In 1907 there also appeared for the first time since 1903 a regular price list issued by the defendant, 7455
and that is said by the plaintiff also to be significant upon the defendant's attitude during the previous years of marketing its product. The significance is said to reside in the fact that the absence of a regular price list of the defendant during the period between 1903 and 1907 was caused by its making special prices during that period to secure the trade, and that in such way the prices were unstable and the trade purposely kept unsettled that the defendant, as the largest producer of powder, might get the benefit of such uncertainty, being ready to take the trade at any price. That prices are apt to lower during periods of strenuous competition is one of the usual results and that they will rise again after competition is at an end is

7456 *Court's Charge*

likewise a trade axiom; and that the survivor in the contest is the only one that gets the benefit of such a rise is inevitable.

In considering the competitive conditions in the central states, of which the Peoria and Sprinfigeld, Illinois, coal fields are but a small part, you will, of course, not lose sight of the fact that others than the plaintiff and the defendant were competing for the trade. Mr. Brewster, a witness for the plaintiff, and others called on behalf of the defendant, in giv-
7457 ing the defendant's competitors in that territory, mentioned the Excelsior, of Kansas City; the Senior, near Cincinnati; Miami, near Xenia, Ohio; Egyptian, near Marion, Illinois; Austin, near Cleveland, Ohio; Equitable, near Alton, Illinois, and the United States, near Terre Haute, Indiana, which made seven outside of the plaintiff and the defendant. Some other smaller or more remote concerns were also mentioned by some of the witnesses whose names I do not at this moment recall. Of these just named, the defendant held 19 per cent.
7458 of the capital stock of the Equitable, and about 33 per cent. of the capital stock of the Austin.

That competition carried on by such a number, striving with more or less zeal to obtain trade in the central states, would, in the absence of artificial restrictions, be more or less keen and troublesome must be assumed, and in dealing with the question whether the defendant, in inaugurating or using the methods employed by it to secure trade in that territory, was acting on the defensive and simply endeavoring to protect its legitimate interests, such competition must be considered; but in so doing it must not be forgotten that during this time, or the greater part of it, it had the greater part of the trade which it obtained through the contracts mentioned in the Rice list and which, you will remember, came into existence while the trade association

lasted, and which were then unlawful because undue restraints of trade; so that, if in the competitive struggle it was of its own initiative or forced upon it by its competitors, its endeavor was to add to the trade thus secured to itself, and that by this larger amount of trade thus removed from open competition its competitors in the territory containing such restricted market would be unable to get sufficient trade to carry on a profitable business, thus minimizing or removing them as competitors in that territory, such endeavors constitute attempts to monopolize. 7460

In addition to this, the making of this 95-cent rate, general or special, as applied to the Central States, is to be considered in the light of the fact that the defendant was a large producer, having plants located in different parts of the country, the normal markets of each being within such area of its different plants as could readily be reached by them respectively. Such a trader has an advantage over a competitor who has but one location, as the former can recoup its loses, if any, in any particular district, or can add to a low amount of profit in such a district, from the profits, if any result, from its operation in other districts. 7461

Intent, therefore, in the making of such 95-cent rate, as already noted in the instance of other steps, is the crucial matter. Intent, of course, is an act of the mind, and where the person having the mind in which an intent is formed fails to disclose it by words, we may turn to his acts, and if they furnish the evidence of intent, we may accept such conduct as evidence of the intent. If the remarks attributed to Mr. Haskell and Mr. Bumstead, by Mr. Brewster, which are that Mr. Haskell said that the competitors could not make powder at a profit at 95 cents and that Mr. Bumstead said that such price was

low enough to get the competitive black powder business, are true, they would be rather significant upon the purpose of making that 95-cent rate, for you will remember that such remarks were said to have been made by both of these men after that rate had been determined upon and which, as you recollect, is said to have followed the making of the Brewster report, and which report contained the names of alleged customers of the plaintiff. Mr. Bumstead, you will remember, denied making the
7463 remark attributed to him. Mr. Haskell, as I recall it, was not called as a witness after Mr. Brewster had testified. As between Mr. Brewster and Mr. Bumstead is here raised for your determination the question of veracity and accuracy; but, as to the statement attributed to Mr. Haskell there seemingly is no denial.

Up to this time, in our consideration of such of the alleged overt acts as I have dealt with and such of the testimony in relation thereto to which I have referred, they have been treated as separate subjects. There is much other evidence, pro and con,
7464 relating to these and other alleged overt acts but as to which I make no reference, not because they may not be significant upon the broad question of whether the defendant is guilty of attempts to monopolize the trade, but because, as I stated at the beginning, the exhaustive arguments of counsel on both sides precluded the necessity of my making reference to all the disputed facts in the case; but those which I did deal with were selected because they were to my mind the more prominent instances and around which have gathered more of the disputes and contentions of counsel. They were the storm conters, and when you have mastered these and determined what the facts are as to them you will be in a position to see more clearly the relationship and signifi-

cance of the other matters disputed and undisputed as well as those specifically referred to. You will, of course, take these other matters under consideration and find the facts in regard thereto the same as you will do in regard to those that I have specifically referred to. In your consideration of all of them, of course, you will keep in mind that the burden of proof as to what the facts are in these particulars is upon the plaintiff, and that it is not incumbent that the defendant established its contentions in regard thereto. What the plaintiff fails to prove 7466
by a preponderance of evidence must be resolved in favor of the defendant, so that not only do you find for the defendant in case the weight of evidence should preponderate in its favor, but also in every case where there is a balancing of the evidence; so that, as far as these allegations of overt acts are concerned, the defendant is entitled to your verdict in every case where the prepondering weight is not in favor of the plaintiff's contention. Now, if you find that such acts were not committed by, or if committed, were not chargeable to, the defendant, 7467
you will render your verdict in its favor; but if you find that they, or some of them, were committed by and are chargeable to the defendant, then the next question for your determination is whether they establish that the defendant was guilty of an attempt to monopolize the powder trade.

You, in your consideration of the facts, of course, will endeavor to ascertain whether they stand isolated or are steps in a general plan. If they are the former, that is, separate and disconnected, I think you would have great difficulty in finding that they show such an attempt at monopolization as is necessary to maintain this suit. It, however, you find that they bear a relation to each other and the facts satisfy you, in the manner that

7468 *Court's Charge*

I have charged you, that they are part and parcel of a general plan, or steps in a deliberate purpose, the question then is: What is that plan or purpose? Such a plan might be either legitimate or illegimate. Was such plan or purpose to merely protect the legitimate interests of the defendant in the trade, that is, was it for the purpose of protecting such part or all of the trade which it had acquired theretofore by legitimate means, or which, by reason of its capacity and ability to supply, it
7469 was reasonably entitled to in free and open competition; or was it to harrass and oppress its competitors so that in the end, be it near or far removed, they would cease to be independent competitors and leave it master of the market? If you find that such protection, and not oppression, was the purpose and the use made of such steps or parts of a plan, then the defendant is not liable in damages simply because as an incident to the carrying out of that plan a competitor was injured in his business or property. No one who enters into a
7470 competitive field is guaranteed that he will get any particular share or even a share of the business at a profit, nor does the mere fact that the largest competitor is able to prevent a smaller one from getting a profitable share of the business make it liable in damages to such other. Competition, as it exists under the laws at this date, has within it the element of fight. It permits fighting so long as it is fair and it permits the fair fighter to go away with the spoils, even though some one in that fight has been injured, and perhaps irretrievably injured in consequence; so that it is not the mere fact that a competitor suffers injury through severe competition that makes the other competitor who may have come out of the fray successfully liable to compensate for the losses sustained by

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the injured party. It is only when the injury is sustained by reason of the things forbidden by the Anti-Trust Act that compensation can be recovered, and the things that are forbidden, so far as pertinent to this case, are those that constitute an attempt to monopolize, that is, to suppress competition. If, however, the plan and purpose and the use made thereof are to cripple the competitor and such step or parts of such plan as carried out directly and naturally tend to the suppression of competition, no matter how slow the development 7472
of such purpose or gradual its consummation, and a competitor is injured in his business or property by reason of the carrying out of such plan, then the author and user of such plan is liable in damages for the loss thus sustained. Now, in view of what has been previously stated, it is hardly necessary for me now to reiterate, but I do so, that upon all of these questions you can only find that the purpose and use made of such steps were to suppress competition if the evidence preponderates in favor of such a conclusion. If the facts in the case as found by you fail to prove that the defendant 7473
is guilty of attempts to monopolize the powder trade, then your verdict must be for the defendant. If, however, they do prove such attempts then, and then only, arises the question whether the plaintiff has proved that it was injured in its business or property by reason thereof and of what it has proven itself to have lost by such injury.

Injury by reason of attempts to monopolize is the gist of this action. If the plaintiff sustained its injury from other cause it cannot maintain this action, and as the defendant insists that its failure to make a profit was not due to any of the acts of the defendant, but to its own lack of proper

capitalization and equipment, its failure to produce a satisfactory powder to the trade, and its failure or disinclination to sell the powder that it could make, it is necessary that the evidence in regard to these counter charges should be considered by you.

As to the properly equipped plant: You have the testimony on the part of the plaintiff as to obtaining a favorable site, and the construction and equipment of the plant, the employment of compe-
7475 tent salesmen and the efforts that were made to secure the trade, and the results. You have also the testimony of Messrs. Olin and Pierce as to how they found such plant, and these will be again referred to under the head of damages. In connection with this subject you will also consider the disputed testimony between Mr. Waddell and Mr. Rice as to what was said at the Handicap Meet at Kansas City while Mr. Waddell was still in the employ of the defendant, where, according to Mr. Rice's testimony, Mr. Waddell made overtures to
7476 interest him to go into the powder business, and that upon Mr. Rice's declination stating, in substance that he didn't care to get any nearer the business of manufacturing powder than he was, Mr. Waddell said that "he would not of necessity make very much powder; the plan was to make prices." First, as to the truth of that interview; it is a disputed matter and it is for you to determine. If you find that Mr. Waddell never made such a statement—and he denies that he made it—of course, it would have no relation to the present subject we are considering; but if you should find that he made that statement, then the question would arise that notwithstanding here was a plant erected and equipped to make powder, whether it was sufficiently capitalized to stand the stress of

such severe competition as would arise through fair and legal methods, or whether such company was capitalized more for the purpose of forcing a sale of it to the manufacturers then in the field, after having proved its ability to manufacture both powder and prices. The capitalization was only $100,000, as I recall it, although other large amounts were obtained and used by the plaintiff during the course of its operation. Mr. Waddell, as already stated, was well advised when he promoted the plaintiff company, of the defendant's 7478
business, capacity and policies. He had been its agent for a long period during which several severe competitive struggles took place, and he knew the outcome thereof, and which was, generally speaking, the taking over in one form or another of such newcomers, and at least in one instance—that of the Indiana—at a considerable profit to the owners of that company. Of course, Mr. Waddell, or the company which he formed, had a right to go into business, and the motive for entering into such business is of little moment, so far as their rights 7479
were concerned; but if he was actuated by the belief that his company would meet with a like experience after some competitive struggles, it may have a bearing upon the question whether the plaintiff was sufficiently capitalized to engage in the struggle for the market already occupied. Of course, if you find that it was sufficiently capitalized, or that it had sufficient financial backing to weather a struggle carried on under normal or lawful competitive conditions, that is a sufficient answer, and it would make no difference whether it was or was not sufficiently capitalized to meet a competition forced upon it by unlawful means.

As to the quality of powder: The evidence warrants the conclusion that by far the larger part of

7480 *Court's Charge*

the plaintiff's powder was of proper quality. The use made of powder, however, is such that even an occasional lapse from the proper quality is bound to reflect heavily upon new manufacturers, for less consideration would normally be given to it when some of it was discovered not up to the standard than if it were the product of a manufacturer of long standing, for in the latter case the consumer would ordinarily conclude that such falling off was but temporary, while in the case of a new concern
7481 that conclusion is not as likely to obtain, with the necessary result that more difficulty would be encountered in reinstalling such powder by the new manufacturer than one of long standing. The defendant further insists that in the mines where the miners forced the plaintiff's powder out, while it might be that such miners were prejudiced against it, that their prejudices were a sufficient reason for its rejection and that because the defendant became the beneficiary in consequence thereof, it did not make it responsible for such prejudice or any other
7482 reasons that were influential in ousting or excluding the plaintiff's products. The more or less force of this reasoning is for your determination, as is also its application to the particular cases where the plaintiff's powder was rejected or refused entrance.

As to the unprofitableness being due to failure or disinclination to work up to the plaintiff's capacity; the evidence shows that the plaintiff's output reached its high-water mark at the close of the year 1904; and that from that time it began going down, each six months' business thereafter generally showing a decrease over the one preceding it. The evidence relied upon by the defendant as indicating a refusal to accept business or to work up to capacity, is based upon the plaintiff's answer to the defend-

ant's letter of October 24, 1907, which is Exhibit 1221. This letter from the defendant asked if the plaintiff could help it out with some powder, and at what price, and how much per month, and during what months they could so supply it. This was following the explosion of the Indiana mills at Fontanet. To this the Buckeye Company replied under date of October 26, 1907. Exhibit P 1325, that it had been the company's policy for the past year to operate only 40 per cent of its capacity—merely enough to fill current unsolicited orders, and that 7484
they had no powder to offer. Mr. Waddell, in explaining this declination, said that they were not seeking an extension of their business; that they had already declined to supply Mr. Olin, who wanted 20,000 kegs after having supplied the Egyptian Company with 6,400 kegs; and that plaintiff did not have sufficient working capital at that period to increase its business. Of course, it is to be noted that plaintiff was then nearing the time when it ceased to manufacture powder. The 95-cent rate, issued by the defendant, had been in existence 7485
then more than two years, during which the plaintiff's sales were lessening. If the defendant's wrongdoing was responsible for the gradual loss of plaintiff's business, the fact that it in the latter part of 1907 was unable by reason of the lack of capital to respond to this demand for powder, as also the fact that it did not at that time show a desire to accept business, would have little, if any, significance.

Of course, if you find that the plaintiff's failure to grow in its business and to carry it on profitably was due, not to the alleged wrongful acts of the defendant, but to its lack of capital or the poor quality of its powder, or to its failure to run its mill more nearly to its capacity than it did, it cannot recover, for it is only in those cases when injury is sustained by reason of the doing of things for-

7486 *Court's Charge*

bidden by the Anti-Trust Act that a suit of this character can be maintained.

Now, as to damages; the plaintiff claims that it was injured and damaged by the unlawful acts of the defenadnt as follows:

$47,935.94, as loss sustained in the sale of its plant and real estate; the plant here being considered as a physical, tangible property; and

7487 $135,242.13, which it claims was the value of the good will of its business; and

$67,404.90, as the loss of the profits on the powder actually made and sold by it; and

$153,845.10, the loss of profits on the number of kegs that it could have made and sold in addition to those that were actually sold, making a total of

$404,418.07.

If you should reach the question of damages, the
7488 plaintiff will be limited to compensation for the actual injuries sustained. The seventh section of the Anti-Trust Act authorizes the recovery of treble damages; but you will have nothing to do with the trebling of the damages, your function in this particular being limited to ascertaining the actual damages. The law itself multiplies it and that will be done by the Court. Compensation for legal injuries is the measure and the only measure of the recoverable damages. None but actual damages can be awarded by you in an action of this kind, and these must be established by facts from which they are logically and legally inferable. This rule, of necessity, excludes conjectures and unwarranted estimates or witnesses, as it does speculative, remote or contingent damages. Keeping this rule

in mind, let us consider, first, that damage which it is alleged was sustained in the sale of the plaintiff's mill which it sold to Mr. Olin. The rule here to be applied is the difference in value before and after the injury. Mr. Waddell has given us his judgment of the value of this plant, but for the alleged acts of the defendant, and the books of the plaintiff were put in evidence and are relied upon as giving the exact cost of the land and construction, and which show that land and plant were carried as having cost $118,385.94. Passing for 7490
the moment the attack made by the defendant upon these books as furnishing even a correct account of such cost, I charge you that what a party pays for property, whether he buys it outright or pays for its construction, is not, in itself, the test of value, although such price constitutes a circumstance to be considered and weighed in connection with other evidence. This is the rule as to the ascertainment of the value of property generally, but it is peculiarly forcible as to manufacturing plants. Generally speaking, the price paid for the land and in 7491
the construction of a residence or ordinary business building thereon, furnishes a fair guide as to its value; but this rule is of but little help in the case of a manufacturing plant. A manufacturing plant may obtain value greatly in excess of its cost, or it may fall far below it. This is true because the selection of the site, as well as the plan and character of the buildings erected thereon is determined by the nature of the manufacture that is to be carried on; and the value of the plant, therefore, depends largely, if not entirely, upon such manufacture proving profitable. If the venture is disastrous the market for that particular class of property is very much depressed by reason of such failure. At best, the market for that kind of property in such

circumstances is much more limited than for property adapted for residential or business purposes. The cost of the site, as well as of the construction and equipment of manufacturing plants are, therefore, never to be taken as conclusive evidence of value, and the persuasiveness of such as evidence of value depends very much upon other conditions.

In this case it is said that the site for the purpose of manufacturing powder was worth considerable more than it cost. This is not an impossible thing;
7493 but that, of course, depends upon whether it is peculiarly adapted for the manufacture of powder. This increased value the plaintiff insists is due to its favorable location, both on account of the contour of the land utilized, and its being near a large consumption of its product, and having exceptionally good railroad facilities, and its location, as I understand is considered favorable on account of its detonations which might happen in case of explosions. Mr. Waddell has given the increased value at $4,550 and his reasons why this is so; but the actual value of land for any purpose,
7494 as well as its enhanced value for particular purposes, may vanish entirely if the venture to which it has been applied should prove disastrous. The cost of putting up a manufacturing plant is likewise not conclusive, and its persuasiveness as evidence of value depends upon so many other conditions, that such conditions, rather than the actual cost, are more likely to furnish the true guide as to its real value. In the building of a manufacturing plant the particular purpose to which it is to be applied, as well as the character of the material used and the skill and experience of those who are constructing it, largely affect the cost of such improvements; and if the manufacture subsequently carried on there should prove unprofitable,

much of such cost may be valueless, but as this particular plant was purchased to carry on the very kind of manufacture for which it was built, and as it therefore suffered no loss on account of its having been taken for other purposes, we are concerned here only in ascertaining what it was really worth for the purpose for which it was originally intended. 7495

On behalf of the plaintiff it is insisted that by reason of the acts of the defendant which made such manufacture less profitable than it would have been except for such acts, the market for such manufacturing plants was unduly limited, and that the cost of the plant, rather than the amount realized from such sale, furnishes the criterion of value. Furthermore, it is testified by Mr. Waddell that the plant was exceptionally well built and kept in good repair. On the other hand, it is said by Mr. Olin who made the purchase, and Mr. Pierce, who was employed by Mr. Olin to pass upon the efficiency and value of the plant and equipment before it was purchased, and who subsequently managed its operations for a time, that the plant by reason of some defective constructions and lack of repair in the particulars named by them, was worth no more than had been paid for it. Here is a question of fact which you must deal with. As I have said, cost is not very persuasive evidence of value. If in part it was defectively constructed, it will readily be accepted that much, if not all of the cost, as represents defective construction, will have to be deducted from the total cost. Furthermore, a manufacturing plant is one peculiarly subjected to deterioration, whether in use or not, sometimes to a greater degree when not used than when in actual use. The way in which a plant is constructed or repaired, as necessities require, is therefore an im- 7496 7497

portant element in the determination of its value. A manufacturing plant may for a long time satisfactorily to serve the purpose of its construction, and yet be constantly lessening in value. It is, therefore, a common practice of manufacturers, having that in mind, to charge off annually a certain percentage for depreciation, that the book value may be kept close to its real value. What this percentage should be depends, of course, in part upon the character of the manufacture carried on, how
7499 well the plant is kept in repair, and what wear and tear is encountered which has not called for immediate repair, and for how long such wear and tear has been going on. Matters of this kind are to be kept in mind and considered in making your final determinations as to whether the plant was worth more than received and, if so, how much more.

The plant, after several futile attempts to sell, was sold to Mr. Olin for $75,000.

The book value of the plant, as already stated, is $118,385.94. This, of course, you will note, is what
7500 what the plaintiff claims the land and plant actually cost. The method of book-keeping employed by the plaintiff has been attacked, and of course, the first inquiry as to the effectiveness of such books as evidence is whether they have been fairly kept and with accuracy record the financial transactions of this concern. The Court admitted the books because, from the evidence as to the manner in which they were kept it considered them sufficiently proven to go to the jury; but this action of the Court related merely to their admissibility. Their effect and weight as evidence is for you to say. If you find that they have been fairly kept and do record the financial transactions with accuracy, of course, they are evidence of what they contain.

If not, and by reason of such unfair and inac-

curate method of keeping them, you can not ascertain with certainty what those transactions were, the books must be discarded by you as valueless. If, however, you find that they have been fairly and accurately kept, then resort may be had to them for the different purposes for which they have been offered in evidencve, one of which and that which now concrns us, being the book record of the cost of the plant.

If the books are to be considered by you on this question, then, in addition to what I have said to 7502
you with reference to the limited effect you are to give to cost in determining what is the value of the plant, you will take into consideration the evidence that bears upon the charge that some of the items which make up this amount of cost, can not properly be charged to plant. These items, as I recall them, are the salaries paid to Mr. Waddell and his sons and certain items of reconstruction due to explosions. During the time the plant was in actual course of construction, any salary that was being paid to persons who were contributing by their 7503
services to such construction, would be properly chargeable to such account; but no salaries after the construction was finished or of any persons during the period of construction that did not contribute value to such construction, should be so charged.

Mr. Graham: Our contention was, sir——

The Court: I don't mean your contention, sir; I mean my statement. I have made some corrections here and I am not sure that I stated my own proposition correctly. Yes, I think I did state is so, and in order that it may be stated again and be sure of it I will repeat.

In the matter of explosions; several occurred during the period that plaintiff's mills were in opera-

7504 *Court's Charge*

tion, but the only one, as I understand it, that is involved in the present attack that the loss sustained thereby was not charged off construction was in January, 1904, which according to Mr. Waddell's testimony cracked a cylinder of an upright press, which press was thereupon abandoned and another one of a different type already on hand substituted. I don't know whether I have got that statement correct or not. The books, seemingly, do not show that any deduction from the construction
7505 or improvement account was made by reason of the abandonment of such damaged press, and Mr. Waddell does not know whether the cost of such abandoned press was charged off on such account or not. From this it is evident that the book value of the plant can not be accepted in toto, and that some deduction must be made therefrom on account of that explosion; and, as the plaintiff has not borne the burden of proof which is upon it, you will, in making such deduction, charge off enough to insure that all the cost of such abandoned press is de-
7506 ducted from such book values.

Now, as to the salaries of the Waddell's; the plant began to make powder about November 1st, 1903, but the entire construction work had not then been completed, for, as I recall it, the books show that about $34,000 worth of construction work was done between that time and June 1st, 1904. It appears, however, that all the salaries of the Waddells in the months of November and December, amounting to $1,000, were charged to construction or improvement account, and that of $3,026.00 of salaries between January 1st and June 30th, 1904, $1,750 was charged to construction; and the question raised here is whether any or all of such $1,000 for November and December salaries, and any or all of such $1,750, charged to construction account,

should not have been charged to general or running expenses. If you find that any or all of this should have been charged to the expense account, then, of course, you will make a further deduction from the book values of the plant to the extent that you find should have been charged to expense account.

When Mr. Olin took charge of the mill he spent considerable moneys upon the plant. He stated that such expenditures amounted in round numbers to about $100,000. Some of the moneys expended by him undoubtedly were for new or additional improvements, and as to some others there is a question as to whether they were necessary by reason that the plant was not in proper working order through either defective construction or lack of proper repair, or whether they were made more to suit Mr. Olin's ideas as to how a mill should be arranged and constructed. 7503

That is a matter of course, for you, as you have the different testimonies of the witnesses in regard thereto, and it will be for you to determine where the truth is, making such further deductions from the book values as from your consideration of the whole testimony bearing upon the real value of the plant at the time of its sale, you are satisfied should be deducted. 7509

So far I have been dealing with the value of the plant simply as a tangible or physical property. A manufacturing plant, however, may have another and additional value, namely, its good will; and as the plaintiff claims that it has suffered damages to its good will, that phase will now be considered. Good will may be defined for present purposes as "the advantage or benefit which is acquired by an establishment beyond the mere value of the capital stock, funds or property employed therein in consequence of the general public patronage and encour-

agement which it receives from constant or habitual customers on account of its local position, or from celebrity or reputation for skill, or affluence or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices." Establishment of a profitable business is the essential of the good will. Where that does not exist there can be no good will.

The very contention of the plaintiff on another branch of the matter of damages is that from Sep-
7511 tember 18, 1905, until the time that it ceased doing business, it was conducting an unprofitable business; and as the losses said to have been incurred during this period largely overcame the profits claimed to have been made for the twenty-two months preceding we have as the only basis for a good will, not that a pecuniary advantage or benefit was secured by the plaintiff during the time it was in business, but that it would have done so except for the wrongful acts of the defendant, and that for a part of such time it actually did make a profit.

True, a person may be wrongfully prevented from
7512 acquiring a good will; and ethically such a wrong is just as injurious as if an established good will was injured by such wrong doing. The rule in allowing as well as estimating damages, however, is a practical, rather than an ethical standard, and this excludes all damages that are purely speculative and contingent. To attempt to create out of unknown quantities a good will for the purpose of giving it a value when no past conditions establishing a good will exist, would be but a pure speculation, and therefore not allowable. The claim of damages for good will therefore must be disallowed.

As to the loss of anticipated profits; as to this the claim is divided into two classes; (1) upon the powder actually sold, which it is said is 224,683 kegs;

and (2) as to that which was never made, but which it is claimed would have been made except for the unlawful acts of the defendant, amounting to 512,817 kegs. As to the first class—those made and sold—plaintiff claims that they were sold at an actual loss, and, if the figures presented to us from the plaintiff's books of account are to be taken as correct, that is so.

Plaintiff claims thirty cents (30 cents) a keg profit, but there is no evidence in the case that would justify the conclusion that that was a fair 7514
profit. The evidence does disclose that for certain periods that, and even more, profit was realized by some of the manufacturers of powder; but it also discloses that at other periods powder was sold at a price which would not warrant anywhere near such a profit. It is manifest that the illegal restraints put upon the trade by the trade associations alone permitted of that amount of profit. One, if not the main, purpose of such associations was to fix an arbitrary price for powder, and this it achieved in part by restricting the output. This, of 7515
course, could be accomplished in more ways than one, but it is needless for present purposes to inquire as to how it was done. It is enough that it was done; and, so far as this present record is concerned, the only basis for a thirty cents (30 cents) profit is that which is furnished by this arbitrary, and therefore illegal, means employed by the trade associations. With the dissolution of the association and the passing away of its arbitrary restraints imposed upon the capacities of existing plants, that amount of profit could not be long maintained unless there was such an increased demand for powder as to take the output of the mills at their unrestricted capacity. That there was such an increased demand as to bring about a profit such as thereto-

fore was only maintained by unlawful restraints of trade would have to be shown by convincing evidence ere it could be accepted as the measure for fixing anticipated profits. It is needless to say that that kind of evidence is not contained in this record, for even if you should find, as you will have to before you even consider the question of damages, that the defendant was guilty of such unlawful restraints upon the trade as to make it liable in damages, it is perfectly clear that its efforts were largely exerted to maintain the trade which it theretofore had. In the struggle for trade or supremacy, whichever it may indicate, it is perfectly clear that there was no such demand for powder during these years when the plaintiff was operating as to warrant your finding that thirty cents was the profit which the condition of the trade then would sustain as a fair and reasonable one. If not this much, then how much? Here again we are confronted with uncertainties. That some profit would result, if trade conditions were normal, and none but the natural law of supply and demand regulated it, may be assumed; but how much? This the plaintiff must show with reasonable certainty. Upon him is cast the burden. Has he satisfied it? It is not to be determined by a guess, nor by the fact that we may believe that any unprofitableness of the plaintiff's business was due to the defendant's wrong doing; and then because of the consciousness, borne in upon us by reason of such belief proceed to arbitrarily fix the profit. Until the Congress gives a different rule to estimate damages in such cases as this the old rules are applicable, and they, as before stated, exclude mere conjecture or speculation. In consequence of this rule, were it not for the fact that the plaintiff claims that in the twenty-two months preceding September 18th, 1905, it had

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made a profit notwithstanding the unlawful restraints that it says were then being exerted upon the powder trade, I should be compelled to withdraw the question of profits from you in toto; but this contention of plaintiff requires me to submit the evidence that bears upon that to you upon this question of anticipated or expected profits; for while it is the general rule that such profits are not recoverable, an exception has been made in many jurisdictions in cases where an established business has proved profitable in the past, and 7520
where by competent proof it is made reasonably certain that but for an interruption chargeable to the defendant, the amount of the expected profits would have been made. Profit alone, however, is not enough to bring an existing business within the exception. In addition, the business must have been carried on for such a length of time as to make it reasonably certain that it had passed the period of experimentation and was capable of successfully surmounting the ordinary commercial vicissitudes that beset similar enterprises. What length of time
may be necessary to obtain such a status may be a 7521
question of law or fact, according to circumstances. A shorter period during which financial or industrial depression or severe competition was encountered would permit of the submission of the question whether the business was sufficiently established to admit of the recovery of anticipated profits; whereas a much longer period of business life, but during which none of such depression or competition was experienced, might as a matter of law forbid the consideration of such question at all.

In this case the statute of limitations pleaded by the defendant furnishes a line of damarkation between the two periods of the plaintiff's business. The 18th of September, 1905, fixes the dividing line

7522 *Court's Charge*

and the plaintiff seeks to recover anticipated profits on the kegs of powder manufactured and sold for the three years since that date. The plaintiff claims that up to the 18th day of September, 1905, and covering a period of twenty-two months, it carried on its business profitably. The average profit per keg during such period, according to this claim, is 3 1-7 cents. This price per keg is figured from $6,470.61, which is the sum that the plaintiff claims its books show as the amount of the net profits
7523 made during the said twenty-two months and the number of kegs upon which the 3 1-7 cents per keg profit is based is 205,931. What I said to you concerning those books as evidence when dealing with with the alleged cost of the plant is applicable here. It is only in case you find that these books have been so kept that you can ascertain therefrom with certainty that a profit was made during this period, and the amount of such profit, that you can use that profit as a basis for a comparison upon the question of profits during the subsequent period. If you can
7524 not ascertain what were the actual profits by resorting to such books, of course, the inquiry as to profits at all fails for the lack of proof, and no allowance of profits can be made. If, on the contrary, however, it can be ascertained from such books with certainty that profits were made, and what was the amount of them, then the next question arises whether this period of twenty-two months was sufficiently long in view of the trade conditions prevailing, whatever may have been the cause thereof, to establish with reasonable certainty what the anticipated profits for the period subsequent to this 18th day of September, 1905, would have been if normal trade conditions had prevailed. Now, according to one contention, normal trade conditions did not obtain during this twenty-two months end-

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ing with the eighteenth day of September, 1905, while according to another contention that the conditions prevailing during that period, as well as during the period following, were normal; and that they were just such conditions as would be likely to follow the abandonment of the Trade Association, which you know finally was dissolved in June, 1904. Whether they be normal or abnormal, if it be a fact that during that period the plaintiff made profits, they furnish a sufficient basis for comparison with subsequent years for me to submit it 7526
to your consideration; but it will be for you to say whether as a fact that period was sufficiently long to furnish a basis for comparison with subsequent years. If you should find that it isn't sufficient to furnish such a basis, even though you should have found that during the twenty-two months the plaintiff made a profit, the further inquiry as to profits during the remaining years must end, and no profits can be allowed. If, however, you find that it does furnish a satisfactory basis, then you will allow us profits upon the kegs manufactured during such subsequent period all or so much of such 3 1-7 7527
cents per keg as you shall find was the profit per keg on the 224,683 kegs as is shown were made during the three years following September 18, 1905.

The defendant challenges the correctness of the sum alleged to have been made as profits during the twenty-two months referred to, claiming that the items of salary paid to the Waddells, and the loss sustained in the explosions, one of which I considered a short time ago, when dealing with the question of the book value of the plant, should have been charged to the running or working expense during those twenty-two months, instead of to construction, and that if they had been this amount

would have been totally wiped out. If that is the fact, of course, there is no standard here upon which you can calculate profit for the 224,683 kegs which were made and sold; but if you should find that only a part of such salaries and explosion losses, and which were charged to the construction account, should have been charged to running expense, and after deducting from this sum total, namely, $6,470.61, such amount so found, there remains a profit, that profit will furnish the stand-
7329 ard; and when you have ascertained the price per keg such profit represents that will be the profit per keg, and not the 3 1/7 cents per keg that has been allowed as the anticipated profits upon the kegs actually sold. In order that you may have these figures before you, I have prepared a table which will be handed you when you retire.

As to plaintiff's further contention that it is entitled to its loss of profits on the number of kegs of powder which it would have been able to make and sell, but for the acts of the defendant over and above those which it actually made and sold; this
7330 question, if it could be submitted to you would only obtain if you should find damages for loss of profits on the kegs actually made and sold during that period. If you did not so find you could not find anticipated profits on those not made, even if it were to be referred to you. You will note that in this further claim for profits there is another and a very important element to be considered in addition to those considered in the submission of the last proposition. In the last proposition the number of kegs actually manufactured and sold was a subject capable of exact ascertainment, whereas in the one now being considered the number that might have been made and sold is not susceptible of actual proof. While the capacity of plaintiff's mills is a subject capable of exact determination,

so that one of the elements involved in this question of the number of kegs not manufactured could be determined, yet because of the plaintiff had a capacity of making 250,000 kegs annually, it does not follow, even assuming that the defendant is chargeable for the abnormal condition that prevailed during such period, first, that the plaintiff would have made that number or could have found a ready sale for them; or, second, that it could have marketed any that it made at the same price as it did market those actually sold. The trade conditions in that district within which the plaintiff operated were unquestionably disturbed. Severe competitive conditions existed there. Not only did the plaintiff fail to manufacture to the utmost of its capacity, but it was either unable or it purposely declined to make the same proportion during the latter part of its operation as it made in the earlier period. 7532

As the evidence does not furnish us with a legal basis upon which we can determine, as a matter of fact, that the plaintiff could have sold on a profitable basis any more powder than it actually sold, no allowance can be made for such unmade or unsold merchandise. As already observed to you, the Anti-Trust Act provides for a trebling of the damages recoverable in actions of this kind. Such trebling of damages is not a penalty, however, but it is a legislative recognition that there may be injuries sustained which, under existing rules, applicable to the measuring of damages, cannot be ascertained. The trebling of such as can be ascertained, therefore, was undoubtedly intended to meet such a condition and by means of which much, if not all, of that class of damages may be secured, without doing violence to rules that have proven their practical serviceability in damage cases. 7533

7534 *Court's Charge*

through many years of juridical experience. If further commercial experience should show that trebling of damages fails to secure substantial justice to the injured party, Congress, which has the power, may go beyond the trebling of such damages and multiply the same many fold. This claim of damages, therefore, as well as that made for good will, is withdrawn from your consideration.

In conclusion, let me reiterate what I said at the beginning, that before the plaintiff can recover it
7535 must prove by a clear preponderance of the weight of the evidence, first, that there was an attempt on the part of the defendant to monopolize the trade, and that by reason thereof the plaintiff was injured; and, secondly, what was the kind and amount of the damage that it thus sustained. If you find for the plaintiff, you will state first the total amount of damage; second, how much thereof, if any, is for the loss sustained by it in its investment of its manufacturing plant, which means the difference, if any, obtained on the sale and what it was actually worth; third, how much thereof, if
7536 any, is for the loss of profits sustained by it on the powder actually manufactured and sold by it. In no instance will you include interest, as that is a matter of exact calculation and can be readily ascertained by the Court if it, as a matter of law, should be included.

If you find for the defendant, you will find that there is no cause of action.

Taking up the defendant's requests to charge, I give the following in the language requested:

The fourteenth, I charge in the language requested, and that is: "That there is no proof of the following overt act alleged in the complaint and therefore you must disregard it, namely: That the said powder company organized and maintained a

sales board which fixed prices and established policies with all of the defendants named in the complaint which all were compelled to maintain and observe, and that the prices so fixed and maintained were always arbitrary and were so fixed as in certain territory to leave substantial and sometimes excessive profits, and in other places where it encountered competition, were reduced to prevent competition, and that plaintiff was for a period of five years continuously forced to meet the prices thus fixed." 7538

And I charge you that there is no proof in the language employed by the plaintiff. The proof does show that there was a sales board as a part of the carrying on of the business of the defendant, but the evidence does not justify the conclusion that the prices fixed and maintained by such board were always arbitrary and that they were so fixed as to produce excessive profits in any territory.

The fifteenth, I have covered in part. The sixteenth I decline. Also the seventeenth and eighteenth. The nineteenth I have charged. The twentieth I will charge: "In considering any claim of the plaintiff to the effect that it should have received more money for the powder it actually sold than it did receive, the jury must determine whether or not such condition was due to the poor character of the powder or to want of skill in manufacture or of enterprise, and if found to be due to such cause, then no award can be made for such claim." 7539

No. twenty-one, I have charged in part. Twenty-two I decline to charge. No. twenty-three I will charge in the language requested: "If the jury believe that the prices which plaintiff received for its powder, although lower than those that prevailed during the life of the trade associations, were the prevalent and normal prices at the time it was

engaged in business, it can not recover damages on that account."

The twenty-fourth, declined. The twenty-fifth, declined. The twenty-sixth I have charged. That relates to good-will. The twenty-seventh I decline to charge. The twenty-eighth I will charge in the language requested: "The plaintiff has no right to expect more profit on the powder sold than was derivable from the fair market value of its product during the years it was in business. It has no right
7541 to fix upon what Mr. Waddell deems a fair profit and claim compensation for the loss of that."

The twenty-ninth, I also charge you: "The plaintiff can not recover damages because it did not receive what it claims was a fair profit on its investment nor what it may consider desirable or proper, as any recovery must be based on what the plaintiff actually would have received in the absence of any violation of the law, even if you find such violation to have occurred."

The thirtieth I decline to charge. The thirty-first and thirty-second I have charged. The thirty-third
7542 I decline to charge except in the manner I have already covered that subject. The thirty-fourth I have charged.

The thirty-fifth: "The fact that Mr. Waddell, Sr., testified that he told certain persons certain things is no evidence of the truth of things related, as, for instance, his statement that he told Coyne and Simpson that money had been paid to miners."

And in that connection it is proper to add that the issue there raised was offered on the part of the defendant when Coyne and Simpson were examined as to statements made by Waddell with reference to his charges against the defendant in dealing with him unfairly in certain particulars and his alleged statements that for certain considerations he would

abandon his claim of damages against the defendant. The defendant's purpose here was to show motive for such acts, and animus in bringing it, for the purpose of discrediting him as a witness, and to minimize the effect of the testimony given by him in this cause. That being its purpose, Mr. Waddell had the right to give his version as to what took place at that interview and to negative the idea that he was actuated by such a motive and to sustain himself as a witness before you as one entitled to the credit that is given to a witness ordi- 7544
narily.

In dealing with the statements pro and con made by the parties to this interview, you jurors must keep in mind that such statements as were given whatever they might be are not in themselves proof of the facts therein asserted. The only matters presented by the testimony bearing upon this interview relate to what was said, and not whether it is true. And the results, if you should find that Mr. Waddell did say to Coyne and Simpson that certain miners said to him certain things as having 7545
been done or said by the agents of the du Ponts, and that Mr. Waddell made certain replies as to such miners, that does not show either that these things were said or done by the defendant to the miners, and that the miners told it to Mr. Waddell, but simply that Mr. Waddell told such things to Coyne and Simpson.

It is your province therefore simply to determine what version of what took place at this interview is the correct one. If you find that the version given by Messrs. Simpson and Coyne is the correct one, then such finding would be an important factor in determining what credit is to be given to Mr. Waddell as a witness in this case, or the weight you will accord to his testimony.

7546 If you find on the other hand that what Mr. Waddell said is the correct version of what took place at such interview, then n t only is he not discredited as a witness by reason of anything that may have transpired at that interview, but such finding would also tend to discredit the testimony of Messrs. Coyne and Simpson as witnesses in other matters as to which they have testified.

In this connection reference may also be made to the interview between Mr. Waddell and Mr.
7547 Piatt at Peoria regarding Piatt's efforts to secure information from railroad employees relating to plaintiff's shipments and concerning which Mr. Paige has testified and which interview was testified to by Mr. Waddell. Regarding such interview Mr. Waddell was permitted to state what Mr. Piatt said, as the Court considered that there was sufficient evidence for the jury to find in the absence of contradiction that Mr. Piatt was an agent of the defendant; and while the Court also permitted Mr. Waddell to testify what he said to Mr. Piatt at such
7548 interview, you are instructed that what Mr. Waddell said, as having been said by him at such interview is not evidence of the facts he then recited, and only what Mr. Piatt said is evidence; that which Mr. Waddell said having been admitted merely that the statements of Mr. Piatt might be fully understood, for if only what Mr. Piatt said was permitted to be testified to, much of what he said might be unintelligible as is often the case by merely hearing one side of a conversation.

A familiar illustration is a telephone conversation. It may be that what we hear one person say in a telephone conversation is perfectly intelligibility, but generally it is not.

I decline 35, 36, 37, 38, and I decline 39 except as I have touched upon it.

7549

Fortieth: "There is no evidence showing that any of the defendants knew or had anything whatsoever to do with the purpose of the Buckeye powder plant and property by Mr. Olin and his associates, and therefore you must not consider the fact of such purchase as tending to establish any combination or conspiracy or other conduct prohibited by the Sherman Act."

The forty-first, I also charge in the language requested: "There is no evidence in the case to show that the defendants, or any of them, at any time 7550
exercised any control of any kind over the United States Powder Company or the Egyptian Powder Company, and therefore you must not consider any claim to the effect that they did exercise such control."

I also charge the forty-second request in the language requested: "There is no evidence to the effect that the defendants or any of them exercised any control at any time over the affairs of the Equitable Powder Company or the Austin Powder Company by virtue of any stock that they have held 7551
in those corporations, and therefore you must not consider any claim to the effect that they did exercise such control.

The last one, the forty-third, I do not charge because I reserve that question.

As to the plaintiff's requests, as I recall it, I have touched upon every one of these requests, and I therefore will not charge them in the language requested but counsel may take an exception, of course, to the fact that I do not specifically charge in the precise language requested.

Now, gentlemen, there will be some business yet brought up. This is the time to take your exceptions.

(Thereupon Mr. McCarter for the defendants,

took certain exceptions to the charge. Thereupon the following occurred):

Mr. Abbott: If the Court please: We desire to enter an exception to the instruction of the Court to the jury that they return a verdict in favor of the Eastern Dynamite Company and International Smokeless Powder Company.

The Court: You may have it.

7553 Mr. Abbott: We also desire to except to that portion of your Honor's charge to the effect that the plaintiff in this case does not occupy the same situation as one who had been in the field before the unlawful combination——

The Court (Interrupting): Whatever I said in regard to that.

Mr. Abbott: We also desire to except to your Honor's instruction to the effect that there is no evidence that the defendant distributed cash to the miners.

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The Court: You may take an exception. I withdraw that question from the jury.

Mr. Abbott: We also except to that portion of your Honor's charge which is to the effect there is no evidence that powder was sold by the defendants below actual cost.

The Court: You may take your exception.

Mr. Abbott: We also except to that portion of your Honor's charge where it is stated that the plaintiff in this case had a paid representative present at the time of the test involved in the "Thrush incident."

The Court: You may take it.

Mr. Abbott: We also except to that portion of your Honor's charge which relates

to the definition of competition and refers to it as being in the nature of a fight.

The Court: I did not define competition. I said it had in it the element of fight. You may take an exception, however.

Mr. Abbott: We also except to that portion of your Honor's charge which is to the effect that there is no evidence that the plaintiff's plant was sufficiently equipped and financed. I may not have that just right, but the point I make is that there is evidence in the record, in the testimony of Mr. Waddell, that the plant was sufficiently equipped and financed.

The Court: Yes, I said so. You have misapprehended what I said as to that.

Mr. Abbott: Then, of course, the exception is of no force.

And we except to that portion of your Honor's instruction which relates to the withdrawal of the question of good will from the consideration of the jury.

The Court: Yes.

Mr. Abbott: We also except to that portion of your Honor's instruction which relates to the cost of the plant not being a true test of the value, particularly with referernce to the fact that there is evidence in the record that the value of the plant was more than it cost.

The Court: Whatever I said in that respect you may take an exception to.

Mr. Abbott: We also except to that portion of your Honor's charge which says that there is no evidence that 30 cents a keg was a fair profit, and, further, to the statement of your Honor that there is no evidence in the record as to what is a fair profit.

The Court: Yes; whatever I said upon that.

Mr. Abbott: We except to that portion of your Honor's charge which limits our profits to 3 1-7 cents, or such portion thereof, as the jury may find.

The Court: That is on your own standard, although I verified it. You may take an exception to what I said in that regard.

7559 Mr. Abbott: We except to that portion of your charge which withdraws from the consideration of the jury anticipated profits—the profits that might have been made on powder that was not manufactured.

The Court: You may have it.

Mr. Abbott: We also except to your Honor's charging as to the trebling of damages.

The Court: That is a matter of law. You cannot get much of an exception on that. But you may take it. It is not in the charge.

7560 Mr. Abbott: And we except to that portion of your Honor's charge to the effect that there is no evidence that the defendants had nothing to do with the purchase of the plant by Mr. Olin.

The Court: You may have it.

Mr. Abbott: And also we except to that portion of your Honor's charge that there is no evidence of any control by the defendants over the Equitable or Austin Companies by reason of the fact that the defendants have a stock interest in those companies.

We also except to that portion of your Honor's charge which refuses to give our instructions, except as charged.

The Court: You may have it.

Mr. Abbott: We also want to speak of certain exhibits outside of those mentioned by the Court. What I wanted particularly was that the books might be taken into the jury room.

The Court: All the exhibits will be taken to the jury after they have retired.

Gentlemen of the jury, you may retire, but before doing so let me say that if in the course of your deliberations you think you need further instructions from the Court, 7562
you are at liberty to call for them.

In the matter of exhibits, they will all go into the jury.

Mr. Abbott: In some cases it is going to be exceedingly difficult, I think, to select, and we ought to have the assistance of the Court.

The Court: Not necessarily, unless you get into an altercation about it.

Mr. Abbott: We have not any objections to these books going in in their entirety. (Pointing to plaintiff's identifications 1 to 7563
12.) At this late hour we think it is impracticable to make transcripts of simply the portions that are introduced in evidence.

The Court: Those leaves could be torn out.

Mr. Abbott: Of course even that could not be done without showing some portions of other matters.

The Court: That is a matter for you to determine.

Mr. Abbott: For my part I do not think there is anything in the printed record that the jury would care to see excepting perhaps the Rice list. We can make a copy of that, and probably it will be ready in a short time.

The Court: Then if you agree upon excluding any part of the evidence I will be glad to co-operate with that.

Mr. Button: All of those negotiations with T. C. du Pont and so on are in those books. They ought to go in, I should think—those proposed contracts.

Mr. Abbott: That is all right, if your Honor thinks that is proper.

The Court: Now with reference to depositions, of course the exhibits attached to them ought to be detached, but not the depositions.

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Mr. Katzenbach: I think a most serious question is with reference to the exhibits that have been marked in the Government record. I understand that they have never been copied and have never been cut out.

Mr. Abbott: No; they are simply in the bound volumes, marked as exhibits. The original volumes have been identified by Mr. Mahaffey, and then the stamp is in there showing that they are exhibits in the case.

7566

The Court: You can arrange that among yourselves if possible, and if not I will have to take it up.

Mr. Abbott: Take such exhibits as the trade reports—all those matters can go in?

The Court: I suppose these can be sent right in.

The Clerk: I want to get large envelopes first.

The Court: If you need me I will be in my chambers.

Mr. Abbott: Counsel suggests we cut them out. Of course we can do that if you think that is the only thing that is proper to be done in the matter.

Court's Charge in re Exhibits
Plaintiff's Requests to Charge

7567

The Court: Unless you agree that they do not go in.

Mr. Katzenbach: Will you stipulate then that those exhibits shall not be submitted to the jury?

Mr. Abbott: I do not see the use of submitting any of them except the Rice list.

Mr. Katzenbach: We agree that you substitute a copy of the Rice list. Give it to Mr. Chevrier; and that the other exhibits 7568
shall not be submitted to the jury—that is, those contained in the Government record.

Mr. Abbott: If the jury desires access to any of them——

The Court: If they call for anything, of course they are entitled to it.

Mr. Abbott: Especially those contracts Mr. Button spoke about. We will cut those out if you say so.

Mr. Button: I don't care.

The Court: It seems to simplify itself then.

Mr. Abbott: That is down to the Rice list. 7569

The Court: And you are going to make a copy of that?

Mr. Abbott: Yes.

(Thereupon the jury retired to consider of its verdict in charges of James E. Van Horne, bailiff.)

The plaintiff's requests to charge were as follows:

The plaintiff requests the Court to charge that in considering the evidence in this case the jury should be guided by the following rules or principles:

The Court: Gentlemen, Mr. C
states to me that it will be impos
him to tell what has been admitted a
has not. This must be evident to

PAGE CUT OFF

7570 *Plaintiff's Requests to Charge*

I.

Eminent authorities have declared that the Christian religion is a part of the law. It may safely be said that civilization as we understand it, so far as the recognition of the individual in the community and his rights are concerned, is the outgrowth of the appreciation that dealings between man and man must be on terms of justice, and that justice requires that no man shall build up his business by
7571 acts whose purpose is to put the purchasing public at his mercy, or to exploit others for his advantage and destroy thereby the opportunities of others to exercise their talents and desires in the same field of mercantile activity. It is unjust to the community to monopolize a product, and thereby enhance, or have the power to enhance, the prices the public are to pay for it, and it is always unjust to deprive an individual of his right and power of contracting and of carrying on any lawful business he desires and selling his product at prices fixed by free competition. If in the doing of a thing, a man
7572 intends a wrongful purpose, he knows it better than anyone else can know it. If under the law, a man is presumed to intend the consequences of his acts, how much the more must he be held blameworthy, when his deliberate purpose is to bring about the evils condemned by law. If the act is wrong under commonly accepted moral or ethical standards, it always was and always must be wrong, so long as there is community life with common and relative rights belonging to each individual in the community and to the public as a whole. No fair-minded man engaged in trade, whose deliberate purpose in his acts and contracts in trade is to work injustice to his competitors and to the public can honestly claim want of knowledge of the quality of his act. "The Golden Rule" may not, as yet, be the standard

by which the law requires contracts in restraint of trade to be measured, but the ancient adage, "Live and let live," has its application to trade and is a safe rule to go by.

II.

It is not necessary to establish the conspiracy by direct evidence. Conspirators do not go out upon the public highway and proclaim their purpose; their methods are devious, hidden, secret and clandestine. It is enough that they have a common pur- 7574
pose to defraud and that they act together for that purpose.

It is not necessary that a formal agreement be proved; it is sufficient if the testimony shows that the parties are acting together understandingly to accomplish the same unlawful purpose. Even individual conspirators may do acts in furtherance of the common unlawful design apart from and unknown to the others. It is manifest, therefore, that in many and, indeed, in most cases of conspiracy the corrupt agreement is proved by circumstantial evidence. 7575

III.

You are instructed that it is not necessary in order to constitute an unlawful conspiracy that those engaged in the conspiracy should be bound together by any written or specific form of agreement; it is sufficient if their acts are of such a character as to show a common purpose and that purpose an unlawful one.

Therefore, if you find that the defendants and any of their co-conspirators at any time were engaged in the common purpose of restraining interstate trade in explosives such fact would be evidence of a wrongful act within the meaning of the Sherman Act.

7576 *Plaintiff's Requests to Charge*

IV.

You are hereby instructed that it is not material what the degree of the restraint of trade was which the defendants exerted. It is sufficient if their acts only tended to restrain trade.

V.

You may also consider in ascertaining the policy
7577 of the defendants, the acts of their associates; whether they are made parties to this suit or not, and you may consider the dealings and agreements existing between the defendants and their associates as brought out in evidence. It is not necessary that a person be mentioned in the complaint as a defendant in order to make him a co-conspirator. It is possible that the names of all co-conspirators may not be ascertained, but that fact would not change the situation, and if you find that other persons not mentioned in the complaint were co-conspirators with these defendants in connection
7578 with their acts towards the plaintiff, you may also consider the acts of those co-conspirators not named in the complaint in an attempt to ascertain the general policy of the defendants.

VI.

That if the jury find that the principal holding company received and retained the fruits of an illegal combination heretofore, although it may have done no act in violation of the Anti-Trust Act, nevertheless it is a monopoly.

The combination cannot escape the condemnation of the Anti-Trust Act, merely by the form it assumes or by the dress it wears. It makes no difference whether the combination be in the form

7579

of a trust or otherwise, whether it be in the form of a trade association or a corporation, if it arbitrarily uses its power to force weaker competitors out of business or to coerce them into a sale to or union with the combination, it puts a restraint upon interstate commerce and monopolizes or attempts to monopolize a part of that commerce, in a sense that violates the Anti-Trust Act.

VII.

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It is no excuse that the members of a conspiracy did not intend to violate the Anti-Trust Act. It is the effect of the acts of the defendants and their co-conspirators that you must consider and not the intent or motive which they may have had in performing said acts. It is not, therefore, relevant to the issues in this case whether or not the defendants intended to injure the plaintiff, but the question is whether the plaintiff has been injured by the unlawful acts of the defendants.

Intent may be inferred.

7581

The acquiring or taking over of the fruits of an unlawful conspiracy is of itself prima facie evidence of the intent of those who have acquired those fruits to continue the conspiracy.

VIII.

It is conceded by defendants' counsel that there was an unlawful conspiracy to monopolize the powder trade of the United States which existed previous to June, 1904. It is for you to say whether such conspiracy assumed any different form before or after its abandonment in 1904, and if so whether the policies and purpose of restraining trade in explosives in the United States was continued by the conspirators or members of the as-

sociation or any two or more thereof in a new form. The mere change of form of the conspiracy from an unincorporated to an incorporated form, would not relieve the persons engaged in the conspiracy from the responsibility of their acts in violation of the laws against combinations and conspiracies in restraint of trade.

IX.

7583 This being a civil action, the rules which require that you should be convinced of the responsibility or liability of the defendants either on account of their unlawful acts or on account of the injury which the plaintiff may have suffered beyond a reasonable doubt do not apply. A fair preponderance of the evidence is sufficient in actions of this character.

X.

In determining the purpose of the defendants to monopolize or restrain the powder trade, you may
7584 consider the purpose of inducing consumers of explosives to enter into contracts for the purchase of explosives from the defendants. You should consider the nature of these contracts, the general scope and terms thereof, and whether the same constitute a general system. If you find that these contracts were sufficiently numerous to indicate a general purpose to induce consumers of explosives over a wide area to withdraw their trade from competition, then you should find that such contracts constitute an attempt to monopolize the powder trade by eliminating competition.

If you find that numerous contracts were made with numerous consumers of explosives prior to the time of the organization of the defendants the E. I. du Pont de Nemours Powder Company, and that

such contracts were acquired and taken over by said defendants after its organization, and that such contracts have been renewed from time to time as they were about to expire, you are entitled to consider such facts as evidence of a continuing conspiracy for the purpose of monopolizing the trade in explosives. It is for you to determine what was the purpose and effect of these contracts regardless of any interpretation that may have been put upon the making of said contracts by the defendants or any of the co-conspirators. 7586

XI.

You are instructed that while it may be true that in small corporations the holding of less than a majority of the stock would not necessarily amount to control, you may consider whether the testimony in this case shows that where such minority was compact and held by a few stockholders who were acting unitedly as to policies and purpose, such minority did result in actual control of the affairs of the corporation. 7587

You may also take into consideration the fact, if you so find from the evidence, that the minority interests were held by persons who were in a situation to exercise considerable influence through their other associations or interests with the majority stockholders in a corporation. It is for you to consider whether it is possible in this manner that a few persons holding a minority of the stock, but who are in active attendance at stockholders' meetings and in conducting its affairs, may exercise control by reason of the necessary community of interest which exists between them.

It may be that no more effective method could well be devised for unifying the various interests

engaged in the powder trade than by combining them in one corporation, the stocks of which were held by a few persons who were in active control of the policies and management of the affairs of such corporation. Such unification, unexplained, alone testifies to a presumption of an attempt to dominate and control the powder interests.

XII.

7589 You are instructed that it is the policy of the law to encourage men to engage in business for themselves and that business or trade combinations which may temporarily or even permanently reduce the price of an article traded in or manufactured, by reducing the expenses inseparable from the running of many different companies for the same purpose, are not thereby excused or to be absolvel from the condemnation of the anti-trust laws. Trade or commerce in those circumstances may nevertheless be badly and unfortunately restrained by driving out of business the small dealers and worthy
7590 men whose lives have been spent therein and who might be unable to readjust themselves to their altered surroundings. Mere reduction of price of the commodity dealt in might be dearly paid for by the ruin of such owners and the absorption or control over one commodity by an all-powerful combination of capital.

XIII.

You have a right to consider the evidence not only with reference to acts which relate directly to the plaintiff but also in order to ascertain the general policy of the defendants and to make that policy clear to your minds, you have a right to consider similar acts of the defendants in connection with other persons besides the plaintiff, which may

show a general intent or policy on the part of the defendants to restrain trade and create a monopoly.

XIV.

You are instructed that it is not necessary that the acts which injured the plaintiff and from which it suffered damage were aimed specifically at the plaintiff. The question is whether injuries resulted as the natural and proximate consequence of the unlawful acts of the defendants or any of 7592
their co-conspirators. It is enough if such acts were prohibited or made unlawful by the Sherman Act. Any injury which resulted to the plaintiff by means of anything forbidden or declared to be unlawful by that act should be compensated for by you even though it should appear that the plaintiff was not in contemplation by the defendants at all.

XV.

You are instructed that it is your duty to ascertain and find the amount of actual damages which the plaintiff may have suffered. You have nothing 7593
to do with the matter of multiplication of such damages as required by the Seventh sections of the Sherman Act. You are therefore instructed that you are not to be influenced in arriving at a determination of the amount of actual damages suffered by the plaintiff by the fact that such damages as you may return a verdict for are to be multiplied three-fold. The multiplication of the damages which may be returned by you as your verdict is a right which belongs to the plaintiff and is not to be abridged in any manner whatever.

XVI.

In arriving at the amount of damages which the

7594 *Plaintiff's Requests to Charge*

plaintiff has sustained you may take into consideration the value of the plant and the sum received for the same on its sale. In arriving at this result you may take into consideration the cost of the plant, its up-keep from the time of its construction, and the general facts and circumstances which would indicate its fair value at the time of its sale.

XVII.

7595 Plaintiff claims damages on account of the loss of its business and good-will. You are instructed that good-will is the advantage of anything that is acquired beyond the mere value of the physical property, and, particularly, in consequence of the general public patronage and encouragement which the enterprise receives from constant or habitual customers or from other accidental circumstances.

You are instructed that the value of the plaintiff's plant is not necessarily limited to what is actually invested in its physical properties, but in estimating the value of the plant you may consider
7596 its earning capacity; and the value of its good will in valuing which you may take into consideration its earning capacity.

XVIII.

You are instructed that if you find that the plaintiff has lost profits by reason of the acts of the defendants or any of their co-conspirators you should find the amount of such losses, and while you are not permitted to indulge in mere speculation or guesses, you are entitled to take into consideration all the facts and evidence which have been submitted to you for the purpose of forming a rational basis for a reasonably correct estimate of the amount of damages which the plaintiff may

have suffered by the loss of anticipated profits in conducting its business. You are therefore instructed that the law does not require proof of loss of profits with absolute certainty. All that is necessary to prove is that the profits claimed were reasonably certain to have been realized but for the wrongful acts of the defendants, or that such losses were the natural and proximate consequences of the acts of the defendants and their co-conspirators. While the measure of damages in such cases may not be susceptible of absolute and positive determination, you have a right, as I have stated, to consider all the surrounding circumstances and facts for the purpose of forming an estimate of the probable losses from this source. 7598

The plaintiff claims loss of profits on goods actually manufactured and sold. Also loss of profits on account of goods which it would have manufactured and sold had it been permitted, but for the unlawful acts of the defendants, to operate its mills at the normal capacity thereof. If you shall find that the plaintiff was prevented from making a reasonable and fair profit upon the powder which it actually manufactured and sold, or which it might have manufactured and sold, by reason of anything which the defendants or any of the co-conspirators did in carrying out their purpose and policy to monopolize and restrain the powder trade. then you are instructed that the plaintiff is entitled to recover such losses as you can reasonably determine from the evidence that it sustained for the period from September 19, 1905, to September 19, 1908. 7599

XIX.

You are instructed that you may allow interest on all damages which you may find the plaintiff

7600 has actually suffered, the same to be calculated at the rate of 6 per cent per annum, from such date as you shall determine such loss was sustained down to the date when you render your verdict.

XX.

You are instructed that an employe of a corporation or person who is engaged in an unlawful combination to restrain trade and commerce is not a
7601 co-conspirator unless the acts independently and beyond the scope of authority which is conferred upon him by his employers. If, therefore, you find that R. S. Waddell was at any time acting as an employe of one of the defendants or any of their co-conspirators, during the period while they were engaged in the performance of any unlawful act, you are not thereby to conclude that the said Waddell was a co-conspirator in the performance of any of said acts.

XXI.

7602 You are instructed that the acts done by these defendants must be judged irrespective of any acts which may have been done by the plaintiff or any officer or person connected therewith. The right of an individual to enter into business is nowhere restricted by the law;

And you are further instructed that R. S. Waddell had a right to go out and build up an independent business of his own. The question involved in this case is whether the defendants themselves have violated the anti-trust laws of the United States. And if you find that they have violated said laws then they cannot excuse themselves because it may appear that some other person or corporation against whom their acts were directed may have

been guilty of the same unlawful acts. The anti-trust act has its own penalties for violations of its provisions. It contains nothing that sanctions the argument that an offender against it shall be deprived of redress from a civil injury on the plea that he has been guilty of an infraction of that act. The act gives a remedy to any person injured in his business or property by virtue of any of the things prohibited by the act and does not suggest that such person may invoke unlawful acts of others as a defense to its liability. 7604

You may disregard all statements by witnesses or counsel in this case with reference to any violations of the anti-trust act by the plaintiff or by Mr. Waddell in determining the guilt of the defendants and should not allow any such evidence or statements to in any wise influence your judgment in considering the responsibility of the defendants to the plaintiff.

XXII.

If you find that R. S. Waddell, previous to the time when he organized the plaintiff, was shadowed by detectives you may consider all the facts and circumstances surrounding the employment of such detectives and what the purpose was; and if you find the purpose of the employment of such detectives was to interfere with the said Waddell in securing a location for the erection of a plant for manufacturing explosives, and that such purpose was a part of the plans of the defendants to prevent the entrance of an independent competitor into the powder trade, then you are instructed that such purpose was an unlawful and wrongful purpose on the part of the defendants, to injure the plaintiff. Shadowing by detectives may be suggestive of criminality and it may be fatal to public esteem and 7605

productive of public contempt and ridicule and may be actionable in itself. The effect of shadowing by detectives may be directly to harrass the person shadowed and to embarrass him in his business.

The injury to the plaintiff by reason of the employment of detectives may not have been direct, it may have been indirect, and one of the elements of the general scheme employed by the defendants to carry out their purpose to control and monopolize the powder trade.

7607 XXIII. You are instructed that the employment of miners or other persons to circulate among the users of black blasting powder in coal mining operations to cause them to become dissatisfied with or to object to the use of powder manufactured by the plaintiff and to make protests and complaints to their employers against the use in their mining operations of powder manufactured by the plaintiff, is evidence of the purpose and policy of the defendants to drive the plaintiff out of business.

XXIV.

7608

You are instructed that efforts to employ railroad agents or employes to divulge information concerning consignments which might from time to time be made by the plaintiff to its various customers is evidence of the purpose and policy of the defendants to drive the plaintiff out of business and is therefore an act prohibited by the Anti-Trust Act.

XXV.

If you find that the defendants or any of their employers made or encouraged false statements as to the quality of the powder produced by the plaintiff, that act in itself would be evidence of a general scheme or policy to injure the plaintiff. It is

for you to determine whether such false statements as to quality were made with a view to such general plan. Sometimes even acts which may not be unlawful in themselves may become unlawful when they are confined so as to form a part of a general scheme, the scheme itself being unlawful.

XXVI.

If you find that the defendants made prices which were applicable to certain districts where there 7610
was competition and which were different from prices which obtained in other districts in which no competition prevailed, you are instructed that this is strong evidence of the purpose of the defendants to restrain and monopolize the powder trade.

You are further instructed that the policy of making prices which were applicable only in districts where competitive conditions prevailed is a policy which it is difficult if not impossible to contend with and is regarded as one of the most effective weapons which can be used in the monopolizing of trade within a given territory. 7611

XXVII.

If you shall find that the plaintiff is entitled to recover damages, in arriving at the amount which in your judgment he is entitled to recover you may separate the items of damages which under the instructions of the Court you award him, under the following headings, and specify the damages, if any, you award under each of said headings:

1st. The loss, if any, sustained by the plaintiff in its investment in its manufacturing plant.

2d. Loss to the plaintiff on the good will of its business.

7612 *Verdict*

3d. Loss to the plaintiff of profits on powder manufactured and actually sold.

4th. Loss to the plaintiff in profits on powder which it would have been able to sell but for the acts of the defendants, based on the normal manufacturing capacity of its plant.

5th. Interest on the above four items to the date of rendering a verdict.

7613

Thereupon the jury retired in charge of James E. Van Horne, bailiff, at 2:00 P. M. to consider of their verdict.

Minutes of the Court of February 25, 1914:

And the jury having considered of their verdict, return again into Court, at 5.00 P. M., and by their foreman say: That as to the defendant, the E. I. du Pont de Nemours Powder Company, they
7614 find no cause of action. That pursuant to directions by the Court they also find no cause of action as to Eastern Dynamite Company and International Smokeless Powder and Chemical Company. And so say they all.

Jury discharged.

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Plaintiff's Exhibit 22. 7615

The duty of this Committee is limited to the consideration of price on Blasting Powder. Our study of the present situation has been concentrated mainly upon three points, to wit:

FIRST: EFFECT OF EXISTING CONTRACTS.

SECOND: PRICE CLASSIFICATION.

THIRD: CLASSIFICATION OF CUSTOMERS.

7616

To secure the facts we have tabulated fully the records. Dealing with

FIRST. EFFECT OF EXISTING CONTRACTS.

It has been the general policy to cover the future demand by contracting for as lengthy a period as possible. There has been no universal policy adopted as to the form of contract; various forms are in use. Disregarding minor details, the contracts may be divided into two classes:

7617

(a) Those selling on the basis of a card rate, subject to change, from which basis the necessary deduction or concession is made. These contracts permit of a change in price.

(b) Those selling at a fixed price, which is a basis for the debate. These contracts permit of no change in price.

In addition to the trade covered by contract, there is the trade covered by Special Price. This trade also permits of a change in price.

Attached to this report you will find various exhibits.

7618 *Plaintiff's Exhibit 22*

Exhibit No. 1 gives a recapitulation of all contracts.

Exhibit No. 2 gives a separate recapitulation of what we have termed Class "A" Contracts, being those which permit of a change in price.

Exhibit No. 3 gives a summary which shows the extent to which a change in price will be affected by existing contracts.

Class "A" Contracts and Special Prices being susceptible to the change, it is only necessary to
7619 eliminate from the total estimated sales the fixed contracts, on which no change can be made. We have estimated the sales for the next four years on the basis of 4,000,000 kegs per annum. We take this figure notwithstanding the fact that the total business has increased at the rate of from 17% to 20% per annum for the last five years, because it may be conservative to anticipate some cessation of the phenomenal period of prosperity during the next four years, and also because a safe estimate can be obtained regardless of exact accuracy in the
7620 total sales. On this basis, it will be found that if it is decided to advance the price, such advance would be immediately applicable as follows:

In 1903—Advanceable, 71 3/4%; not advanceable, 29 1/4% of total business.

In 1904—Advanceable, 88 1/2%; not advanceable, 11 1/2% of total business.

In 1905 and 1906 the percentage of fixed contracts is small.

It is a matter of consideration as to how far the amount of fixed contracts will operate to interfere with an advance in the price of powder.

A study of Exhibit No. 3 will show that the fixed contracts cover a larger section of the country than the advanceable contracts of "Class A." It is a fact, therefore, that what will be low-priced

trade in the event of an advance will be generally scattered. We believe it safe to assume that the fixed contracts will not prohibit an advance.

First: Because the total percentage is small, and as the fixed contracts are practically scattered all over the country, the effect at any one point is minimized.

Second: Because those in possession of the low priced contracts will have no inducement to compete with the Powder Companies by reselling if they have any faith in the stability of the advance. An individual price may be low from one of two causes: Viz:—By means of a concession or by means of an advance. 7622

Under the present system there has been a direct advantage to every purchaser in spreading broadcast any concession obtained in price, because under that system a low price has always belonged to the first category. But when a price becomes low from the second cause, it is not generally in human nature to give away the advantage. 7623

We believe, therefore, that existing contracts leave us in a position to advance prices if so determined.

SECOND: PRICE CLASSIFICATION.

We refer to Exhibit No. 4, in which we have classified all the trade covered by Contract and Special Price for one year. We have divided the business into twelve classifications, starting with the Classification of Customers No. 1, representing those whose demand consists of 1200 kegs per annum, or less, and ending with Classification No. 12, representing that combination of customers (dealt with as a unit) taking from 75,000 to 100,000 kegs per

7624 *Plaintiff's Exhibit 22*

annum. We give the average price and the number of customers in each classification. A study of this exhibit, when taken in connection with Exhibit No. 5, will be of interest.

It is generally an admitted law of business that in the matter of LOW PRICES the pace is set by the largest consumer, and that the AVERAGE has to be maintained by an increase of price to the smallest consumer. We are familiar with the constant argument advanced at our meetings, "That a
7625 given consumer was entitled to a reduction on account of the magnitude of his business." We would, therefore, anticipate that the largest customer was that of the lowest price, and that in every other classification reduced consumption would be followed by a higher basis. A glance at the average price in Exhibit No. 4 will dispel this allusion. It will be noted that that classification of the trade taking the largest total number of kegs is Classification No. 7, consisting of forty-six customers. We will take this as a dividing line. The average price
7626 of this classification is $1.1339. The average price of Classification No. 1 (smallest trade, consisting of 419 customers, is $1.155, whereas the average price of Classification No. 12 (largest trade, consisting of only two customers), is $1.10.

The intermediate prices, while they show some variation, is no place to indicate the law. Exhibit No. 4 was prepared believing that difference in price between these classifications should be great enough (considering that they apply to the whole country), to eliminate all other considerations, even that of difference of freight.

A further study was then made, as shown in Exhibit No. 5, in which the country was divided into such sections as had developed distinct features as separate districts, to wit:

Plaintiff's Exhibit 22 7627

THE WESTERN DISTRICT,
THE SOUTHERN DISTRICT
AND THE CENTRAL DISTRICT.

It was hoped when the disturbance of differences in freight was eliminated, some indication would be found of that difference in price would should exist. The results show that the general average price in the Western District is $1.76. In the Southern District $1.152. In the Central District $1.10. While this Division shows some difference in 7628
price to the different districts, when we look in each separate district for a proper difference between classifications we do not find it.

TAKING THE WESTERN DISTRICT, with Classification No. 8 as a dividing line (consisting of nine customers) at an average price of $1.17. We come to Classification No. 1 (smallest trade, consisting of thirty-three customers) at an average price of $1.266, and to Classification No. 12 (largest trade, consisting of three customers) at an average price 7629
of $1.10.

In the SOUTHERN DISTRICT, taking Classification No. 7 as the dividing line, we find the average price $1.166, the highest price $1.216 and the lowest price $1.00. In both of these Districts there is some evidence of discrimination, particularly in the Western District. Nevertheless, there is nothing like that distinction in price that should exist, and if we study the intermediaries, not anything like the regularity that should exist in the difference.

But when we come to the CENTRAL DISTRICT, where the dividing line is again Classification No. 7, what do we find? An average price of $1.08, a maximum price of $1.12, and a minimum price of $1.05, so small a difference as to be unworthy of

7630 *Plaintiff's Exhibit 22*

consideration, and it should be remembered that the Central District represents in a large degree the largest market of all.

We believe that this study indicates that there is some great evil underlying our methods of selling. What this evil may be, and what its remedy is, perhaps, not within our province to discuss, beyond the suggestion that it must be based upon an unintelligent internal competition. We urge that until a proper variation in price be maintained as
7631 between the different classifications, our selling will not be logical, and, therefore, our prices cannot hold.

THIRD: CLASSIFICATION OF CUSTOMERS.

There are many indications that the present handling of this matter is leading to inconsistency in relative price. A salesman (on representation of his customer) puts forward a suggestion for a low price on the theory that the demand of the said customer will reach eight, ten or twelve thousand
7632 kegs per year, as the case may be. The price is given on this hypothesis and at the end of the year it is found that the customer's total consumption has been exaggerated in his effort to secure a low price. It is well within our power, as it would be just, to classify such customers at a figure that we know to be safe, with the agreement that should their consumption exceed the assumed amount, a rebate will be allowed them in cash at the end of the year, based not upon a supposition, but upon the actual amount of powder received by said customer.

SPEAKING GENERALLY.

Refer now to Exhibit No. 6. By the courtesy of a leading Company we are permitted to exhibit the

average of its prices for the last ten years. An examination of this will show that the history of the powder business has been that of a steady reduction in price up to the year 1896. The lowest price reached is contemporaneous with the lowest price basis in this country of all other staples: so far so good. But going beyond this, it shows none of the reaction towards higher figures that has ruled in every other business in the years following, viz: 1896 to 1902. Prices generally have increased 7634
over 100% in other staples during the last five years. This is true of those businesses that were subject to the keenest and FREEST COMPETITION in common with the rest. In powder we find the increase has been from $ .98 in 1896 to $1.14 to date in 1902, an increase of only 16 cents. We believe that the price of today is abnormally low.

It does not suffice to say that at today's prices there is a fair margin of profit, because the fact is that at today's prices there ought to be something more than a fair margin—there should be a heavy margin of profit, and in the fact that there is not 7635
we see a menace to the future of the business. The present phenomenal prosperity cannot last—if past history is to guide us we must assume that it will be followed by a period of reaction. During this period of reaction the price of powder must come down heavily. When the demand comes from our customers to reduce the price when everything else is being reduced, it will be no answer to say that we did not advance it when we could. During periods of depression the purchaser—not the seller—is in control of the market, and the irresistible logic of all past history shows that his control is absolute. In a country of such trade irregularities as that of the United States, it is only by a high profit during periods of prosperity that a fair re-

7636 *Plaintiff's Exhibit 22*

turn to capital can be maintained in face of the minimum that follows the period of trade distress.

But more important than the question of present profit is that of prevention of future loss, it being remembered that the period of low prices does always average longer than that of high prices. An advance, if made now, will come too late to do much in the way of present profits, but it will at least give us the margin from which to reduce when this has to be done.

7637 We need not delude ourselves by feeling that we can stem a natural reduction by any co-operation or understanding among ourselves. When the result of all our efforts at co-operation has led to a continual reduction of price during periods of prosperity, it needs no great intelligence to surmise what the effect of that co-operation will be during a struggle against adversity.

We have consulted fully with the Sales Agent—the man in direct touch with all of our customers. We find them advocating a prompt and liberal ad-

7638 vance. They state that their trade is prepared for it, and even speculating why it has not occurred sooner.

CONCLUSION.

In view of the above the Committee recommends:

(A) That the following prices be established in the CENTRAL DISTRICT: Carload lots $1.35 per keg.

Trade running from 1200 to 2399 kegs per annum a rebate of 10c per keg.

Trade running from 2400 to 4999 kegs per annum a rebate of 15c per keg.

Trade running from 5000 to 9999 kegs per annum a rebate of 17 1/2c per keg.

Plaintiff's Exhibit 22 7639

Trade running from 10000 to 24999 kegs per annum a rebate of 20c per keg.

Trade running above 25000 kegs per annum a rebate of 22 1/2c per keg.

(B) That prices be advanced in the other DISTRICTS to correspond, with the exception of the disturbed DISTRICT in the East.

(C) That the above advances in prices be doubled, provided the Committee on Competition 7640
will provide machinery which in the judgment of the Advisory Committee will restrain internal competition and which will put the question of external competition into the hands of a properly organized Working Committee.

(D) That Contractors on Railroad work be treated as a class unto themselves, and to be given a price to apply to work in all districts at the discretion of the Advisory or Special Committee, with a rebate of not to exceed 15c from the carload price. 7641

(E) That all Customers shall be classified according to their past consumption, and shall receive only an increased rebate when they have purchased powder to the extent which will entitled them to such a rebate.

(F) That to Dealers now enjoying special prices and to those under contract, special prices be authorized of $1.25 per keg East of the Mississippi River and $1.35 per keg West of the Mississippi River, in carload lots, with corresponding prices in other DISTRICTS where necessary.

(G) That the price of Powder to Fireworks

7642 *Plaintiff's Exhibit 22*

Manufacturers be $3.00 per keg, and the terms 60 days net with a discount of 5% cash if the bill is paid within ten days.

(H) That all expiring contracts before renewal be referred either to the Advisory or Special Committee.

(I) That the change in price shall take immediate effect.

7643

7644

Plaintiff's Exhibit 22 7645

EXHIBIT NO. 1.

RECAPITULATION.

All Contracts.

Name of Company.	1903 No. Kegs.	1904 No. Kegs.	1905 No. Kegs.	1906 No. Kegs.	Average Price
					7646
DuPont & Co.	505900	315672	129892	34400	1.153
Hazard Company	145398	69625	21990		1.103
Laflin & Rand	231325	9485	1150		1.141
Equitable Co.	60107	26292			1.146
Oriental Co.	32670	435			1.260
Birmingham Co.	———	———			———
Ohio Company	2775				1.148
Miami Company	97080	24535			1.079
King Company	53810	33885	16345		1.101
American Company	2575				1.190
Chattanooga Co.	106162	32000	5100		1.097
Austin Company	41637	650			1.075 7647
Phoenix Company	33016	7065			1.171
Schaght Co.	———	———	———		———
Sycamore Company	18500	1050			1.221
Indiana Company	95286	94086	85236	83806	1.115
Northwestern Co.	5760	5760	5760	5760	1.10
				"R. S. W"	
TOTAL	1431991	620540	265473	123966	

The above excludes deliveries on expired contracts.
Above figures checked second time by Mr. Maclem & R. S. W. Jr.
"R. S. W. G. M."
Prepared for and attached to Mr. Moxham's address.
"R. S. W."

7648 *Plaintiff's Exhibit 22*

EXHIBIT NO. 2.

RECAPITULATION.

CLASS "A" CONTRACTS.

	Name of Company.	1903 No. Kegs.	1904 No. Kegs.	1905 No. Kegs.	1906 No. Kegs.	Average Special Price
7649	DuPont & Co.	217413	137800	42390		
	Hazard Co.	59990	16575	25		
	King Co.	7845				
	Chattanooga Co.	9200				
	Oriental Co.	1450				
	Ohio Co.	670				
	Austin Co.	1200	650			
	Phoenix Co.	3200	2800			
	TOTAL	300968	157825	42415		

7650

EXHIBIT NO. 3.

SUMMARY.

(Estimating total output at 4,000,000 kegs for each year.)

	1903	1904	1905	1906
Fixed Contracts	1,131,023	462,715	223,058	123,966
Advanceable "	300,968	157,825	42,415	
Sp'l or unsold	2,568,009	3,379,460	3,734,527	3,876,034
	4,000,000	4,000,000	4,000,000	4,000,000
Fixed contracts	28-1/4%	11-1/2%	5-1/2%	3%
Advanceable	71-3/4%	88-1/2%	94-1/2%	97%

Plaintiff's Exhibit 22 7651

EXHIBIT NO. 4.

Contract and Special Price Trade (Everything but current orders) From July, 1901, to July, 1902.

RECAPITULATION.

No. of customers.		Total No. Kegs used in one year All Co's.		Average Price	
419	Classification No. 1			H-1.85	7652
	1200 kegs and less	281734	$1.155	L-1.05	
195	Classification No. 2			H-1.45	
	1201——2400 kegs	355116	1.149	L-1.10	
88	Classification No. 3			H-1.30	
	2401——3600 kegs	259362	1.142	L-1.05	
49	Classification No. 4			H-1.35	
	3601——4800 kegs	201463	1.1399	L-1.05	
49	Classification No. 5			H-1.35	
	4801——6400 kegs	274841	1.136	L-1.00	
37	Classification No. 6			H-1.35	
	6401——8800 kegs	273540	1.1528	L-1.05	
46	Classification No. 7			H-1.30	7653
	8801——16000 kegs	537519	1.1339	L- .92	
20	Classification No. 8			H-1.35	
	16001——24000 kegs	372358	1.122	L-1.00	
6	Classification No. 9			H-1.30	
	24001——40000 kegs	191971	1.10	L-1.00	
1	Classification No. 10			H-1.20	
	40001——50000 kegs	41650	1.20	L-1.20	
4	Classification No. 11			H-1.15	
	50001——75000	237912	1.073	L-1.00	
3	Classification No. 12			H-1.15	
	75001——100000 kegs	259503	1.10	L-1.00	
918	TOTAL	3286969	$1.1309		

NOTE: (This statement is made on basis of $1.25 list price in Pennsylvania—List price in that State is now $1.15.)

EXHIBIT NO. 5.
RECAPITULATION.

	Western Dist.			So. Dist.			Central Dist.		
	No.	Kegs.	Av. Pr.	No.	Kegs.	Av. Pr.	No.	Kegs.	Av. Pr.
Class No. 1 1200 kegs of less	33	25287	$1.266	82	54444	$1.216	299	198560	$1.12
Class No. 2 1201—2400 kegs	27	48091	1.266	32	54842	1.211	135	251062	1.121
Class No. 3. 2401—3600 kegs	13	38871	1.227	11	34920	1.184	63	185571	1.116
Class No. 4. 3601—4800 kegs	9	37975	1.236	1	4259	1.25	38	154429	1.115
Class No. 5. 4801—6400 kegs	10	56837	1.215	3	18100	1.216	36	199904	1.10
Class No. 6. 6401—8800 kegs	10	73653	1.24	5	38800	1.146	22	161087	1.11

Plaintiff's Exhibit 22

(*Exhibit No. 5, Cont'd.*)

Class No. 7.									
8801—16000 kegs	11	132170	1.226	9	105487	1.166	26	299862	1.08
Class No. 8.									
16000—24000 kegs	9	169420	1.17	1	16270	1.00	10	186668	1.089
Class No. 9.									
24001—40000 kegs	1	37200	1.30				5	154771	1.052
Class No. 10.									
40001—50000 kegs	1	41650	1.20						
Class No. 11.									
50001—75000 kegs	2	131112	1.113	1	54900	1.00	1	51900	1.05
Class No. 12.									
75001—100000 kegs	3	259503	1.10						
Total		1051769	1.757		382022	1.152		1843814	1.10

7659 7658 7657

3352

7660 *Plaintiff's Exhibit 22*

(Exhibit No. 5, *Continued*)

1—*Western District.*

All territory West of the Mississippi River and including Wisconsin and the Northern Peninsula of Michigan.

2—*Western District.*

7661 Territory East of the Mississippi River and South of the Ohio River, including the States of Kentucky (excepting Ohio River points in Kentucky north of Owensboro); Tennessee, Mississippi, Alabama, Georgia, North Carolina, South Carolina, Florida and Virginia (excepting in nine counties of the Southwest corner of Virginia, and the Counties of Allegheny, Botetourt and Craig on the C. & O. railroad in Virginia adjoining the West Virginia coal field).

7662 3—*Central District.*

Southern New York, Pennsylvania (outside the Anthracite Region), Maryland on the B. & O. Railroad, West Virginia, the twelve counties in Virginia excepting No. 2 and which are adjacent and part of the West Virginia coal field, Ohio, Indiana, Illinois, Michigan, excepting the Northern Peninsula.

Plaintiff's Exhibit 22 7663

(Exhibit No. 5, *Continued*)

	Western Dist. Prices	Southern Dist. Prices	Central Dist. Prices
Classification No. 1	H-1.40	H-1.35	H-1.45
	L-1.10	L-1.10	L-1.05
Classification No. 2	H-1.45	H-1.30	H-1.30
	L-1.10	L-1.10	L-1.05
Classification No. 3	H-1.30	H-1.25	H-1.20
	L-1.10	L-1.09	L-1.05 7664
Classification No. 4	H-1.35	H-1.25	H-1.20
	L-1.15	L-1.25	L-1.05
Classification No. 5	H-1.35	H-1.25	H-1.15
	L-1.10	L-1.20	L-1.00
Classification No. 6	H-1.35	H-1.25	H-1.15
	L-1.10	L-1.10	L-1.05
Classification No. 8	H-1.35	H-1.00	H-1.15
	L-1.02	L-1.00	L-1.05
Classification No. 7	H-1.30	H-1.25	H-1.15
	L-1.15	L-1.10	L- .92
Classification No. 9	H-1.30	———	H-1.10 7665
	L-1.30	———	L-1.00
Classification No. 10	H-1.20	———	———
	L-1.20	———	———
Classification No. 11	H-1.15	H-1.00	H-1.05
	L-1.10	L-1.00	L-1.05
Classification No. 12	H-1.15	———	———
	L-1.00	———	———
TOTAL	H-1.45	H-1.35	H-1.45
	L-1.02	L-1.00	L- .92

7666 *Plaintiff's Exhibit 22*

EXHIBIT NO. 6.

Year.	Kegs.	Average Price.
1890 (Jany. to June)	145,235	$1.65
1891 (June 1890 to June 1891)	171,100	1.55
1892 (June 1891 to June 1892)	151,833	1.52
1893 (June 1892 to June 1893)	174,519	1.22
1894 (June 1893 to June 1894)	128,058	1.07
1895 (June 1894 to June 1895)	151,315	.995
1896 (June 1895 to June 1896)	171,692	.92
7667	Avg.	.98
1896 (July to December)	103,000	1.09
1897 (Jany. to December)	173,879	1.24
1898 (Jany. to December)	145,349	1.266
1899 (Jany. to December)	230,786	1.214
1900 (Jany. to December)	284,700	1.183
1901 (Jany. to December)	292,422	1.173
1902 (To Sept. 1st)	216,890	1.14

7668 **Plaintiff's Exhibit 26.**

New York, August 26th, 1895.

Mr. J. G. Miller,
C/o Atchison, Topeka & Santa Fe R. R.,
Chicago, Illinois.

Dear Sir:

Enclosed herewith I hand you a copy of Circular Letter notifying the several offices of your appointment as General Sales Agent.

Kindly make an estimate with Mr. Vehmeyer of the cost of the changes you desire in our Chicago office and we will, if possible, authorize the expenditure.

Plaintiff's Exhibit 26 7669

Regarding our relations with Du Pont & Company and other Powder Companies, would say that I can best give you our desires by quoting from Circular Letter issued some time ago, outlining the policy we thought best, as follows:

"From time to time Trade Report Calls "will be sent out and we would indicate pol- "icy to be pursued in certain cases as far as "local conditions will permit.

"While we are very anxious to enlarge our 7670
"trade and agents will use their utmost en- "deavors to achieve that end, it is not worth "while to divert trade from associate com- "panies such as DuPont, Hazard, Oriental, "Ohio, etc., by cutting prices, as such a "course will probably result in their meeting "the price or perhaps cutting it and regain- "ing the trade, which merely hurts the for- "mer seller and does no one any good except- "ing the buyer.

"If, however, trade has been diverted from "us we want it back and you will at the earli- 7671
"est opportunity examine your records care- "fully and make Trade Reports on any for- "mer customers that may have been taken "from you within the last few years, explain- "ing as fully as possible the conditions, past "and present, and write asking for assist- "ance when prices given you are not low "enough to enable you to recover lost ground.

"In making Trade Reports agents and "salesmen will be particular to give as far as "possible the retail price or prices, as well as "price bought at, of loaded shells, smokeless "powder, etc., in order that we may get some "idea of the margin in the business for mid- "dle men.

7672 *Plaintiff's Exhibit 26*

"As our interest in The Repauno Chemical "Company and The Hercules Powder Com- "pany is very large, it is our desire that "agents and salesmen assist them as much as "possible in marketing their goods whenever "it can be done without cutting the prices of "or interfering with The Atlantic Dynamite "Company, Aetna Powder Company or The "Hecla Powder Company, and in case a "buyer visited uses or buys dynamite the
7673 "amount used, kind, price and of whom pur- "chased should be touched on in Remarks of "Trade Reports."

The gist of the whole matter is that if trade has been taken from us *we want it back*, but we do not think it wise to divert trade from DuPont, Hazard, Miami, Austin or Oriental Companies by cutting as that would merely lead to retaliation and do no one any good. In cases where we could divert trade from our so called associates we should prefer part
7674 rather than all and with no more fuss than necessary.

Regarding matter of desk and chair: Would authorize you to purchase a suitable desk and chair, sending bill to us. Would also suggest that some file cabinet which could be locked might also be a good thing for you to have for your private correspondence.

Yours very truly,

J. A. HASKELL,
President.

Enclosure/

Plaintiff's Exhibit P-36. 7675

THIS CONTRACT, made between E. I. du Pont de Nemours Co. of New Jersey, first party, and Howarth & Taylor of Edwards, Illinois, second party.

WITNESSETH: That first party hereby sells, and second party buys all the Black Blasting Powder, in kegs twenty-five (25) pounds each, required for use in the mines owned or controlled by second party as noted below, for the period of three (3) years from this date, at the current carload price established by first party, at the location named, at the time of receipt of order, the present carload price being $1.35 per keg. 7676

In consideration that this contract is to run for a term of three years, it is hereby mutually agreed that should Nitrate of Soda in New York market advance above $1.80 per cwt., then the price of powder under this contract fluctuates one cent per keg for every 5c per cwt. on Nitrate of Soda, but when said Soda is at or below $1.80 per cwt., the price of powder shall be per keg as the price indorsed hereon. 7677

The following conditions are mutually accepted:

(a) First party agrees to allow second party a rebate upon powder purchased under this contract as follows:

In 400 keg deliveries, f.o.b. rails, Edwards, Ill., 15c per keg; in deliveries of 800 kegs (or full car) one delivery, rebate shall be 17½c per keg; all emergency requirements necessitating deliveries from magazine stocks at Peoria, Ill., shall be at full card price—$1.35 per keg.

(b) As specified in paragraph (a), first party

7678 *Plaintiff's Exhibit P-36*

agrees to allow second party actual carload freight charges from shipping to delivery points when required and accepted in not less than 400 keg lots.

(c) TERMS are 60 days, or two per cent (2%) discount for each if remitted within ten days from date of invoice.

(d) Second party agrees to buy from first party either du Pont or Hazard black blasting powder when to be delivered at their mines located as here-
7679 inafter indicated, in 400, 800 or more kegs of twenty-five lbs. each at each delivery.

NAME	LOCATION
Howarth & Taylor,	
Mines at	Edwards, Ill.

or for any other mines that may be acquired by the second party, in the same district, during the time of this contract.

(e) It is agreed that powder furnished under this contract is for consumption of the second party only and not for sale, except to its own miners or
7680 employees. It is agreed that a violation of this clause gives for first party the option of cancellation of this contract.

(f) The first party may furnish, and second party will accept under this contract du Pont or Hazard brand of powder as the second party may require.

(g) The first party is not to be responsible for delays by strikes, accidents, or causes beyond its control.

Dated at Edwards, Ill., November 1, 1904.

E. I. DU PONT DE NEMOURS CO.,
by Eugene du Pont, Pres.
Howarth & Taylor.

Plaintiff's Exhibit P-36 7681

For and in consideration of the sum of One Dollar ($1.00) and other valuable consideration, to it in hand paid at and before the delivery of these presents by E. I. du Pont Company (the receipt whereof is hereby acknowledged), the undersigned hereby assigns, sells, transfers and sets over to said E. I. du Pont Company all its right, title and interest in and to that certain contract between the undersigned and Howarth & Taylor of Edwards, Illinois, dated the First day of November, 1904, which is hereto attached and hereby made a part hereof. 7682

It is agreed that the acceptance of this Assignment by the said E. I. du Pont Company shall constitute an agreement on its part to assume and discharge all of the obligations and liabilities of said contract on the part of the undersigned.

In Witnesseth Whereof, the undersigned corporation has caused these presents to be signed and its corporate seal to be affixed hereto on this 20th day of February, 1905. 7683

E. I. du Pont de Nemours Co. of N. J.,
Eugene du Pont, President.

ATTEST:

Edward S. Lentilhon,
Assistant Secretary.
Seal.

Seal.

7684

Plaintiff's Exhibit 36.

THIS AGREEMENT, made this Second day of October, A. D. nineteen hundred and two, between John L. Riker, of the City of New York and State of New York, party of the first part, and Delaware Securities Company, a corporation existing under the laws of the State of Delaware, party of the second part.

WHEREAS, the party of the first part has for
7685 many years last past been engaged in the manufacture and sale of powder and other explosives.

AND WHEREAS, the party of the second part has agreed to purchase from the party of the first part all of his shares of the capital stock of the Laflin and Rand Powder Company, a corporation engaged in the manufacture of powder, a part of the consideration for which purchase is the agreement by the party of the first part herein contained,

7686 AND WHEREAS, the party of the second part has as part of its assets a portion of the capital stock of the Laflin and Rand Powder Company, and as such is interested in the business of manufacturing and selling powder and other explosives.

NOW, THEREFORE, in consideration of the premises, and of the purchase of the said stock of the said party of the first part, as well as for and in consideration of the sum of Five Hundred Thousand Dollars and sundry other good and valuable considerations, by the party of the second part to the party of the first part in hand paid, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, the party of the first part hereby covenants and agrees to and with

the party of the second part, and its successors, that he shall not and will not, for the period of twenty-five next immediately ensuing the date of this agreement, be directly or indirectly engaged in or interested in the manufacture or sale of powder, or any other explosive, within any of the United States of America or the District of Columbia, excepting the State of Florida, and that the said party of the first part shall not and will not be directly or indirectly the owner of or interested in the stock of any company or corporation where- 7688
soever incorporated, which company, or corporation, shall be engaged in the manufacture or sale of powder, or other explosives, within the territory and for the time aforesaid; provided, however, that nothing contained in this agreement shall prevent the party of the first part from being directly or indirectly the owner of or interested in the stock of any company, or corporation in which the said party of the second part, E. I. du Pont de Nemours and Company, or said Laflin and Rand Powder Company, may or shall be interested, or to prevent the party of the first part from being 7689
connected with such company, or companies, whether as a stockholder, employee, agent, or otherwise, or from being directly or indirectly interested in the manufacture and sale of Chlorate of Potash, it being the purchase and intention of this agreement that the party of the first part shall not be directly or indirectly interested in the manufacture, or sale of powder or other explosives, which shall come in competition with the product of the party of the second part, or any of the companies in which it is now or may hereafter become interested, except as herein stated.

IN WITNESS WHEREOF, the party of the first

7690 *Plaintiff's Exhibit 36*

part hath hereunto set his hand and seal, and the party of the second part, hath caused these presents to be executed by its President, and its corporate seal to be hereunto affixed, the day and year first aforesaid.

(S) WM. BARCLAY PARSONS

[SEAL]

DELAWARE SECURITIES CO.,
By A. J. Moxham,
President.

7691

Signed, Sealed and Delivered
in the presence of
(S) Samuel Riker, Jr.
Attest,
(S) L. L. Dunham,
Secretary.

[As a part of the foregoing Exhibit there appears three other agreements exactly similar to the foregoing except as to the names of the first parties and the date and the consideration. One is dated
7692 October 2, 1902, William Barclay Parsons, a party of the first part, and the consideration, $75,000; a second dated October 6, 1902, H. de B. Parsons, the party of the first part, and the consideration, $60,000; a third dated October 2, 1902, Schuyler L. Parsons, the party of the first part, and the consideration, $150,000.]

Plaintiff's Exhibit 42 (Government's Exhibit 286). 7693

MEMORANDUM OF AGREEMENT, made and entered into this day of January, 1903, by and between R. S. Waddell and T. C. du Pont, representing ———— Powder Company or Companies (hereinafter called the Powder Company).

WITNESSETH, that whereas R. S. Waddell has been associated with the Powder Company for a great many years past and whereas his associations with said Powder Company have been entirely sat- 7694
isfactory and whereas he recently moved from Cincinnati to accept the position of General Sales Agent of said Powder Company on trial, and whereas that position is not entirely agreeable or congenial to him, and whereas said R. S. Waddell is desirous of building a powder plant and is further desirous of having associated with him the Powder Company with which he has been so long connected and he is also desirous of owning 51% of the stock of said (————) powder company (hereinafter called the New Company), in his own name and right, and whereas, the Powder Company does 7695
recognize the ability and appreciate the long and faithful service of R. S. Waddell and whereas they desire to increase their business and output to meet the growing demands for their product in the United State and whereas the said Powder Company is willing that said R. S. Waddell should be the owner of the majority of the stock of the New Company under conditions hereinafter set forth,

NOW THEREFORE it is agreed and understood that the said R. S. Waddell shall organize the New Company under the laws of the State of Delaware with a capital stock of $75,000.00, 51% of which shall be subscribed to and paid for by R. S. Wad-

7696 *Plaintiff's Exhibit 42*

dell and 49% of which shall be subscribed to and paid for by the Powder Company.

The said New Company to build mill or mills at a point or points in the United States to be agreed upon by said R. S. Waddell and said Powder Company. The capacity of said mill or mills to be 1,200 kegs per diem. The machinery for the manufacture of powder to be approved by the Powder Company.

Either one of the existing powder companies or a
7697 new company to be organized (hereinafter called the Selling Company) to enter into an agreement with the New Company under which agreement the New Company agrees to make and the Selling Company agrees to sell annually for a term of ten years with the privilege of two renewals of five years each, 250,000 kegs of blasting powder to be furnished in approximately equal monthly quantities. It being understood that if by accident or otherwise the New Company is prevented from furnishing equal installments in any one calendar
7698 quarter they may make up the shortage in the quarter following but the privilege to make up this shortage shall not extend, except by permission of the Selling Company, over a second quarter. (Stop)

The price of said powder sold by the New Company to the Selling Company to be $1.00 per keg f.o.b. mill or mills of the New Company? The quality of said powder is guaranteed by the New Company to be equally as good as the powder made by other standard companies owned or controlled by the Powder Company.

It is understood that the price above-mentioned of $1.00 per keg is based upon the cost of nitrate of soda in New York, and that should nitrate of soda be above $1.90 per hundred pounds then for every

five cents above $1.90 per hundred pounds that nitrate of soda advances the price of powder is to advance one cent per keg of twenty-five pounds. Should the price of nitrate of soda in New York be below $1.50 per hundred pounds then the price of powder to be reduced one cent per keg of twenty-five pounds for every five cents below $1.50 nitrate of soda declines.

IT IS FURTHER AGREED that should the Selling Company desire more than the 250,000 kegs which they above agree to take up to the capacity of the mill or mills of said New Company, then the price for the powder in excess of 250,000 kegs per annum shall be sold by the New Company to the Selling Company at the same price which is made for powder sold as between other powder companies (now 80c). 7700

IT IS AGREED and understood that the salary of R. S. Waddell, who is to be President of the New Company, shall be $10,000.00 per annum, with no further compensation for other work. 7701

It is further agreed and understood that there shall be five directors, three of whom are to be named by R. S. Waddell and two of who mare to be named by the Powder Company.

It is further understood that R. S. Waddell is to look after the selling of the powder produced by the New Company.

It is further agreed that the Selling Company shall give to R. S. Waddell a guarantee that they will sell and pay for at $1.00 per keg 250,000 kegs per annum, and a further guarantee to the New Company that they will pay for at the exchange price between powder companies any powder above 250,000 kegs per annum that they may purchase.

7702 *Plaintiff's Exhibit 42*

The said R. S. Waddell being in absolute control of the New Company through his ownership of 51% of the stock agrees to give a satisfactory guarantee that he will not produce, sell or offer for sale more than the 250,000 kegs per annum or such further quantity as may be ordered by the Selling Company and agrees further that he will not go into the powder busines or the explosives business either directly or indirectly except by consent of the Powder Company first above-mentioned. That
7703 the salaries of office employees will not be raised except by a unanimous vote of the directors and that the Powder Company will have the right to name two directors.

The said R. S. Waddell is to say what will be a satisfactory guarantee that the Selling Company will perform its part of this contract during its entire term, and the said R. S. Waddell agrees to hypothicate 2% of the stock of the New Company standing in his name as a guarantee that he, his heirs, executors and assigns will fulfill their part of
7704 the terms of this contract. The voting power of said stock and the dividends accruing on said stock to belong to R. S. Waddell.

IN WITNESS WHEREOF R. S. Waddell and T. C. du Pont have hereunto set their hands and seals the day and year first above written.

Plaintiff's Exhibit 43 (Government's Exhibit 287). 7705

Buckeye Powder Co. incorporated under the Laws of Delaware. Capital stock $75000.00 divided into 1500 shares of $50.00 each.

R. S. Waddell owning 51% equal to 765 shares.

L. & R. Powder Co. owing 49% equal to 735 shares.

Capital to be paid in, ten per cent at time of incorporation, balance proportionately as called for by the board of directors.

To erect two powder mills having a total capacity 7706
of 1200 kegs per day. The larger mill located near Peoria, Galesburg of Sprinfield, Ill. The smaller one near Kenova, W. Va.

Directors:

R. S. Waddell
N. C. Waddell
R. S. Waddell, Jr.
A. J. Moxham
J. A. Haskell

Officers:

R. S. Waddell	President.	7707
	Vice "	
R. S. Waddell, Jr.	Secretary.	
	Treasurer.	

By Laws:

Capital stock cannot be increased except by vote two thirds (2/3) of the total number of shares of stock.

No change in the By-Laws, except by vote of the same proportion of the total shares.

No mortgage on the property of the Company shall be given, except by vote of the same proportion of the total shares.

Cumulative votes by stockholders for directors to be allowed.

Salaries:

7708 *Plaintiff's Exhibit 44*

The President's salary shall be fixed by the By-laws at $10000.00 per annum and shall not be raised or changed during the term of service of R. S. Waddell.

Plaintiff's Exhibit 44 (Government's Exhibit 288).

Contract—see R. S. W's letter 1/13-03.

7708

By Mr. Hilles from notes of Mr. T. C. DuPont.

THIS AGREEMENT, made this day of January, A. D. nineteen hundred and three, by and between Robert S. Waddell, of the City of Wilmington, New Castle County and State of Delaware, party of the first part, and E. I. du Pont de Nemours and Company, a coporation existing under the Laws of the State of Delaware, party of the second part, WITNESSETH:

7710 THAT WHEREAS, the party of the first part has been associated with the party of the second part for a great many years last past,

AND WHEREAS, his associations with said Company have been entirely satisfactory.

AND WHEREAS, he has recently accepted the position of Central Sales Agent of the said party of the second part, which position is not entirely agreeable, or congenial to him.

AND WHEREAS, the said party of the first part is desirous of having an interest in the building of a powder plant, and is further desirous of having associated with him in the company to be

formed to promote the said enterprise, and to receive the assistance of the party of the second part,

AND WHEREAS, the party of the second part recognizing the ability, and appreciating the long and faithful service of the said party of the first part is desirous of assisting him in the said enterprise, now, therefore, it is agreed by and between the parties hereto as follows, to wit:

That the party of the first part will cause to be incorporated and organized under the Laws of the 7712
State of Delaware, a corporation to be known as Buckeye Powder Company (or by some other name to be mutually agreed upon) the said Buckeye Powder Company to be incorporated for the purpose of manufacturing powder; to have a capital stock of Seventy-five Thousand Dollars, divided into fifteen hundred shares of the par value of Fifty Dollars each.

The party of the first part agrees to subscribe and pay for fifty-one per cent of the capital stock of the said corporation, and the party of the second part agrees to subscribe and pay for forty-nine 7713
per cent of the said capital stock.

The Charter, or Articles of Association of the said Buckeye Powder Company to contain a provision that the by-laws of the said Company shall be made and altered by the vote of the holders of not less than seventy-five per cent of the capital stock, issued and outstanding.

made—not altered.

The said Buckeye Powder Company shall build and equip a mill, or mills, for the manufacture of powder at such place, or places, as may be determined to be advantageous by the *unanimous* vote of the Directors of the said Company. The normal capacity of the said mill, or mills, to be two

not unanimous—agree now.

7714 *Plaintiff's Exhibit 44*

hundred kegs per diem; the machinery for, and the construction of said mills to be first-class, and of such kind as may be recommended by Mr. Alfred I. du Pont, or Mr F. Olin, whose recommendation shall be followed, unless it shall appear to the Board of Directors unwise so to do.

It is agreed that the said party of the first part shall devote his entire time and ability to the business of the said Buckeye Powder Company for t
7715 period of ten years, if he shall so long live and be capable of so doing and that during the said period he shall not and will not engage, or be interested, directly or indirectly, in the business of buying, selling or manufacturing powder, dynamite, or other explosives, except in the business of the said Buckeye Powder Company.

It is further agreed that the said party of the first part shall be elected to be the President of the said Buckeye Powder Company, and that he shall receive in full for his services, while holding that
7716 office, the sum of Ten Thousand Dollars per annum to be paid by the said Buckeye Powder Company.

The by-laws of the said Buckeye Powder Company shall provide that the business and affairs of said Company are to be conducted and managed by a Board of Five Directors, two of whom shall be named by the party of the second part.

The salaries of officers of the said Buckeye Powder Company and of employees
No. shall be *fixed* and altered only by the *unanimous* vote of the Directors of said Company.

It is further agreed that the party of the first part shall assign and have transferred to the ——— Company thirty shares of the capital stock of the

said Buckeye Powder Company subscribed for by him as herein provided; the said stock to be held by the said Company subject to the terms and conditions set forth in the receipt to be signed by the said Trust Company in the form hereto annexed and marked "A."

Waived.

It is further agreed that a contract in the form hereto annexed, marked "B," shall be entered into between the said Buckeye Powder Company and the Laflin and Rand Powder Company, said contract to be executed and delivered before the parties hereto shall be required to pay the subscriptions upon the stock of the said Buckeye Powder Company; and the execution and delivery of the said contract to be a condition precedent to the right to collect or enforce said subscription from either of the parties hereto.

7718

Modify "B"

It is further agreed that proceedings shall be immediately taken for the incorporation and organization of the said Buckeye Powder Company and that the said Company when organized shall, with all dispatch, enter into the contract with the Laflin and Rand Powder Company, herein referred to.

7719

IN WITNESS WHEREOF, the party of the first part hath hereunto set his hand and seal, and the party of the second part hath caused these present to be signed by T. C. du Pont, its President, and its corporate seal to be hereunto affixed the day and year first aforesaid.

Signed, Sealed and Delivered
in the presence of

[SEAL]

E. I. DU PONT DE NEMOURS AND CO.,
By

President.

Attest:

Secretary.

7720 **Plaintiff's Exhibit 45 (Government's Exhibit 288a).**

WHEREAS, ROBERT S. WADDELL, of the City of Wilmington, New Castle County and State of Delaware, has assigned and transferred unto the Company, thirty shares of the capital stock of Buckeye Powder Company, a corporation existing under the laws of the State of Delaware.

Now, in consideration of the premises, as well as for and in consideration of the sum of One dol-
7721 lar to this company in hand paid by E. I. du Pont de Nemour's and Company, a corporation existing under the laws of the State of Delaware, the receipt whereof is hereby acknowledged, it is agreed as follows: That the said thirty shares of stock is held in trust for the following purposes, that is to say, until default made, as hereinafter provided, to vote the said stock at all meetings of the stockholders of the Buckeye Powder Company, as it may be directed by the said Robert S. Waddell; provided, however, that the said stock shall be voted
7722 for two directors who shall be named by E. I. du Pont de Nemours and Company; and further provided that the said stock shall not be voted without the consent of the said Robert S. Waddell, or his assigns, and the said E. I. du Pont de Nemours and Company or its assigns, to increase the capital stock of the said Buckeye Powder Company, or to place any lien, or encumbrance upon the property of the said company.

Until default made, as hereinafter provided, the dividends on the said stock, if any, shall be the property of the said Robert S. Waddell, or his assigns.

Should either of the following events happen, this company shall, upon the written request of E. I. du Pont de Nemours and Com-

Not on mere request— Not accepted by R. S. W.

pany, and after it shall be satisfied that the said E. I. du Pont de Nemours and Company has given at least five days' *written notice* to the said Robert S. Waddell, or his assigns of its intention to make the said request, be assigned and transferred absolutely, and free from any trust, unto the said E. I. du Pont de Nemours and Company as its sole and exclusive property.

The events of default, hereinbefore referred to, 7724 shall be the following:

1. If the said Buckeye Powder Company shall sell to any person, or persons, corporation or corporations, any of its product or output, except in accordance with the terms of a certain contract made and entered into on the day of A. D., nineteen hundred and three, by and between the said Buckeye Powder Company and the Laflin and Rand Powder Company, a copy of which contract is hereto annexed, marked "A." 7725

Illegal and voidable by either party.

2. If the said Buckeye Powder Company shall refuse, or neglect to manufacture and supply to the Laflin and Rand Powder Company the powder, as agreed upon in the said contract, marked "A."

3. If the said Robert S. Waddell shall engage in, or be directly, or indirectly interested in the manufacture or sale of explosives, except for the said Buckeye Powder Company, the agreement covering which is contained in a certain contract between the said Robert S. Waddell and the said E. I. du Pont de Nemours and Company bearing date the day of A. D., nineteen hundred and three, a copy of which contract is hereto annexed, marked "B."

7726 *Plaintiff's Exhibit 45*

Upon the termination of the period named in the said two contracts hereto annexed (or if the said contracts shall otherwise be determined) and the faithful compliance with the provisions thereof by the said Buckeye Powder Company, and the said Robert S. Waddell, the said thirty shares of stock shall be transferred and assigned by this company unto the said Robert S. Waddell, his executors, administrators or assigns.

7727 The costs and charges of this company in executing this trust shall be paid equally by the said Robert S. Waddell and the said E. I. du Pont de Nemours and Company.

IN WITNESS WHEREOF, the said Company hath caused these presents to be signed by its president and its corporate seal to be hereunto affixed this day of A. D., nineteen hundred and three.

Signed, Sealed and Delivered

7728 in the presence of,

By

President.

Attest:

Secretary.

Plaintiff's Exhibit 46 (Government's Exhibit 288b). 7729

January 13, 1903.

Wm. S. Hilles, Esq.,
Wilmington, Del.

Dear Sir:—

I have read over the contracts you handed me last evening, and now comment on same. For reference I will describe the papers as

7730

Contract,
Paper A,
Paper B,

Referring to the third paragraph on page 2 of the contract, charter provision that by-laws should be made and altered by vote of holders of 75% of stock, if these are to be made, and there is a disagreement, what would be the effect of doing without by-laws. I can see that by-laws should not be changed, except by such vote. Do you not think this is a stringent clause in regard to "making" 7731 the by-laws.

Fourth paragraph, same page: The company shall build mill or mills at such place or places as may be determined by "unanimous vote of directors;"—if this cannot be determined in advance of organization, it would appear to be unnecessary to organize. The interests of the two parties to the contract are opposed to each other on this proposition. For instance, I would favor the vicinity of Peoria, Ill., for the following reasons:

1. It is a fine distributing point, with excellcellent rail connections reaching all parts of the country.

7732 *Plaintiff's Exhibit 46*

2. Illinois mined during the year 1901, about 27,000,000 tons coal.
Iowa " " 5,400,000 " "
Missouri " " 3,800,000 " "
Ohio " " 10,500,000 " "
46,700,000

3. If the vicinity of Peoria or Springfield, Ill. is not occupied by this company, it will be by another and outside interest.

4. It is to my advantage to locate in favor of
7733 conditions ten years hence. The Illinois field has much the brightest future.

5. Peoria, Decatur, Springfield, and Litchfield have five or six railroad connections.

6. West Virginia fields are in parts, hemmed in by mountains. Each locality has a single railroad, and arbitrary rates. (Such mill location would be limited in the area it could reach.

The opposing interest would favor West Virginia for two reasons:

1st. Because it is limited, and would supply a
7734 local business on the C. & O. and N. & W. roads.

2nd. Because Illinois somewhat conflicts with Mooar, Iowa, Mills.

From this it is apparent that friendly conclusion could not be reached by a unanimous vote of the Board of Directors, and there would, therefore, be no location, and no mills.

It would not be prudent to contract for a supply of powder without the possibility of having mills to make it.

In the same paragraph, "The construction of Mills to be First Class," it is possible to get this so high that it would con-

sume the entire capital in fancy machinery, and expensive construction. Good mills could be built without this.

The second paragraph, next page provides that business and affairs of the company are to be conducted and managed by a board of five directors. It seems to me they are to be managed by the contract, and although a director might be chosen for such work, he could do nothing without the consent of the minority. This section, and previous pro- 7736
visions cited appear to conflict.

Third paragraph, this page, "Salaries of officers and Employees shall be fixed and altered only by unanimous vote of Directors;"—under this provision a single member of a board could prevent the hiring of employees to operate the mills, yet they would be under contract for such operation.

Commenting on paper "A," first page, paragraph 4 provides 10 years from the date of this paper. This really means a nine year contract, as the mills could not be built under eight or nine months.

Fifth paragraph, same page, "First party agrees 7737
to sell during said period (10 years from date hereof), a definite number of kegs per year, in approximately equal monthly installments. Should not this be more flexible? If the first party cannot sell a keg to others, and disposes of his entire product to the second party, giving an unqualified pledge to keep its contract, this clause seems to severe for rational acceptance. Why not say "not exceeding" a definite quantity. Suppose the first party were enjoined from manufacture?

Second paragraph, next page, reading: "It being understood that the price abovementioned is based upon average quarterly cost of soda."

7738 *Plaintiff's Exhibit 46*

I think our understand is a little at variance from this. So long as the price of soda remains between $1.50 and $1.90 per 100 lbs., no change is to be made in the price of powder. When it goes above $1.90, or below $1.50, then a change is to be made: one cent per keg for each advance of five cents for soda, above $1.90. When this advance price declines, the price of powder is to be proportionately reduced until soda gets below $1.90, and above $1.50, when the powder price is normal, as pro-
7739 vided in the contract.

Commenting on paper "B," the last paragraph on first page seems to clothe E. I. D. & Co. with judicial powers. When, in the opinion of this company, the contract is broken, the penalty is to be applied, and the forfeiture be made. I have no objection to offer in putting up the security, and in complying with the contract to the letter, yet I should expect to be heard before making this forfeit. As I understand it, all the company desires would be security. If it were a mortgage, it would
7740 have to be foreclosed. Such summary proceeding as is provided for in this case would not suit me.

Paragraph second, page two, if the company should "refuse or neglect" to manufacture a stated quantity as agreed upon in Paper "A," then a forfeiture by summary proceedings would be in order. I do not think this was contemplated as between the parties who have discussed it.

If I sell all my product to one party; limit myself not to sell to others (as in penalty clause No. 1 of Paper "B,") and agree to a forfeiture if I do so; is it probable that I would sit in dleness without the use of a plant? Why is it necessary to penalize me for neglect and to the extent of losing control of a business?

In presenting the proposition which you have

now put in formal shape, I had no intention of buying the majority interest in a business, and of submitting it entirely to the control of the minority, and then give security to the minority that I would comply with its wishes, or forfeit my property on five days notice."

My purpose has been to give old friends and employers the preference in joining me in a business venture which I have decided to make. They, perhaps, have misunderstood me. I am not seeking assistance, but endeavoring to be fair and just to 7742
associates in business.

In making this proposition, the opportunity for a better business future was waived. An independent connection would be preferable to this one, under the restrictions in these papers.

In the main we have agreed. Am very sorry that I cannot acquisce in these technicalities. Kindly submit my views and comments.

I have written Mr. T. C. du Pont that it is necessary for me to be absent to attend to some important matters.

Probably you will desire to let the matter rest 7743
until after the recovery of Mr. T. C. du Pont, and my return to Wilmington, within a week from this date.

Truly yours,

R. S. Waddell.

7744 **Plaintiff's Exhibit 47 (Government's Exhibit 288c).**

January 29, 1903.

Mr. T. C. duPont, Prest.,
Building.

Dear Sir:

Complying with your request that I name definite locations for the proposed powder mills, will say that for the Illinois Mill, Peoria is by far the best
7745 distributing point under present rates and conditions. The competition from Peoria, which has 12 railroads, is sufficient to insure good shipping facilities and favorable rates. There is, however, something to be said in favor of Springfield. Wagon deliveries are practicable from that point, while, in time, if the trade developed the necessity for it, favorable freight rates would be made. I would not object to either of these places.

Litchfield, also, offers some advantages, and stands on par with Springfield as a distributing point to other localities.

7746 Something would depend on the ability to secure a definite site, and this can only be settled by viewing the surroundings, which I would like to do immediately after February 1st.

As to the West Virginia Mills. As the Purchasing Company contracts to take the entire output of the mills for a term of years, I presume I should offer no objections, yet, knowing the situation, and desiring that the Purchasing Company should not enter into a contract without understanding the conditions, I would express an opinion on this subject.

West Virginia Trade is strictly FFF. A mill located in that territory will produce approximately 40% FFF Powder, the remainder FF, F, C, and

Plaintiff's Exhibit 47 7747

CCC. The Purchasing Company would, therefore, have 60% of the powder, of course grain, that would have to be market in other sections of the country. If there were two mills, and they were located in Kanawha and Pocohantas Districts, 60% of the powder would have to be shipped out at a high freight rate, in order to find a market. If on the other hand, the Purchasing Company desired to have the Manufacturing Company break down the coarse grains, and increase its output of FFF, this would treble the expenses of wheeling, pressing, and graining; at the same time reducing the output of the mills fully 40%, or in other words, increase the cost for labor and mill work, and exclusive of materials, fully 40%. The Operating Department should be able to furnish you the cost of materials, and the cost of glazing. Deduct this cost from the total cost of manufacture ready for packing in the kegs, and you can readily determine the extra cost involved by such operation. The Manufacturing Company, of course, could not undertake to bear this extra expense, for it would absorb all the profits of the business, and it would merely be working for the Purchasing Company. 7748 7749

There would be a little saving of freight by locating near the centre of Kanawha and also in the centre of the Pocohantas Fields. This would be more than overcome by the added expense of manufacturing FFF. I would be willing to locate a mill in each of these places, the Purchasing Company to take the entire output as it runs from day to day, or, if it would agree to bear the added expense of the manufacture of strictly FFF powder.

After studying the situation very carefully, I am of the opinion that for the good of all concerned, it would be very much better to locate an 800 keg mill in Illinois, for the general relief of that

7750 *Plaintiff's Exhibit 47*

district, and to locate a 400 keg mill near Kenova, the latter to make as much FFF powder as would be possible, so as to relieve the Purchasing Company of the marketing of an excess quantity of the coarser grains. I believe a 400 keg mill, with three wheels, would be large enough for that location; placing five wheels at the Illinois plant.

As a better proposition, and one more favorable both for your interests, and my own, I would recommend the following:

7751 Locate an 800 keg mill in Illinois, and a 400 keg mill in the Fort Smith, Indian Territory district, to be operated by the Buckeye Powder Company. Then let the Phoenix Powder Mnfg. Company move its present plant at Kenova to a more favorable situation in that locality, to be owned and controlled by its present stockholders. If all my expenses were paid, in the care of such a mill, I would be willing to look after its operation, conducting the business without compensation. The total cost would probably not exceed one thousand

7752 dollars per year, and the Cincinnati office could market the output.

I have made a very careful study of the trade, the requirements of the business, the future prospects, and of the situation in all its relations to Associates, and believe this latter suggestion to be the better one for the DuPont interests.

The present volume of business in the Indian Territory and Arkansas Fields is about 190,000 kegs per year. This will increase to a maximum of 300,000, which could be tributary to the plan I suggest, and to the one contemplated by Mr. Olin. I would recommend that you have two strings to your bow in that district.

Awaiting your pleasure in the matter, I remain,

Truly yours,

Plaintiff's Exhibit 48 (Government's Exhibit 288d). 7753

February 2, '03.

Mr. T. C. duPont, President,
Office.

Dear Sir:

Your counter-proposition to locate two mills for Buckeye Powder Company, one at Birmingham, Ala.; the other at a point in Indian Territory, or 7754
at Pueblo, Colo., has been carefully considered, and does not impress me favorably for several reasons:

First, The freight rates on raw material are excessive.

Second, Transportation facilities are limited, and the trade of such mills will be strictly local. The business of these mills would always be menaced by probable combinations of operators in building opposition mills.

7755

Third, Either place would be undesirable as a home.

During the past six weeks our efforts to agree have proved futile, and it seems useless to longer continue the negotiations.

I wish to decide a definite course at the beginning of this month, and that I may be free to take up other lines of work, I request that you kindly designate some one to whom I may turn over pending business.

Truly yours,

General Sales Agent.

7756 **Plaintiff's Exhibit 49 (Government's Exhibit 788e).**

E. I. du Pont de Nemours & Co.,
Wilmington, Delaware.

President's Office.

February 2, 1903.

Mr. R. S. Waddell,
Building.

Dear Sir:—

I am in receipt of your letter of even date, the contents of which have been noted. Since in the
7757 last paragraph you make a definite request to be relieved of the duties of your present position there would appear to be nothing for me to say in reply except that I will arrange to relieve you at whatever time will best suit your convenience on or before February 9, 1903.

Regretting that our recent efforts along the lines of co-operation appear to have been futile, I remain,

Yours truly,
(Signed) T. C. duPont,
Pt.

7758 ———

Plaintiff's Exhibit 50 (Government's Exhibit 288f).

February 2, '03.

Mr. T. C. duPont,
Office.

Dear Sir.

Your favor this date received. As this is the beginning of the month, I would prefer to discontinue service at once, and will thank you if you will kindly have some one relieve me of duty to-day.

Truly yours,

General Sales Agent.

Plaintiff's Exhibit 51 (Government's Exhibit 288g). 7759

E. I. DU PONT DE NEMOURS & Co.,
Wilmington, Delaware.

President's Office.

February 2, 1903.

Mr. R. S. Waddell,
Building.

Dear Sir:—

I have your letter of February 2nd. If Mr. Eugene du Pont returns this evening he will relieve you. If not he will do this the first thing to-morrow morning. 7760

Yours truly,
(Signed) T. C. du Pont,
President.

Plaintiff's Exhibit P-162.

THIS CONTRACT entered into this 16th day of November, 1912, by and between the E. I. DU PONT DE NEMOURS POWDER COMPANY, a corporation of the State of New Jersey, party of the first part, and DOOLEY BROTHERS, PEORIA, ILLINOIS, party of the second part. 7761

(1) WITNESSETH: That the party of the first part, hereby sells and the party of the second part hereby purchases all of the explosives and blasting supplies needed, required or used by the party of the second part during the period of this contract, for use or sale in the PEORIA COAL MINING DISTRICT, at the following prices:

"B" BLASTING POWDER

CARLOAD LOTS: F.O.B. Peoria, Illinois, direct sale to the party of the second part for local

7762 *Plaintiff's Exhibit P-162*

sale and distribution by the party of the second part. 800 kegs or more, one shipment, $1.15 per keg; 400 kegs and less than 800 kegs, one shipment, $1.17½ per keg. Less Five cents (5c) per keg commission to party of second part.

CARLOAD. SHIPMENTS: Made by the party of the first part direct to customers of the party of the second part in the Peoria Coal Mining District, f.o.b. nearest Railroad Station. 800 kegs or
7763 more, one shipment, $1.15 per keg; 400 kegs and less than 800 kegs, one shipment, $1.17½ per keg. Less Five cents (5c) per keg commission to party of the second part.

Any other explosives or blasting supplies not specified in this contract to be furnished at current prices which are charged by the du Pont Company in the district in which the explosives or blasting supplies are to be used.

The following conditions are mutually accepted:

7764 (2) The prices herein are based on present freight rates, and present minimum carload quantities, but in case the present freight rates or present minimum carload quantites are increased or decreased during the existence of this contract, the amount of such increase or decrease shall be added to or deducted from the above prices.

The prices herein are also based on present method of packing and transporting powder, but in case the present method of packing or transporting powder is prevented by law or Railway Association regulations during the existence of this contract, then in that event this contract may, at the election of the party of the first part, be terminated.

Plaintiff's Exhibit P-162

(3) Terms: 30 days Net, or 2% discount if paid within 10 days from date of invoice. 7765

Party of the second part to make carload sales only to such customers as may be approved by party of the first part.

Sales of less than carload lots by party of the second part are to be confined to Peoria County, Illinois, and to the Pekin Mining District in Tazewell County, Illinois, unless special permission be first secured from party of the first part.

(4) The party of the first part is not to be responsible for delays caused by strikes, accidents or causes beyond its control. 7766

(5) This contract to go into effect on the 1st day of January, 1913, and continue in force until the 31st day of December, 1913, and thereafter from year to year unless written notice is mailed to the address of either party by the other sixty (60) days prior to the 31st day of December of any year, in which event upon the arrival of such date the contract is to be terminated. 7767

(6) This contract does not become binding until accepted by the E. I. du Pont de Nemours Powder Company, at its main office at Wilmington, Delaware.

E. I. DU PONT DE NEMOURS POWDER COMPANY,
By P. H. Donnelly,
Salesman, &c.
Dooley Brothers,
By J. B. Dooley, President.

Accepted at Wilmington, Del., Nov. 21, 1912.

E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Wm. Coyne,
Director of Sales.

7768 **Plaintiff's Exhibit 732.**

This contract entered into this 1st day of August, 1906, by and between the E. I. du Pont Company, a corporation of Wilmington, Delaware, party of the first part, and the Clark Coal & Coke Company, Peoria, Illinois, party of the second part, witnesseth:

First, that the party of the first part hereby sells, and the party of the second part hereby purchases all the blasting powder required by the party of the second part for one year's boring operations
7769 of the Clark Coal & Coke Company, Peoria, Illinois, at the price of one dollar per keg of twenty-five (25) pounds, each, delivered f. o. b. at the points aforesaid.

Second, it is agreed that the powder furnished under this contract is for consumption of the second party only, and not for sale except to its own miners and employees, and that violation of this clause gives the party of the first part the option of cancellation of this contract.

Third, deliveries to be made in carloads of not less than eight hundred (800) kegs, terms 60 days,
7770 or two per cent (2%) discount for cash within ten days of date of invoice.

Fourth, party of the first part is not to be responsible for delays caused by strikes, accidents, or causes beyond its control.

Fifth, this contract does not become effective until accepted by the E. I. du Pont Company at Wilmington, Delaware.

E. I. DU PONT COMPANY,
By Dooley Bros., Agents,
Clark Coal & Coke Co.,
Horace Clark, Secy.

Accepted at Wilmington, Del.
July 23, 1906.
E. I. du Pont Co.
(Signed) Eugene du Pont,
G. S. A.

Plaintiff's Exhibit 740. 7771

THIS CONTRACT entered into this Eleventh DU PONT DE NEMOURS POWDER COMPANY, a corporation of the State of New Jersey, party of the first part, and Dooley Brothers, Peoria, Illinois, party of the second part.

(1) WITNESSETH: That the party of the first part hereby sells and the party of the second part hereby purchases all of the Black Blasting Powder required by the party of the second part, during the period of this contract, for use of Clark Coal & Coke Company, Peoria, Illinois, at the following prices: 7772

CARLOADS: 800 kegs, or over $1.05 per keg, delivered nearest railroad station. Less commission of 5c. per keg.

The above prices are based on present freight rates, and present minimum carload quantity, but in case the present freight rates or present minimum carload quantity are increased or decreased during the existence of this contract, the amount of such increase or decrease shall be added to or deducted from the above prices. 7773

The above prices are also based on present method of packing and transporting powder, but in case the present method of packing and transporting powder is prevented by law, or railway association regulations during the existence of this contract, then in that event this contract, may at the election of the party of the first par, be terminated.

The following conditions are mutually accepted:

(2) Terms are sixty (60) days, or two per cent (2%) in ten (10) days from date of invoice.

7774 *Plaintiff's Exhibit 740*

(3) It is agreed that explosives furnished under this contract are for consumption of the party of the second part only and not for sale except to its own sub-contractors or employes and that a violation of this clause gives the party of the first part the option of cancellation of this contract.

(4) The party of the first part is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

7775

(5) This contract to go into effect on first day of January, 1908, and continue in force until first day of January, 1909, and thereafter from year to year unless written notice is mailed to the address of either party, by the other, sixty (60) days prior to first day of January of any year, in which event upon the arrival of such date the contract is to be terminated.

(6) This contract does not become binding until accepted by the E. I. DU PONT DE NEMOURS POW-
7776 DER COMPANY, at its main office at Wilmington, Delaware.

E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Dale Bumstead.

DOOLEY BROS.
By J. B. Dooley.

Accepted at Wilmington, Del.,
Nov. 26, 1907.
E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Wm. Coyne.

Plaintiff's Exhibit 740, 741 7777

Following letter is attached to contract (Ex. 740):

Wilmington, Del., December 3, 1908.

Mr. Alexis I. du Pont, Secty.,
Building.

Dear Sir: File SD-4733

Please note that due notice has been given of our desire to discontinue our self-renewing contract No. 762, with the Clark Coal & Coke Company, Peoria, Ills., running from January 1, 1908, to January 1, 1909. Kindly acknowledge receipt of this letter. 7778

Your very truly,

Director of Sales.

Plaintiff's Exhibit 741.

THIS CONTRACT entered into this 25th day of November, 1907, by and between the E. I. DU PONT DE NEMOURS POWDER COMPANY, a corporation of the State of New Jersey, party of the first part, and Dooley Brothers, Peoria, Illinois, party of the second part. 7779

(1) WITNESSETH: That the party of the first part hereby sells and the party of the second part hereby purchases all of the Blasting Powder required by the party of the second part, during the period of this contract, for use of Howarth & Taylor, Edwards, Illinois, at the following prices:

CARLOADS: 800 kegs, or over, 1.05 per keg, delivered nearest Railroad Station; 400 kegs, or less than 800 kegs, $1.07½ per keg, delivered near-

7780 *Plaintiff's Exhibit 741*

est Railroad Station. 5c per keg commission to Dooley Brothers.

The above prices are based on present freight rates, and present minimum carload quantity, but in case the present freight rates or present minimum carload quantity are increased or decreased during the existence of this contract, the amount of such increase or decrease shall be added to or deducted from the above prices.

7781 The above prices are also based on present method of packing and transporting powder, but in case the present method of packing and transporting powder is prevented by law, or Railway Association regulations during the existence of this contract, then in that event this contract, may at the election of the party of the first part, be terminated.

The following conditions are mutually accepted:

(2) TERMS ARE :

7782 60 days or 2% for cash within 10 days from date of invoice.

(3) It is agreed that explosives furnished under this contract are for consumption of the party of the second part only and not for sale except to its own sub-contractors or employes and that a violation of this clause gives the party of the first part the option of cancellation of this contract.

(4) The party of the first part is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

(5) This contract to go into effect on 25th day of November, 1907, and continue in force until 25th

Plaintiff's Exhibit 741 7783

day of November, 1908, and thereafter from year to year unless written notice is mailed to the address of either party, by the other, sixty (60) days prior to 25th day of November of any year, in which event upon the arrival of such date the contract is to be terminated.

(6) This contract does not become binding until accepted by the E. I. DU PONT DE NEMOURS POWDER COMPANY, at its main office at Wilmington, Delaware. 7784

E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Dale Bumstead.

Dooley Bros.
By J. B. Dooley.

ACCEPTED at Wilmington, Del.,
Dec. 31, 1907.
E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Wm. Coyne.

Following letter is attached to contract (Exhibit 741) and marked Plaintiff's Exhibit 742: 7785

Wilmington, Del., December 3, 1908.

Mr. Alexis I. du Pont, Secty.,
Building.

Dear Sir:— File SD-8177.

Please note that our self-renewing contract No. 964, with Howarth & Taylor, Edwards, Ills., running from November 25, 1907 to November 25, 1908, has been discontinued, and is no longer in effect.

Kindly acknowledge receipt of this letter.

Yours very truly,
Director of Sales.

7786 *Plaintiff's Exhibits 741, 745*

Also the following letter marked Plaintiff's Exhibit 743:

Wilmington, Del., July 30, 1908.

Mr. Dale Bumstead, Mgr.,
Chicago.

Dear Sir:— File SD-8177.

Our contract with Howarth & Taylor, Edwards, Ills., which requires a notice of 60 days to discontinue, will expire Nov. 25, next. Please advise them that it is not our desire to continue this con-
7787 tract; and state on the enclosed sheet the date you notify them.

Yours very truly,

A. D. S.

Plaintiff's Exhibit 745.

THIS CONTRACT entered into this 27th day of November, 1907, by and between the E. I. DU PONT DE NEMOURS POWDER COMPANY, a corporation of the State of New Jersey, party of the first part,
7788 and Dooley Brothers, Peoria, Illinois, party of the second part.

(1). WITNESSETH: That the party of the first part hereby sells and the party of the second part hereby purchases all of the Blasting Powder required by the party of the second part, during the period of this contract, for use of Sholl Brothers' Mine, Peoria, Illinois, at the following prices:

CARLOADS: 800 kegs, or over, $1.05 per keg, delivered nearest Railroad Station. 5c per keg commission to Dooley Brothers.

The above prices are based on present freight rates, and present minimum carload quantity, but

Plaintiff's Exhibit 745 7789

in case the present freight rates or present minimum carload quantity are increased or decreased during the existence of this contract, the amount of such increase or decrease shall be added to or deducted from the above prices.

The above prices are also based on present method of packing and transporting powder, but in case the present method of packing and transporting powder is prevented by law, or Railway Association regulations during the existence of this contract, then in that event this contract, may at the 7790
election of the party of the first part, be terminated.

The following conditions are mutually accepted:

(2) TERMS ARE 60 days or 2% for cash within 10 days from date of invoice.

(3) It is agreed that explosives furnished under this contract are for consumption of the party of the second part only and not for sale except to its own sub-contractors or employes and that a violation of this clause gives the party of the first part 7791
the option of cancellation of this contract..

(4) The party of the first part is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

(5) This contract to go into effect on 27th day of November, 1907, and continue in force until 27th day of November, 1908, and thereafter from year to year unless written notice is mailed to the address of either party, by the other, sixty (60) days prior to 27th day of November of any year, in which event upon the arrival of such date the contract is to be terminated.

(6) This contract does not become binding until

7792 *Plaintiff's Exhibits 745, 762*

accepted by the E. I. DU PONT DE NEMOURS POWDER COMPANY, at its main office at Wilmington, Delaware.

E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Dale Blumstead.

DOOLEY BROS.
By J. B. Dooley.

ACCEPTED at Wilmington, Del.,
7793 Dec. 31, 1907.
E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Wm. Coyne.

Following letter is attached to contract (Ex. 745) and marked Plff.'s Ex. 746.

Wilmington, Del., July 30, 1908.

Mr. Dale Bumstead, Mgr.,
Chicago, Ills.

Dear Sir: File SD-9149.

Our contract with Sholl Bros., Peoria, Ills., which requires a notice of 60 days to discontinue, will
7794 expire Nov. 27 next. Please advise them at once that it is not our desire to continue this contract, and state on enclosed sheet the date you notify them.

Yours very truly,

A. D. S.

Plaintiff's Exhibit 762.

THIS. CONTRACT entered into this 30th day of November, 1907, by and between the E. I. DU PONT DE NEMOURS POWDER COMPANY, a corporation of the State of New Jersey, party of the first part, and Dooley Brothers, Peoria, Illinois, party of the second part.

Plaintiff's Exhibit 762 7795

(1) WITNESSETH: That the party of the first part hereby sells and the party of the second part hereby purchases all of the Blasting Powder required by the party of the second part, during the period of this contract, for use of Applegate & Lewis Coal Company, Cuba, Illinois, at the following prices:

CARLOADS: 800 kegs or over, $1.05 per keg, delivered nearest railroad station; 5c per keg commission to Dooley Brothers. 7796

The above prices are based on present freight rates, and present minimum carload quantity, but in case the present freight rates or present minimum carload quantity are increased or decreased during the existence of this contract, the amount of such increase or decrease shall be added to or deducted from the above prices.

The above prices are also based on present method of packing and transporting powder, but in case the present method of packing and transporting powder is prevented by law, or railway 7797 association regulations during the existence of this contract, then in that event this contract, may at the election of the party of the first part, be terminated.

The following conditions are mutually accepted:

(2) TERMS ARE—60 days or 2% for cash within 10 days from date of invoice.

(3) It is agreed that explosives furnished under this contract are for consumption of the party of the second part only and not for sale except to its own sub-contractors or employes and that a violation of this clause gives the party of the first part the option of cancellation of this contract.

7798 *Plaintiff's Exhibit 762*

(4) The party of the first part is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

(5) This contract to go into effect on 30th day of November, 1907, and continue in force until 30th day of November, 1908, and thereafter from year to year unless written notice is mailed to the address of either party, by the other, sixty (60) days prior to 30th day of November of any year,
7799 in which event upon the arrival of such date the contract is to be terminated.

(6) This contract does not become binding until accepted by the E. I. DU PONT DE NEMOURS POWDER COMPANY, at its main office at Wilmington, Delaware.

E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Dale Bumstead.
DOOLEY BROS.
By J. B. Dooley.

7800 ACCEPTED at Wilmington, Del.,
Dec. 31, 1907.
E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Wm. Coyne.

Following letter attached to contract (Exhibit 762) and marked Plaintiff's Exhibit 763:

Wilmington, Del., July 30, 1908.

Mr. Dale Bumstead, Mgr.,
Chicago, Ill.

Dear Sir:—

File SD-6816.

Our contract with the Applegate & Lewis Co., Peoria, Ill., which requires notice of 60 days to discontinue, will expire November 30th, next. Please advise them at once that it is not our desire

Plaintiff's Exhibit 762 7801

to continue this contract, and state on the enclosed sheet the date you notify them.

Very truly yours,

A. D. S.

Plaintiff's Exhibit 1247-S, is a contract dated January 20th, 1908, identical in all respects with Plaintiff's Exhibit 762, except that the customer to be supplied is Champion Coal Company, Pekin, Illinois, and the prices for blasting powder are as follows: 7802

Carload lots: 800 kegs or over $1.10 per keg f. o. b. cars, Pekin, Illinois; 400 kegs, or over, $1.12½ per keg f. o. b. cars, Pekin, Illinois. Five cents (5c) per keg, commission to Dooley Bros. This contract goes into effect Jan. 20, 1908, and continues in force until Jan. 20, 1909.

Plaintiff's Exhibit 736, is a contract dated November 11, 1907, identical in all respects with Plaintiff's Exhibit 762, except that the customer to be supplied is Collier Co-operative Coal Company, Peoria, Illinois, and the prices for blasting powder 7803 are as follows:

"Carloads: 800 kegs, or over $1.05 per keg, delivered nearest railroad station. Less commission of 5c per keg."

This contract goes into effect Nov. 11, 1907, and continues in force until Nov. 11, 1908.

The following letters are attached to contract (Exhibit 736) and marked Plaintiff's Exhibit 737:

Wilmington, Del., December 3, 1908.

Mr. Alexis I. du Pont, Secty.,

Building,

Dear Sir:— File SD-5149.

Please note that our self-renewing contract No. 761, with the Collier Co-operative Coal Co., Peoria,

7804 *Plaintiff's Exhibit 762*

Ill., running from November 11, 1907, to November 11, 1908, has been discontinued, and is no longer in effect.

Kindly acknowledge receipt of this letter.

Yours very truly,

Director of Sales.

Wilmington, Del., July 30, 1908.

Mr. Dale Bumstead, Mgr.,

Chicago, Ill.

7805 Dear Sir:— File SD-5149.

Our contract with the Collier Co-operative Coal Co., Peoria, Ills., which requires a notice of 60 days to discontinue, will expire Nov. 11, next. Please advise them that it is not our desire to renew this contract, and state on enclosed sheet the date you notify them.

Yours very truly, A. D. S.

Plaintiff's Exhibit 1247-D, is a contract dated November 29, 1907, identical in all respects with Plaintiff's Exhibit 762, except that the customer 7806 to be supplied is Eastern Coal Company, Peoria, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs, or over $1.05 per keg, delivered at nearest railroad station; 5c per keg commission to Dooley Brothers."

This contract goes into effect Nov. 29, 1907, and continues in force until Nov. 29, 1908.

Plaintiff's Exhibit 1247-E, is a contract dated November 29, 1907, identical in all respects with Plaintiff's Exhibit 762, except that the customer to be supplied is Eagle Mining Company, Canton, Illinois, and the prices for blasting powder are as follows:

Carloads: 800 kegs, or over $1.05 per keg, de-

livered nearest railroad station; 5c per keg commission to Dooley Brothers."

This contract goes into effect Jan. 1, 1908, and continues in force until Jan. 1, 1908.

Plaintiff's Exhibit 759, is a contract dated November 30, 1907, identical in all respects with Plaintiff's Exhibit 762, except that the customer to be supplied is W. E. Foley, Mapleton, Illinois, and the prices for blasting powder are as follows:

7808

"Carloads: 800 kegs, or over, $1.05 per keg, delivered nearest railroad station; 400 kegs, or less than 800 kegs, $1.07½ per keg, delivered nearest railroad station; 5c per keg commission to Dooley Brothers."

This contract goes into effect Nov. 30, 1907, and continues in force until Nov. 30, 1908.

Following letter attached to contract (Exhibit 759) and marked Plaintiff's Exhibit 760:

Wilmington, Del., July 30, 1908.

Mr. Dale Bumstead, Mgr., 7809

Chicago, Ills.

Dear Sir:— File SD-9151.

Our contract with W. E. Foley, Mapleton, Ills., which requires a notice of 60 days to discontinue, will expire November 30th next. Please advise them that it is not our desire to continue this contract, and state on the enclosed sheet the date you notify them.

Yours very truly, A. D. S.

Plaintiff's Exhibit 1247-H, is a contract dated November 29th, 1907, identical in all respects with Plaintiff's Exhibit 762, except that the customer to be supplied is Harry C. Hill, Fairview, Illinois, subdivision (3) is stricken out, and the prices for blasting powder are as follows:

7810 *Plaintiff's Exhibit 762*

Carloads: 800 kegs, or over, $1.05 per keg, delivered nearest Railroad Station; 400 kegs, or less than 800 kegs, $1.07½ per keg, delivered nearest Railroad Station. 5c per keg commission to Dooley Brothers."

This contract goes into effect Nov. 29, 1907, and continues in force until Nov. 29, 1908.

7811 Plaintiff's Exhibit 1247-W, is a contract dated January 22nd, 1908, identical in all respects with Plaintiff's Exhibit 762, except that the customer to be supplied is Mutual Coal Company, Mt. Pulaski, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs, $1.10 per keg f.o.b. nearest Railway Station; 400 kegs, $1.12½ per keg, f.o.b. nearest Railroad Station. 5c per keg commission to Dooley Brothers."

This contract goes into effect Jan. 22, 1908, and continues in force until Jan. 22, 1909.

7812 Plaintiff's Exhibit 1247-I, is a contract dated November 27th, 1907, identical in all respects with Plaintiff's Exhibit 762, except that the customer to be supplied is Phoenix Coal Company, Peoria, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs or over, $1.05 per keg, delivered nearest Railroad Station. 5c per keg commission to Dooley Brothers."

This contract goes into effect Nov. 27, 1907, and continues until Nov. 27, 1908.

Plaintiff's Exhibit 765, is a contract dated November 30th, 1907, identical in all respects with Plaintiff's Exhibit 762, except that the customer to be supplied is Simmons Coal Company, Canton,

Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs, or over, $1.05 per keg, delivered nearest Railroad Station. 5c per keg commission to Dooley Brothers."

This contract goes into effect on Nov. 30, 1907, and continues in force until Nov. 30, 1908.

Following letter attached to contract (Ex. 765) and marked Plff.'s Ex. 766.

Wilmington, Del., July 30, 1908. 7814

Mr. Dale Bumstead, Mgr.,
Chicago, Ills.

Dear Sir: File SD-9150

Our contract with the Simmons Coal Co., Canton, Ills., which requires a notice of 60 days to discontinue, will expire November 30th next. Please advise them that it is not our desire to continue this contract, and state on enclosed sheet the date you notify them.

Yours very truly, A. D. S.

Plaintiff's Exhibit 748, is a contract dated November 29th, 1908, identical in all respects with Plaintiff's Exhibit 762, except that the customer to be supplied is Spoon River Coal Company, Ellisville, Illinois, and the prices for blasting powder are as follows: 7815

"Carloads: 800 kegs, or over, $1.05 per keg, delivered nearest Railroad Station; 400 kegs, or less than 800 kegs, $1.07½ per keg, delivered nearest Railroad Station. 5c per keg commission to Dooley Brothers."

This contract goes into effect Nov. 29, 1907, and continues in force until Nov. 29, 1908.

Following letter attached to contract (Ex. 748) and marked Plff.'s Ex. 749.

7816 *Plaintiff's Exhibit 762*

Wilmington, Del., July 30, 1906.

Mr. Dale Bumstead, Mgr.,
Chicago.

Dear Sir: File SD-9433

Our contract with the Spoon River Coal Company, Ellisville, Ills., which requires a notice of 60 days to discontinue, will expire November 29th. Please advise them that it is not our desire to continue this contract, and state on enclosed sheet the date you notify them.

7817

Yours very truly, A. D. S.

Plaintiff's Exhibit 1247-M, is a contract dated November 27th, 1907, identical in all respects with Plaintiff's Exhibit 762, except that the customer to be supplied is Treasure Coal Company, Bartonville, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs or over, One Dollar-five ($1.05) per keg, delivered nearest Railroad Station. Less commission of five cents (5c) per keg."

7818 This contract goes into effect Nov. 27, 1907, and continues in force until Nov. 27, 1908.

Plaintiff's Exhibit 1247-N, contract dated November 27th, 1907, identical in all respects with Plaintiff's Exhibit 762, except that the customer to be supplied is George Vicary, Peoria, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs, or over, $1.05 per keg, delivered nearest Railroad Station; 400 kegs, or over, $1.07½ per keg, delivered nearest Railroad Station. Five cents (5c) per keg commission to Dooley Brothers."

This contract goes into effect Nov. 27, 1907, and continues in force until Nov. 27, 1908.

Plaintiff's Exhibit 762 7819

Plaintiff's Exhibit 751, is a contract dated November 29th, 1907, identical in all respects with Plaintiff's Exhibit 762, except that the customer to be supplied is I. Wantling & Company, Peoria, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs, or over, $1.05 per keg, delivered nearest Railroad Station; 400 kegs, or over, $1.07½ per keg, delivered nearest Railroad Station. Five cents (5c) per keg commission to Dooley Brothers." 7820

This contract goes into effect Nov. 29, 1907, and continues in force until Nov. 29, 1908.

Following letters attached to contract (Ex. 751) and marked Plff.'s Ex. 752.

Wilmington, Del., December 3, 1908.

Mr. Alexis I. du Pont, Secty.,
Building.

Dear Sir: File SD-7434

Please note that our self-renewing contract #916, with I. Wantling & Co., running from November 29, 1907, to November 29, 1908, has been discontinued, and is no longer in effect. 7821

Kindly acknowledge receipt of this letter.

Yours very truly,

....,
Director of Sales.

Also following letter marked Plff.'s Ex. 753.

Wilmington, Del., July 30, 1908.

Mr. Dale Bumstead, Mgr.,
Chicago, Ill.

Dear Sir: File SD-7434

Our contract with I. Wantling & Co., Elmwood, Ills., which requires a notice of 60 days to discontinue, will expire November 29th next. Please

7822 *Plaintiff's Exhibit 762*

advise them at once that it is not our desire to continue this contract, and state on the enclosed sheet the date you notify them.

Yours very truly, A. D. S.

Plaintiff's Exhibit 768, is a contract dated November 30th, 1907, identical in all respects with Plaintiff's Exhibit 762, except that the customer to be supplied is Winters Coal Company, Peoria, Illinois, and the prices for blasting powder are as
7823 follows:

"Carloads: 800 kegs or over, $1.05 per keg, delivered nearest Railroad Station. 5c per keg commission to Dooley Brothers."

This contract goes into effect Nov. 30, 1907, and continues in force until Nov. 30, 1908.

Following letter attached to contract (Ex. 768) and marked Plff.'s Ex. 769.

Wilmington, Del., July 30, 1908.

Mr. Dale Bumstead, Mgr.,
Chicago, Ill.

7824 Dear Sir:

File SD-6162: Our contract with the Winters Coal Co., Peoria, Ill., which requires notice of 60 days to discontinue, will expire November 30th, next. Please advise them at once that it is not our desire to continue this contract, and state on the enclosed sheet the date you notify them.

Very truly yours, A. D. S.

Plaintiff's Exhibit 1247-P, is a contract dated November 30th, 1907, identical in all respects with Plaintiff's Exhibit 762, except that the customer to be supplied is Wolschlag Co-operative Coal Company, Peoria, Illinois.

"Carloads: 800 kegs, or over, $1.05 per keg, car-

loads delivered nearest Railroad Station. 5c per keg commission to Dooley Brothers."

This contract goes into effect Nov. 30, 1907, and continues in force until Nov. 30, 1908.

Plaintiff's Exhibit 785.

THIS contract MADE between E. I. du Pont Company, a corporation of the State of Delaware, 7826
party of the first part and the Great Northern Fuel Company, party of the second part.

WITNESSETH: That party of the grst part hereby sells and party of the second part buys, all the black blasting powder, in kegs of 25 lbs. each, required for the use in the mines owned or controlled by second party, as noted below, for the period of one year from this date, at current car load price established by party of the first part, at location named, at the time of receipt of order, the present car load price being $1.45 per keg. 7827

The following conditions are mutually accepted:

(a) First party agrees to allow second party a rebate of 40 cents per keg on powder purchased under this contract.

(b) First party agrees to allow second party the actual car load freight charges from shipping to delivery points.

(c) Terms are sixty days or 2% discount for cash if remitted within ten days from date of invoice.

7828 *Plaintiff's Exhibit 785*

(d) Second party agrees to buy from first party in car load lots of 800 kegs of 500 lbs. each, all the black blasting powder required by it for the following mines.

Name.	Location.
Great Northern Fuel Company,	Novinger, Mo.

or any other mines that may be acquired by the second party, in the same district, during the time of this contract.

7829

(e) It is agreed that powder furnished under this contract is for consumption of the second party only and not for sale except to its miners and employees. It is agreed that a violation of this clause gives to party of first part option of cancellation of this contract.

(f) The first party may furnish and the second party will accept under this contract, powder of any standard brand, make and quality, equal to du Pont brand.

7830

(g) The first party is not to be responsible for delays caused by strikes, accidents or other causes beyond its control.

(h) The terms and conditions, as well as the existence of this contract to be confidential.

Dated at St. Louis, Mo.,
Nov. 1, 1905.

E. I. DU PONT COMPANY,
(Signed) by Eugene du Pont,
G. S. A.

(Signed) GREAT NORTHERN FUEL COMPANY,
By W. S. McCaull, Pres."

Plaintiff's Exhibit 787. 7831

"THIS CONTRACT entered into this 5th day of November, 1906, by and between E. I. du Pont Company, a corporation of Wilmington, Delaware, party of the first part, and GREAT NORTHERN FUEL Co., of Novinger, Mo., party of the second part.

(1) WITNESSETH: That the party of the first part hereby sells and the party of the second part hereby purchases all of the blasting powder required by the party of the second part for one year, at the following operations: 7832

Name.	Location.
Great Northern Fuel Co.	Novinger, Mo.

at the price of $1.05 per keg of twenty-five (25) pounds each, delivered f. o. b. the points aforesaid.

(2) It is agreed that powder furnished under this contract is for consumption of the second party only, and not for sale, except to its own miners or employees and that a violation of this clause gives the party of the first part the option of cancellation 7833 of this contract.

(3) Deliveries to be made in carloads of not less than 800 kegs.

(4) The party of the first part is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

(5) This contract does not become effective until accepted by the E. I. du Pont Company, at Wilmington, Delaware.

(6) Terms are sixty days or 2% discount for

7834 *Plaintiff's Exhibits* 787, 788

cash if remitted within ten days from date of invoice.

E. I. DU PONT COMPANY,
(Sgd) Irene du Pont, Treas.
GREAT NORTHERN FUEL CO.,
By I. B. Grant,
Gen'l Manager."

ACCEPTED at Wilmington, Del.,
November 5, 1906.

7835

Plaintiff's Exhibit 788.

THIS CONTRACT entered into this 5th day of November, 1907, by and between the E. I. du Pont de Nemours Powder Company, a corporation of the State of New Jersey, party of the first part, and Great Northern Fuel Company, Novinger, Missouri, party of the second part.

(1) WITNESSETH: That the party of the first part hereby sells and the party of the sec-
7836 ond part hereby purchases all of the black blasting powder required by the party of the second part during the period of this contract for use in their mines at Novinger, Mo., at the following prices:

$1.05 per keg f. o. b. Novinger, Mo., carloads of 800 kegs, of twenty-five (25) pounds each.

(1-a*) The above price is based on and shall apply during the continuance of present freight rates and minimum carload quantity. In case present freight rates or minimum carload quantity are increased or decreased during the term of this contract, the above price shall be increased or decreased accordingly.

The following conditions are mutually accepted:

(2*) Terms are sixty (60) days or two per cent

(2%) discount for cash is remitted ten (10) days from date of invoice.

(3) It is agreed that explosives furnished under this contract are for consumption of the party of the second part only and not for sale except to its own sub-contractors or employes and that a violation of this clause gives the party of the first part the option of cancellation of this contract.

(4) The party of the first part is not to be responsible for delays caused by strikes, accidents or causes beyond its control. 7838

(5) This contract to go into effect on 5th day of November, 1907, and continue in force until 5th day of November, 1908, and thereafter from year to year unless written notice is mailed to the address of either party, by the other, sixty (60) days prior to 5th day of November of any year, in which event upon the arrival of such date the contract is to be terminated.

7839

(6) This contract does not become effective until accepted by the E. I. DU PONT DE NEMOURS POWDER COMPANY, at its main office at Wilmington, Delaware.

E. I. DU PONT DE NEMOURS POWDER COMPANY,
By R. W. Watkins.
GREAT NORTHERN FUEL CO.,
By I. B. Grant, G. M.

ACCEPTED at Wilmington, Del., Oct. 12, 1907.
E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Eugene Du Pont, G. S. A.

7840 *Plaintiff's Exhibits 788, 901*

Following letter attached to contract (Exhibit 788) and marked Plaintiff's Exhibit 789:

Wilmington, Del., July 29, 1908.

Mr. Walter G. Clark, Mgr.,
St. Louis, Mo.

Dear Sir:— File SD-3014.

Our contract with the Great Northern Fuel Co., Novinger, Mo., which requires a notice of 60 days to discontinue, will expire November 5, 1908.

Please notify them at once that it is not our de-
7841 sire to continue this contract, and advise us on attached sheet the date you notify them.

Very truly yours,

A. D. S.

Plaintiff's Exhibit 901.

THIS CONTRACT entered into this first day of August, 1906, by and between the E. I. DU PONT COMPANY, a corporation of WILMINGTON, DELAWARE,
7842 party of the first part, and A. REENTS & BROTHER, KRAMM STATION, ILLINOIS, party of the second part.

(1) WITNESSETH: That the party of the first part hereby sells and the party of the second part hereby purchases all of the blasting powder required by the party of the second part for one year, at the following operations:

A. REENTS & BROTHER, KRAMM STATION, ILLINOIS. At the price of $1.05 per keg of twenty-five (25) pounds each, delivered, f. o. b. the points aforesaid in lots of four hundred (400) kegs, and price of $1.00 per keg of twenty-five (25) pounds each, delivered, f. o. b. the points aforesaid, in lots of eight hundred (800) kegs.

Plaintiff's Exhibit 901 7843

(2) It is agreed that powder furnished under this contract is for consumption of the second party only, and not for sale, except to its own miners and employes, and that a violation of this clause gives to the party of the first part the option of cancellation of this contract.

(3) Deliveries to be made in carloads of not less than four hundred (400) kegs.

Terms: Sixty days (60) or two per cent (2%) discount for cash within ten (10) days from date of invoice. 7844

(4) The party of the first part is not to be responsible for delays caused by strikes, accidents, or causes beyond its control.

(5) This contract does not become effective until accepted by the E. I. du Pont Company at Wilmington, Delaware.

E. I. DU PONT COMPANY,
By Dooley Bros., Agts. 7845
A. Reents & Bros.

ACCEPTED at Wilmington, Del.,
August 13, 1906.
E. I. du Pont Co.
(Sgd) per Eugene du Pont,
G. S. A.

7846 **Plaintiff's Exhibit 962.**

THIS CONTRACT entered into this 24th day of July, 1908, by and between the E. I. DU PONT DE NEMOURS POWDER COMPANY, a corporation of the State of New Jersey, party of the first part, and WESTERN COAL AND MINING COMPANY, a corporation of the State of Missouri, party of the second part.

(1) WITNESSETH: That the party of the first part hereby sells and the party of the second
7847 part hereby purchases all of the BLASTING POWDER requirements, required by the party of the second part, during the period of this contract, for use in coal mines located in the states of Missouri, Kansas, Arkansas and Oklahoma, at the following prices:

KANSAS OPERATIONS.

BLASTING POWDER: Furnished in lots as wanted and delivered by team to mines owned or operated by party of the second part located in Cherokee and Crawford Counties, Kansas, and
7848 within wagon hauling distance of the Pittsburg mill owned by the party of the first part, in Barton County, Missouri, at the following prices.

Kegs containing twenty-five (25) pounds, one dollar and fifteen cents ($1.15) each; half kegs, containing twelve and one-half (12½) pounds each, sixty-five cents (65c) per package.

It is agreed that the party of the first part shall make an allowance of five (5) cents each to party of the second part for empty kegs of its own manufacture, delivered to the teams of the party of the first part at the mines of the party of the second part situated at CRAWFORD AND CHEROKEE COUNTIES, KANSAS, and BARTON COUNTY, MISSOURI, in good, serviceable condition including stoppers. The party of the second part also agrees to provide

proper facilities for the storing of empty powder kegs, so that they may be delivered to party of the first part perfectly dry, both inside and out.

MISSOURI OPERATIONS.

BLASTING POWDER: Furnished in carload lots of not less than 800 kegs of twenty-five (25) pounds each, f. o. b. railroad station in the state, one dollar and fifteen cents ($1.15) per keg.

7850

ARKANSAS OPERATIONS.

BLASTING POWDER: Furnished in carload lots of not less than 800 kegs of twenty-five (25) pounds each, f. o. b. any railroad station in the state, one dollar and twenty-five cents ($1.25) per keg.

OKLAHOMA OPERATIONS.

BLASTING POWDER: Furnished in carload lots of not less than 900 kegs of twenty-five (25) pounds each, f. o. b. any railroad station in the state, one dollar and twenty-five cents ($1.25) per keg.

7851

Any other explosives or blasting supplies not specified in this contract to be furnished at current prices which are charged by the du Pont Company in the district in which the explosives or blasting supplies are to be used.

The prices herein are based on present freight rates, and present minimum carload quantity, but in case the present freight rate or present minimum carload quantity are increased or decreased during the existence of this contract, the amount of such increase or decrease shall be added to or deducted from the above prices.

7852 *Plaintiff's Exhibit 962*

The prices herein are also based on present method of packing and transporting powder, but in case the present method of packing and transporting is prevented by law or railway association regulations during the existence of this contract, then in that event this contract may, at the election of the party of the first part, be terminaed.

The following conditions are mutually accepted.

7853 (2) TERMS ARE thirty days net or two per cent (2%) discount for cash ten days from date of bill.

ADDITIONAL CLAUSE: 4. The party of the first part may, at its option, furnish, in case of accident to its mill, from which the supply of blasting for any given operation of the party of the second part would be ordinarily furnished, blasting of standard quality and reputable make.

(3) It is agreed that explosives furnished un-
7854 der this contract shall be solely of the du Pont manufacture and are for consumption of the party of the second party only and not for sale except to its own sub-contractors or employes and that a violation of this clause gives the party of the first part the option of cancellation of this contract.

(4) The party of the first part is not to be responsible for delays caused by strikes, accidents or causes beyond its control. (See above for additional to this clause).

(5) This contract to go into effect on the 1st day of August, 1908, and continue in force until the 1st day of August, 1909, and thereafter from

year to year unless written notice is mailed to the address of either party, by the other, sixty (60) days prior to the 1st day of August of any year, in which event upon the arrival of such date the contract is to be terminated.

(6) This contract does not become binding until accepted by the E. I. DU PONT DE NEMOURS POWDER COMPANY, at its main office at Wilmington, Delaware.

7856

E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Walter Clark, Manager.
WESTERN COAL AND MINING CO.,
By D. Simpson, Purchasing Agent.

Accepted at Wilmington, Del.,
July 27, 1908,
E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Chas. Patterson.

7857

Plaintiff's Exhibit 1027.

THIS AGREEMENT made this 20th day of June, 1904, between the EXPLOSIVES SUPPLIES COMPANY, a corporation of the State of New Jersey, party of the first part, and the WESTERN COAL & MINING COMPANY, and the Rich Hill Coal Mining Company of St. Louis, Missouri, incorporated under the laws of the State of Missouri, parties of the second part.

WITNESSETH: That for and in consideration of one dollar ($1.00) paid in hand by the party of the second part to the party of the first part, receipt of which is hereby acknowledged, the party

7858 *Plaintiff's Exhibit 1027*

of the first part hereby sells and the party of the second part buys fifty per cent (50%) of the Black Blasting powder in kegs of twenty-five pounds (25 pounds) each, required for use in the mines, owned, leased or controlled by second party, and such mines as they may acquire during the life of this contract, for the period of two years from July 7, 1904, to July 7, 1906, at the following prices:

$1.10 per keg f. o. b. cars at their mines in Missouri; $1.12½ per keg, f. o. b. cars at their mines
7859 in Kansas; or $1.10 per keg, if delivered from local mills; $1.15 per keg, f. o. b. cars at their mines in Arkansas; $1.25 per keg, f. o. b. cars at their mines in Indian Territory.

The following conditions are mutually accepted:

(a) First party agrees to allow second party the actual carload freight charges from shipping to delivery points.

(b) TERMS are 60 days, or two per cent (2%)
7860 discount for cash if remitted within ten days from date of invoice.

(c) Second party agrees to accept from first party at Blasting powder in carload lots of not less than 800 kegs of 25 lbs. each.

(d) It is agreed that powder furnished under this contract is for consumption of the second party only, and not for sale except to its own miners, lesses or employees. It is agreed that a violation of this clause gives to first party the option of cancellation of this contract.

(e) It is further agreed between the parties hereto, that the powder to be furnished under this

contract shall be of the usual standard quality as heretofore furnished, and of such size of grain as may be designated by the party of the second part, and in case of explosion, or other contingencies beyond the control of the party of the first part, said parties shall have the privilege of furnishing any standard brand of powder for such time as said contingencies referred to may interfere with the regular manufacture of powder.

(f) It is undestood that the prices above named 7862
are based upon the cost of Nitrate of Soda at $1.08 per one hundred pounds in New York current funds f. o. b. New York City, and the price of powder under this contract shall advance at the rate of one cent per keg for every five cents per 100 pounds advance in Nitrate of Soda above $2.05 per 100 lbs.

(g) It is agreed between the parties hereto, that the parties of the second part will place orders for shipment 30 days in advance of the time at which shipments are required, and in case said 7863
first party fails to make shipment as specified, said second party may purchase powder at the market price and charge the party of the first part with the diffeence between the purchase price for powder in the open market and the price mentioned in this contract for the various mines.

(h) Parties of the first part agree to furnish powder to the party of the second part at prices no higher than those mentioned in this contact, except as provided for in paragraph (f). In case parties of the first part reduce their pice to any company, coporation or individual in the state of Missouri (except to points on west bank of the Mississippi River, which take Illinois price), Arkansas, Kan-

sas or Indian Territory, below the price named herein for each of these states, parties of the first part guarantee to parties of the second part a like reduction in price for similar deliveries so long as they make such reduced prices and in such quantities.

(i) It is further agreed between the parties hereto that the duration, prices and conditions of this contract shall not be divulged.

Dated, at St. Louis, Mo., June 20, 1904.

EXPLOSIVES SUPPLIES COMPANY,
By Geo. S. Oliver, Vice-Prest.

WESTERN COAL & MINING COMPANY,
By D. Simpson, Purch. Agent.

RICH HILL COAL MINING COMPANY,
By D. Simpson, Purch. Agent

Plaintiff's Exhibit 1093.

COMPANIES OWNED BY EASTERN DYNAMITE COMPANY AUGUST 1, 1903.

Acme Powder Company, 400; Amer. Forcite P. Mfg. Co., 9,000; Blue Ridge Powder Co., 220; Clinton Dynamite Co., 100; Columbian Powder Co., 200; Dittmar Powder & C. Co., 1,000; Enterprise High Expl. Co., 240; Hecla Powder Co., 933; Hudson River Powder Co., 150; *James Macbeth Co., 1,000; Mt. Wolf Dynamite Co., 120; Penna. Torpedo Co., 50; Standard Expl. Co. Ltd., 100; *Sterling Dynamite Co., 250; United States Dyn. Co.,

120; *Atlantic Dyn. Co. of N. J., 5,500; *Atlantic Dyn. Co. of N. Y., 20; *Atlantic Mfg. Co., 1,000; *Electric Exploder Co., 250; *Explosive Supplies Co., 500; *Forcite Pdr. Co. of N. J., 3,000; *Forcite Pdr. Co. of N. Y., 25; *Hecla Dynamite Co., 50; *Hercules Powder Co.—1903, 5,000; *Hercules Powder Co., N. Y., 30; *Hudson River Wood Pulp Mfg. Co., 150; *Joplin Powder Company, 250.

7868

Plaintiff's Exhibit 1094.

*National Torpedo Co., 1,002; *New York Pdr. Co. of N. J., 500; *New York Pdr. Co. of N. Y., 10; *Oliver Dynamite Co., 500; *Producers Powder Co., 1,000; *Repauno Chem. Co. of N. Y., 50; *Repauno Chem. Co. of Del.—1903, 5,000; *Repauno Mfg. Co., 5,000; *Weldy Dynamite Co., 200; *Western Torpedo Co., 50.

*These Companies were organized by the Eastern Dynamite Company and were never independent organizations. 7869

Plaintiff's Exhibit 1095.

PLANTS—MARCH 1, 1902, to SEPTEMBER 18, 1908.

E. I. DuPont deNemours & Co. (Plants owned directly or through stock ownership, March 1, 1902):

Brandywine, Wilmington, Delaware; Carney's Point, Pennsgrove, New Jersey; Fairchance, Oliphant Furnace, Pennsylvania; Hazardville, Hazardville, Connecticut; Meadowbrook, Fairmont,

7870 *Plaintiff's Exhibit 1095*

West Virginia; Mooar, Keokuk, Iowa; Newhall, Newhall, Maine; Scitico, Hazardville, Connecticut; Tamaqua, Tamaqua, Pennsylvania; Wapwallopen, Wapwallopen, Pennsylvania; Sycamore, Sycamore, Tennessee.

(Plants owned by Laflin & Rand Powder Co. March 1, 1902, acquired later by E. I. duPont de-Nemours Powder Company):

7871 Columbus, Columbus, Kansas; Haskell, Haskell, New Jersey; Moosic, Moosic, Pennsylvania; Orange, Newburgh, New York; Penna. & Kansas, Pittsburg, Kansas; Pleasant Prairie, Pleasant Prairie, Wisconsin; Rosendale, Rosendale, New York; Rushdale, Germyn, Penna.; Schaghticoke, Schaghticoke, N. Y.; Wayne, Wayne, New Jersey.

(Plants owned or controlled jointly by duPont and Laflin & Rand Powder Companies):

7872 Ashburn, Ashburn, Missouri; Belleville, Belleville, Illinois; Birmingham, Birmingham, Alabama; Chattanooga, Ooltowah, Tennessee; Clinton, Haverstraw, New York; Consumers, Gracedale, Penna; Dorner, Newport, Indiana; Enterprise, Dyn., Newquehoning, Penna.; Enterprise, Black, Gracedale, Penna.; Farmingdale, Farmingdale, New Jersey; Ferndale, Ringtown, Penna.; Fontanet, Fontanet, Indiana; Forcite, Landing, New Jersey; Kingston, Kingston, New York; Kellogg, Kellogg, West Virginia; Kenvil, Kenvil, New Jersey; Marquette, Marquette, Michigan; Mauch Chunk, Mauch Chunk, Penna.; Oliver, Dyn., Oliver Mills, Penna.; Oliver, Black, Oliver Mills, Penna.; Repauno, Gibbstown, New Jersey; Riker, Punxsutawney, Penna.; Shenandoah, Ringtown, Penna.; Youngstown, Youngstown, Ohio; Weldy, Tamaqua, Penna.; Bartlesville, Bartlesville, Okla.; Bradner,

7873

Bradner, Ohio; Findlay, Findlay, Ohio; Howard Junction, Bradford, Penna.; Lima No. 1, Lima, Ohio; Lima No. 2, Lima, Ohio; Montpelier, Montpelier, Indiana; Neodesha, Neodesha, Kansas; Princeton, Princeton, Indiana; Robinson, Robinson, Illinois.

(Plants acquired by E. I. duPont, de Nemours & Co. or E. I. duPont de Nemours Powder Co. by purchase, after March 1, 1902):

7874

Conemaugh, Johnstown, Penna.; Emporium, Emporium, Penna.; Hercules, Pinole, California; Judson, Noble, California; Oakland, Oakland, New Jersey; Santa Cruz, Santa Cruz, California; Vigorit, Vigorit, California; Bullis Mills, Bullis Mills, Penna.

(Plants constructed by E. I. duPont, deNemours & Co. and E. I. duPont, deNemours Powder Co. after March 1, 1902):

7875

Barksdale, Barksdale, Wisconsin; Casey, Casey, Illinois; Connable, Birmingham, Alabama; duPont, duPont, Washington; Hartford City, Hartford City, Indiana; Joplin, Joplin, Missouri; Louviers, Louviers, Colorado; Nemours, Nemours, West Virginia; Patterson, Patterson, Okla.; Sterling, Lewisburg, Alabama.

7876 **Plaintiff's Exhibit P-1111.**

THIS CONTRACT made and entered into this First day of November, 1903, by and between Buckeye Powder Company, party of first part, and its employees, United Powder and High Explosives Workers of America, No. 124, party of second part, WITNESSETH:

The said parties hereby agree as follows:

Item 1. This contract shall bind the parties
7877 hereto, their successors and assigns for Ten months from November 1st, 1903, to September 1st, 1904.

Item 2. The output of the plant is limited by the present and future capacity of its machinery and equipment and the demand for its powder. It is the intent of both parties that all orders for powder shall be promptly and satisfactorily filled, and that an ample reserve of 25,000 kegs, more or less, may be kept in the Company's magazine to cover emergencies and unusual demands.

Item 3. No employee, unless sick and unable to work, shall absent himself from duty without first
7878 notifying the Superintendent and receiving permission from him. Any one violating this rule shall be suspended from duty for five days; for second similar offence for ten days; and for third, shall be dismissed.

Item 4. Should any employee reporting for duty, or while at work, be found intoxicated, it will be sufficient cause for his dismissal.

Item 5. It is also agreed:

That this being a hazardous business, it is the earnest desire of both parties to the contract that the strictest care shall at all times be exercised by each and every employee to avoid accidents and for the preservation of life and property. To accomplish this it is hereby agreed: that the tram road, cars, powder carts and vehicles for the transporta-

tion of powder, shall be kept in good order and be used with care; that the machinery that is specially used for making powder be kept in good condition, clean and well oiled.

It is further agreed: that it is the duty of every employee working in or about a powder mill to immediately report any break or imperfect condition of machinery in or connected with such mill to the Superintendent of the plant. It shall then be the duty of the Superintendent to go at once to the place and take such action as will repair the break 7880
or imperfection.

Item 6. It shall be the duty of each employee to keep his mill and its surroundings clean and in good order. To do this it is agreed that every man shall clean up his mill every afternoon, when his day's work has been finished and that he shall carefully inspect the condition of the machinery and building when going on and retiring from duty.

Item 7. The Union Label shall be put on all powder manufactured by Buckeye Powder Company and its use be governed by the following rules:
7881

(1) To entitle an employer to the use of the label of the U. P. & H. E. W. of A., all employees must be members of a Powder Workers union.

(2) The scale of wages adopted by the Local Union and approved by the President of the U. P. & H. E. W. of A. shall be paid by the employer.

(3) The Local Union shall not give more labels to the employers than are sufficient to cover the product for the ensuing week.

(4) The employer shall agree, should he at any time violate the rules under which

7882 *Plaintiff's Exhibit P-1111*

the Labels are issued to him, he will not use any more of the Union Labels, but will surrender them to the Secretary of the Local Union from WHOSE HANDS HE RECEIVED THEM.

(5) The employer will not imitate, duplicate or counterfeit in any way, the Label of the U. P. & H. E. W. of A., nor will he permit any one to do so for him or in his behalf.

7883 (6) The first party agrees to pay for these labels at actual cost.

Item 8. In the event that the machinery breaks down, or it is the Company's fault that the men by working eight hours cannot produce their quota of the 700 kegs of powder per day, the Superintendent may notify them there will be no more work for the men on duty that day. Should the Superintendent direct the men to work after expiration of their eight hours for the purpose of completing their portion of the day's run of 700 kegs, then for
7884 such overtime, such men shall be paid their scale of wages, pro-rata per hour, for such overtime.

Item 9. It is further agreed: that from five to eight trucks of powder grain shall stand over in the Corning Mill each night, with which to start the Glaze Mill the following day.

Item 10. It is agreed that should differences arise between the employees and Superintendent as to the construction of this contract, the subject of such disagreement shall be presented in writing by both parties to the President of the Company.

Should he fail to reconcile and adjust the differences, same shall then be referred to two disinterested arbitrators, one being selected by each of the parties interested. If they shall fail to agree, they shall select a third, and the finding of a majority

of this board shall be binding upon the parties, it being understood that there shall be no suspension of work during such adjustment.

Said arbitration shall be held within ten days after presentation of grievances by either party.

Item 11. All employees must abide by the general rules and regulations prescribed by the Company providing for the safety of life and the preservation of property.

Item 12. Rate of pay: 7886

	700 Kegs.
Wheel men—Three shifts.	
Head man	2.75
Second man	2.35
Press men	
Head man	2.75
Second man	2.35
Third man	2.35
Corning men	
Head man	2.75 7887
Glaze	
Head man	2.75
Second man	2.35
Packing House and Separator	
Head man	2.75
Second man	2.35
Soda House	
One man	2.35
Pulverizer	
One man	2.35
Track men	2.35 each

7888 *Plaintiff's Exhibit P-1112*

The following men who do no additional work on increased output receive no additional wages above the 700 keg rate.

Millwright
2 Engineers 12 hours each
2 Firemen 12 hours each
Laborers
2.75 per diem
80.00 per month
7889 2.25 per diem
1.75 per diem of 8 hrs.

Item 13. All of the parties hereto pledge themselves to perform faithfully the terms of this contract, and to this end have this day set their hands and seals.

BUCKEYE POWDER CO.
By R. S. Waddell, Prest.
R. S. Waddells, Jr., Secy.

Ernest Hauser,
J. Lot Reid,
7890 W. A. Justice.

Plaintiff's Exhibit P-1112.

THIS CONTRACT made and entered into this First day of September, A. D. 1904, by and between Buckeye Powder Company, party of first part, and its employees, United Powder and High Explosives Workers of America, No. 124, party of second part, WITNESSETH:

The said parties hereby agree as follows:

Item 1. This contract shall bind the parties hereto, their successors and assigns, from September 1st, 1904, to Sept. 1st, 1905.

Plaintiff's Exhibit P-1112 7891

Item 2. The output of the plant is limited by the present and future capacity of its machinery and equipment and the demand for its powder. It is the intent of both parties that all orders for powder shall be filled promptly, and with a quality of powder that will give thorough satisfaction to the trade: that an ample reserve of 35,000 kegs, more or less, may be kept in the Company's magazines to cover emergencies and unusual demands.

Item 3. No employee, unless sick and unable to work, shall absent himself from duty without first notifying the Superintendent and receiving permission from him. Any one violating this rule shall be suspended from duty for five days; for second similar offense for ten days; and for third, shall be dismissed. 7892

Item 4. Should any employee reporting for duty, or while at work, be found intoxicated, it will be sufficient cause for his dismissal.

Item 5 It is also agreed between party of first part, and each and every individual employee composing party of second part: 7893

That this being a hazardous business, where life and property are in constant peril; it is the earnest desire of both parties to the contract, that the strictest care shall at all times be exercised by each and every employee to avoid accidents and for the preservation of life and property. To accomplish this it is hereby agreed: that the tram cars, powder carts and vehicles for the transportation of powder, shall be kept in good order and be used with care; that tram cars shall not be driven, pushed or run with greater speed than a fast walk; that the machinery that is specially used for making powder be kept in good condition; be used with exceptional care; and any employee breaking this rule may be suspended from work five days; or be discharged from service at the discretion of the Superintendent.

It is further agreed: that it is the duty of every employee working in or about a powder mill to immediately report any break or imperfect condition of machinery in or connected with such mill to the Superintendent of the plant. It shall then be the duty of the Superintendent to go at once to the place and take such action as will repair the break or imperfection.

Item 6. It shall be the duty of each employee to keep his mill and its surroundings clean and in good
7895 order. To do this, it is agreed that every man shall clean up his mill every afternoon when his day's work has been finished, and that he shall carefully inspect the condition of the machinery and building when going on and retiring from duty.

All powder dust and grain shall be thoroughly cleaned up and be placed in two receptacles in each building. That portion of the dust and dirt, suitable for return to other mills for wheeling, pressing, etc., shall be placed in one box or barrel; and that which is mixed with dirt, placed in another
7896 barrel for return to the leeching vat for recovery of soda.

Item 7. The Union Label shall be put on all powder manufactured by Buckeye Powder Company and its use be governed by the following rules:

(1) To entitle an employer to the use of the label of the U. P. & H. E. W. of A., all employees must be members of a Powder Workers union.

(2) The scale of wages adopted by the Local Union and approved by the President of the U. P. & H. E. W. of A. shall be paid by the employer.

(3) The Local Union shall not give more labels to the employers than are sufficient to cover the product for the ensuing week.

Plaintiff's Exhibit P-1112 7897

(4) The employer shall agree, should he at any time violate the rules under which the Labels are issued to him, he will not use any more of the Union Labels, but will surrender them to the Secretary of the Local Union from WHOSE HANDS HE RECEIVED THEM.

(5) The employer will not imitate, duplicate or counterfeit in any way, the Label of the U. P. & H. E. W. of A., nor will he permit any one to do so for him or in his behalf. 7898

(6) The first party agrees to pay for these labels at actual cost.

Item 8. In the event that the machinery breaks down, or it is the Company's fault that the men by working eight hours cannot produce their quota of the 1100 kegs of powder per day, the Superintendent may notify them there will be no more work for the men on duty that day. Should the Superintendent direct the men to work after expiration of 7899 their eight hours for the purpose of completing their portion of the day's run of 1100 kegs, then for such overtime, such men shall be paid their scale of wages, pro-rata per hour.

Item 9. It is further agreed: that from ten to twelve trucks of powder grain shall stand over in the Corning Mill each night, with which to start the Glaze Mill the following day.

Item 10. It is agreed that should differences arise between the employees and Superintendent as to the construction of this contract, the subject of such disagreement shall be presented in writing by both parties to the President of the Company, and shall specify the particular item in the contract that has been violated.

7900 Should he fail to reconcile and adjust the differences, same shall then be referred to two disinterested arbitrators, one being selected by each of the parties interested. If they shall fail to agree, they shall select a third, and the finding of a majority of this board shall be binding upon both parties, it being understood that there shall be no suspension of work during such adjustment.

Said arbitration shall be held within ten days after presentation of written grievances by either
7901 party.

Item 11. All employees must abide by the general rules and regulations prescribed by the Company, which are set forth in copy hereto attached and made part of this agreement, or which may be adopted and posted by the Superintendent from time to time. Particularly such rules as provide for the safety of life and the preservation of property.

Item 12. Rate of Pay:

7902 This schedule of rates is based on a daily output of 1100 Kegs, packed, finished and received in good, merchantable condition, by the Superintendent, at the Packing House.

For each 100 Kegs of powder so accepted by the Superintendent, in excess of the 1100 Kegs daily output, each employee, not excepted, shall receive ten (10) cents additional daily pay, and for each 100 Kegs less than the agreed output of 1100 Kegs per day, each of said unexcepted employees shall receive ten (10) cents less wages per day.

For each 10 Kegs, or fractional part of 100 Kegs excess or deficiency of output, a proportionate allowance or reduction to be made.

Plaintiff's Exhibit P-1112 7903

SCHEDULE OF WAGES FOR 1100 KEGS.

Soda House.		
1 Head Man	$2.35	
1 Assistant	1.85	$4.20
Pulverize.		
1 Head Man	$2.35	
1 Assistant	1.85	4.20
Wheel Men.		7904
3 Head Men	8.25	
3 Assistants	7.05	15.30
Press Men.		
2 Head Men	5.50	
2 Assistants	4.70	10.20
Press Run.		
2 Men	4.70	4.70
Corning Mill.		
1 Man	3.00	3.00 7905
Glaze Men.		
1 Head Man	3.00	
1 Night Man	2.75	
2 Assistants	4.70	10.45
Packing House.		
1 Head Man	2.75	
1 2nd Man	2.35	
2 Assistants	3.70	8.80
Yard Men.		
4 Assistants	7.00	7.00
Millwright.		
1 Millwright	3.25	3.25

7906 *Plaintiff's Exhibit P-1112*

Engine House.

1 2nd Engineer	2.50		
1 Greaser	2.25		
3 Firemen	6.00	10.75	$81.85

The following representing the company:

1 Superintendent	Salary	
1 Chief Engineer	$4.00	$4.00
1 Head Yardman	2.00	2.00

7907

Grand Total $87.85

The following do not contribute to the increase or reduction of the daily output and therefore excepted from sharing in the increase or decrease of wages:

1 Night Glaze Man.....	$2.75	
5 Yardmen	9.00	
3 Engineers	8.75	
3 Firemen	6.00	
1 Millwright	3.25	$29.75

7908

BUCKEYE POWDER CO.,
By R. S. Waddell, Prest.

E. Homser,
James Carlton,
Jas. A. Sherman,
F. Peircefeild,
Geo. Barber.

Plaintiff's Exhibit 1116. 7909

FUNDAMENTAL AGREEMENT.

THIS AGREEMENT, made this 19th day of December, 1889, between E. I. Du Pont De Nemours & Company, a co-partnership doing business near Wilmington, Delaware; The Hazard Powder Company, a corporation organized under the laws of the State of Connecticut; the Laflin & Rand Powder Company, a corporation organized under the laws of the State of New York; the three individual concerns named in the foregoing being in some 7910
of the provisions hereof grouped as one collective party, and called the "Three Companies"; and the Oriental Powder Mills, a corporation organized under the laws of the State of Maine; The American Powder Mills, a corporation organized under the laws of the State of Massachusetts; the Austin Powder Company, the Miami Powder Company, The King Powder Company, The Ohio Powder Company, said last named four corporations being organized under the laws of the State of Ohio; The Sycamore Powder Company, a corporation organ- 7911
ized under the laws of the State of Tennessee; the Lake Superior Powder Company, a corporation organized under the laws of the State of Michigan; the Marcellus Powder Company, a corporation organized under the laws of the State of New York.

WHEREAS, the parties hereto make and sell gunpowder for blasting or sporting purposes, or both; and

WHEREAS, the said parties now enjoy trade of a certain amount in one or both of the said two kinds of powder; and

WHEREAS, for the purposes of this agreement "Blasting" powder is defined to be, such powder

7912 *Plaintiff's Exhibit 1116*

as is made of either nitrate of potassa or nitrate of soda, mixed with charcoal and sulpher, and designed to be used for mining or blasting operations; and "Sporting" powder is defined to be such powder as is made of nitrate of potassa, charcoal and sulpher, and designed for use in small arms (rifles, or smooth bores), cannon, mortars and shells; or in the manufacture of fireworks, safety-fuse and squibs; being of varying qualities and strength and of many brands and tradenames, all of which are
7913 distinctly different from those of blasting powder; and

WHEREAS, in certain portions of the United States the cost of selling said powder is excessive; and

WHEREAS, for this and other causes the carrying on of business has been unsatisfactory in the greater part of the United States to the above name dparties; and

7914 WHEREAS, it is important that reasonable and uniform prices should be maintained, that customers and the public generally should be relieved from the inconveniences and uncertainties due to rapid and uncertain fluctuations, that unjust discrimination between persons and localities should be avoided, and that contractors and other consumers should be enabled to arrange with reasonable certainty such portions of their business as are dependent upon the acts of the parties hereto; and

WHEREAS, it is therefore desired by all parties hereto to enter into the agreement hereinafter set forth;

NOW THEREFORE, IN CONSIDERATION of

the premises, and in consideration of one dollar and other good and valuable considerations to each of the parties by each of the others paid, the receipt of which is hereby acknowledged; for the purpose of regulating in a convenient and desirable manner the business of the parties hereto, in such of their sales of powder as are treated in this agreement; for the purpose of avoiding unnecessary loss in the sale and disposition of such powder by ill regulated or unauthoribed competition and underbidding by the agents of the parties hereto, and 7916
for the purpose of protecting consumers and the public from unjust fluctuations in prices and from unjust discriminations.

IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

I. That during the existence of this agreement the trade in gunpowder in and throughout all of the United States and its Territories, now or hereafter enjoyed by each and all of the parties hereto, shall be subject to the provisions of this agreement, 7917
with the following three exceptions, viz.:—

(1) Such trade as either of said concerns constituting the parties hereto may now or hereafter have in powder actually exported to foreign countries.

(2) Such trade as either of said concerns constituting the parties hereto may now or hereafter have with the Government of the United States.

(3) Such trade in Blasting powder as either of said concerns constituting the parties hereto have in the Anthracite Regions of the State of Penn-

sylvania. (This trade having been retained at extraordinary sacrifices by the manufactories located within said district, some of which are owned or controlled by certain of the parties to this agreement is to belong to the parties who now enjoy it, and no part of the same is to be taken by or shared with either of the nine concerns last named in the first paragraph of this agreement.)

The said Anthracite Regions of Pennsylvania are understood and agreed to be bounded and described
7919 as follows: All of the Northumberland County; all of Montour Caunty; all of Columbia County; all of Luzerne County; all of Lackawanna County; in Susquehanna County the following named townships: Clifford, Herrick and Ararat; all of Wayne County except the townships touching on the Delaware River; all of Carbon County; all of Schuykill County; that portion of Lebanon County north of the "First Blue Mountain"; and that portion of Dauphin County, north of the Southern boundaries of the townships of Rush and Middle Paxton—be-
7920 ing practically that portion of Dauphin County north of the "First Blue Mountain."

II. That that portion of the United States, within which the regulation of trade is contemplated by this agreement, shall for that purpose be divided into districts within each of which uniform prices shall generally prevail, and said "Districts" are defined as follows:

First District: The territory as follows: The New England States, excepting the County of Rutland in the State of Vermont, which is included with the State of New York, in the Second District; and excepting that the price for blasting powder, only, at ports upon Long Island Sound,

west from Westerly, R. I., included, shall be twenty-five cents per keg lower than the minimum price for the same in the First District, generally; provided however, that such lower price shall not be made less than the regular list price for New York City.

Second District: The territory as follows: The States of New York (the County of Rutland, Vt. included therewith), New Jersey, Pennsylvania, Delaware, Maryland, West Virginia (excluding 7922
Bramwell as provided hereinafter), Ohio, Indiana, Illinois, and those portions of the states of Michigan and Wisconsin south of the 44th, parallel of latitude; and the towns of the banks of the Potomas, the Ohio, and the Mississippi Rivers, adjoining said territory.

Third District: The territory as follows: The states of Minnesota, Iowa, Missouri, Kentucky, Tennessee, Virginia (Bramwell, W. Va. to be included also in this district), North Carolina, and
those portions of the states of South Carolina, 7923
Georgia, Alabama and Mississippi north of the 33rd, parallel of latitude, and also those portions of the state of Michigan and Wisconsin north of the 44th parallel of latitude; and also all that part of the State of Kansas east of the 98th meridian of longitude; and the towns in Arkansas on the bank of the Mississippi River.

Fourth District: The territory as follows: The State of Arkansas, excepting the towns on the bank of the Mississippi River, the states of Louisiana and Florida and those portions of the state of Mississippi, Alabama, Georgia and South Carolina, outh of the 33rd parallel of latitude, and also those

7924 portions of Dakota and Nebraska east of the 103rd meridian of longitude, except the towns therein which adjoin the eastern boundaries thereof; and also all of the State of Kansas, west of the 98th meridian of longitude.

Fifth District: The territory as follows: The Indian Territory and the State of Texas.

Sixth District: The "Neutral Belt," which con-
7925 sists of the states of Colorado and Montana and the territories of Wyoming, Utah and New Mexico, all of the same; and also those portions of Dakota and Nebraska, west of the 103rd meridian of longitude.

Seventh District: All of the states and territories of the United States west of the western boundaries of the said "Neutral Belt," which are named as follows: Oregon, Washington, Idaho, California, Nevada and Arizona.

III. That of the whole aggregate trade of all the
7926 concerns comprising the parties hereto, which is made subject to this agreement, division shall be made among said parties in the manner hereinbelow provided:

The yearly allotments of trade to the "Three Companies" shall be to them as one collective party, and shall be in such quantities of sporting and blasting powder as shall be equal to the average sales made by them of said kinds, respectively, for the years 1882, 1883 and 1884. (Sptg. 209, 738, Blstg. 562, 420.)

The yearly allotments of trade to the other concerns, parties to the agreement, shall be as follows:

Plaintiff's Exhibit 1116 7927

Oriental Powder Mills.

Sporting powder, twenty-four thousand two hundred and twenty-three (24,223) kegs.

Blasting powder, sixty-five thousand one hundred and fourteen (65,114) kegs.

American Powder Mills.

Sporting powder, thirty-one thousand seven hundred and fifty (31,750) kegs. 7928

Blasting powder, fifty-seven thousand three hundred and sixty-six (57,366) kegs.

Austin Powder Company.

Sporting powder, fifteen thousand five hundred and seventy-five (15,575) kegs.

Blasting powder, sixty-five thousand (65,000) kegs.

Miami Powder Company.

Sporting powder, eleven thousand four hundred and fifty-two (11,452) kegs. 7929

Blasting powder, sixty-six thousand five hundred and twenty (66,520) kegs.

The King Powder Company.

Sporting powder, twenty-five thousand (25,000) kegs; and besides these there shall be a special allotment to said company of five thousand (5,000) kegs of sporting powder.

Blasting powder to the same company, one hundred thousand (100,000) kegs.

The Ohio Powder Company.

Blasting powder, sixty thousand (60,000) kegs.

7930 *Plaintiff's Exhibit 1116*

The Sycamore Powder Company.

Sporting powder, eight thousand (8,000) kegs.
Blasting powder, thirty thousand (30,000) kegs.

The Lake Superior Powder Company.

Blasting powder, twenty thousand (20,000) kegs.

The Marcellus Powder Company.

7931 Blasting powder, twenty thousand (20,000) kegs.

Making the total of the sums which are thus allotted and taken as the bases for the division of said trade to be:

Of sporting powder,

Of blasting powder,

(Excluding the said special allotment of 5,000 kegs of sporting powder to the King Powder Company.)

IT IS ALSO UNDERSTOOD AND AGREED That the sales out of the above allotments of all of the parties hereto in the following states and territories, viz: California, Nevada, Oregon, Colorado, Washington, Idaho, Arizona, Montana, Utah and New Mexico are to be regulated by a certain supplementary agreement to be entered into between all of the concerns composing the parties hereto with the California Powder Works.

7932

IV. That the aggregate sales made by all the parties hereto in any one year of sporting and of blasting powder shall, for each kind separately, be considered as a volume of trade of certain value to be divided among all of said parties in direct proportion to the yearly allotments to each and by the method hereinbelow set forth:

The value of said volume of trade shall be reck-

oned at the rate of thirty-five (35) per cent of the list price per keg for sporting powder, and twenty-five (25) per cent of the list price for blasting powder, in the "Second District;" subject to change as said list prices may be changed; said values so reckoned being now for sporting powder $1.75 per keg and for blasting powder 50 cents per keg.

The method for determining the "list price" last mentioned to be used as the basis for said adjustment of sales of either of said kinds of powder, shall be by taking the average of the prices for the 7934
months of the period under treatment (considering as a whole month a fraction greater than one-half) as said prices shall have been fixed in accordance with the provisions of this agreement.

V. That the periods for settlement in division of trade shall be as follows:

The first period shall be, and shall comprise the sales of, the six months ending June 30, 1890, made by all the parties hereto, and subsequently the periods shall be each comprising their sales for 7935
twelve months and ending June 30th of each year. And adjustment of differences in sales for said first period shall be upon the basis of one-half of said allotments.

VI. That at the end of each of said periods, and within sixty days thereafter, each of the parties hereto (the "Three Companies" for this purpose being considered as one party) shall make up separate sworn statements showing their sales of sporting and blasting powder, respectively, made within said periods, and forward the same to the Board of Trade, hereinafter provided to be established.

The Board of Trade shall consider separately the

7936 *Plaintiff's Exhibit 1116*

sales of sporting and blasting powder as the same shall appear in said sworn statements, and shall make computation of the differences therein exhibited (by said differences meaning the sales in excess or in deficiency of the proportions to which each party should be entitled in the division of trade as provided by Section IV. hereof); and, considering and valuing said differences, at said rates per keg for the respective kinds of powder, shall make adjustment or clearance of such differences,
7937 in money values, and shall furnish each party a written accounting in full detail, of such clearing process; and the same proving to be a correct computation, the liabilities of the parties shall be as thus determined and stated; and within thirty days from that time each party so made liable shall pay into the treasury such sum of money as shall have thus been adjudged to be due from it. And all of said money thus paid into the treasury shall be distributed among the parties hereto, entitled to the same, in sums to each of them as the same shall
7938 have been determined by said accounting of the Board of Trade.

VII. That in addition to the sworn statements to be made at the end of each of said periods as hereinbefore provided for, each of the parties hereto (the "Three Companies" for this purpose being considered as one party) shall at the end of each quarter of each calendar year, and within thirty days thereafter, make up statements which shall be estimates, as nearly correct as practicable, of their sales of each of said kinds of powder during said quarter and shall immediately forward the same to the said Board of Trade which shall immediately furnish each of the parties hereto with a combined statement of all of said sales during said quarter,

showing the sales of each of said parties, of each of said kinds; which said combined statement is to be for the guidance of each of the parties; to the end that their sales may not, for the whole of the then current period, be in excess of their allotments.

VIII. That in all statements of sales provided by this agreement to be made and in all adjustments thereunder, sporting powder, whether sold in packages of twenty-five pounds each or in packages of other sized, and whether of one quality or another, shall be considered and taken as if the same were all of one quality, to wit: "Rifle" (now so-called in the trade) powder; and shall be stated in units of twenty-five pounds each and fractions thereof, if any, in decimals, and blasting powder whether made of nitrate of potassa or of nitrate of soda, shall be considered and taken as if made of the last-named material. 7940

IX. That in none of the statements hereinbefore provided to be made by the parties hereto concerning their sales and for the purpose of dividing the whole of their trade which is subject to the provisions of this agreement shall there be counted or included any sales of powder made by any one of them to any other of them. It being intended that if one party shall sell powder to another such powder shall be counted only in the sales of the party who shall market the same. 7941

X. That the statements of sales made by each of the parties hereto for the purpose of dividing the trade of the first period (January 1st-June 30th, 1890,) shall include all the powder delivered in said period though the same may have been sold previously.

7942 *Plaintiff's Exhibit 1116*

XI. That immediately after the adoption of this Agreement, there shall be elected a Board of Trade, so to be called, consisting of five members, and a Secretary and Treasurer of the same.

XII. That at all elections of the members of the Board of Trade and of a Secretary and Treasurer of the same, voting shall be by ballot and each of the parties to this Agreement shall have one vote (thus providing for one vote by each of the "Three
7943 Companies") and a majority of the votes so cast shall elect; parties hereto not present at a meeting may be represented by personal proxy.

XIII. That there shall be an Annual General Meeting of all the parties hereto, to be held in the month of September, in each year, to hear reports and to transact such other business contemplated by the provisions of this Agreement, as may come before it.

7944 XIV. That besides the Annual Meeting there may be other General Meetings of all the parties hereto, for special purposes, but the same to be valid and of authority shall be called by the Secretary with due notice to all, setting forth the definite purpose for which such meeting shall have been requested. And the Secretary shall, at any time, call such a meeting on written request from any of the parties hereto stating the purposes as aforesaid. A temporary Chairman shall be elected at each General Meeting to preside over the same. All General Meetings and Meetings of the Board of Trade shall be held in the City of New York unless by general consent some other place be agreed upon.

XV. That at each Annuel General Meeting

there shall be an election of members of the Board of Trade and of a Secretary and Treasurer of the same; but in default of such election the Board of Trade as then constituted, and its Secretary and Treasurer, shall continue in performance of their respective functions until their successors shall be chosen; which may, in such case, be done at any General Meeting of all the parties hereto held as hereinbefore provided.

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XVI. That the Board of Trade shall elect one of their number to be Chairman, and at any meeting of the Board each member present shall have one vote and the adoption of a proposed measure shall be by a majority of much votes. And any vacancy in the Board caused by death or resignation of one of their number may be filled by the remaining members; but in default of their so doing, within sixty days, a General Meeting shall be called to elect a member to fill such vacancy.

The Board shall meet at least once in each quarter year and three of its members may constitute a 7947
quorum for the transaction of business; and at such meetings there shall be considered the quarterly statements, last made, as hereinbefore provided to be done.

XVII. That the Board of Trade shall have power to fix prices and to vary or change the same at any time and for any place, to meet contingencies and for protection of the common interests. It shall have power to enforce any rules and regulations which may be adopted by the parties to this agreement and to take any measures for that purpose which may in its judgment be necessary. It shall hear and adjudge in all cases of grievances,

2649

7948 *Plaintiff's Exhibit 1116*

when the parties involved shall not be able to agree among themselves.

The members of the Board shall be re-imbursed for all expenses incurred by them in performance of their duties.

XVIII. That any action taken at a General Meeting affecting the rights of any individual concern, shall have the unanimous consent of all the parties hereto to be valid and of authority; excepting only in balloting for members of the Board of Trade and for the Secretary and Treasurer as hereinbefore, in Section XII. provided.

7949

XIX. That any General Meeting duly authorized may review or reverse the acts of the Board of Trade and instruct it upon any matter. And at any General Meeting when a question shall be of approval or reversal of any previous acts or decisions, parties hereto not then present may have a vote upon such question by personal proxy giving power thereunto.

7950

XX. That the duties of the Secretary and Treasurer shall be as follows: He shall issue notices for and shall attend all Meetings of the Board of Trade and all General Meetings of the parties hereto and shall keep a faithful record of the proceedings at all such meetings and shall send a copy of the same to each of the parties hereto. And he shall be the medium of communication between the members of the Board of Trade as well as between all parties to this agreement upon matters of general concern.

He shall receive and disburse all moneys for expenditures in the common interest in accordance with the methods prescribed therefor and shall make semi-annual reports to all the parties, of such

expenditures and of the disposition of all moneys coming to his hands.

He shall receive a salary of $2500 per annum for his services.

XXI. That all assessments of money for expenditures made or to be made for the common interest shall be upon each party in direct proportion as its allotment in number of kegs of both kinds of powder is to the total of the allotments to all the parties in number of kegs of both kinds 7952
(excluding said Special Allotment of sporting powder to The King Powder Co.) with exception only as provided in Section XXII. hereof. And no obligation for the payment of money shal be incurred, other than for such expenditures as are provided for in this agreement, except the same shall be done at a General Meeting as hereinbefore provided.

XXII. That any party hereto who shall suffer excessive loss by an overt act of the Board of Trade —as for instance the reduction of a price at a 7953
place, in treatment of a local disturbance of trade —shall receive compensation for the damage it shall sustain by payment of money as may be agreed upon at a General Meeting, on the recommendation of the Board of Trade. And requisitions for money to pay such damages shall be made by the Board upon those of the parties who make and sell this specific kind of powder regarding which such award for damages shall have been settled; and contributions shall be required of them in direct proportion to their allotments of that specific kind of powder.

XXIII. That all the concerns constituting the parties hereto shall be and are severally bound to

each other for the fulfillment of all the obligations of this agreement, but no concern shall be responsible for any default of any other concern.

XXIV. That an Agreement or Agreements, supplementary and auxiliary to this, shall be executed by all the parties hereto relating to the prices to be maintained for sales of powder, and the general harmonious arrangement of the powder trade.

7955 XXV. That the existing agreements between the twelve concerns, parties hereto, and the California Powder Works, and between the "Three Companies" and the other nine concerns, parties hereto, relating to the trade of the "Pacific Coast District" and the "Neutral Belt," shall continue with the consent of all the parties hereto, now expressed; and the consent thereto of the California Powder Works shall be obtained if practicable. New written Agreements to be the same in effect as those now existing shall be made and executed, if possible, at an early date; the same to be co-terminous 7956 with this Agreement.

XXVI. That the benefits and liabilities arising from this Agreement shall extend to the successors and assigns of each of the concerns comprising the parties hereto and to the executors and administrators of the members of the firm of E. I. Du Pont, de Nemours & Company, but no concern shall be liable for any default not committed by itslef except as herein expressly specified.

XXVII. That this Agreement shall begin to be in effect on the 1st day of January, 1890, and shall remain in force until the 30th day of June, 1895, and shall continue in force thereafter from year to year, indefinitely, so long as none of the concerns

shall give written notice to all the others, through the Secretary of the Board of Trade, of its intention to withdraw at least three months previous to June 30th, 1895; but such notice having been given, in any year succeeding the year 1894, this Agreement shall terminate June 30th of said year.

XXVIII. That the Schaghticoke Powder Company, a corporation organized under the laws of the State of New York, being owned as to a majority of its stock, and controlled by the Laflin & Rand Powder Company, it is understood and agreed that all of its sales shall be considered as sales of the Laflin & Rand Powder Co., and said Leflin & Rand Powder Co. hereby guarantees that said Schaghticoke Powder Co. will respect and faithfully comply with all the provisions of this Agreement with the same effect as if it had signed this Agreement as a party hereto included under the name of the Laflin & Rand Powder Company.

XXIX. This shall be called the "Fundamental Agreement."

IN WITNESS WHEREOF, the concerns forming the parties hereto, have hereunto set their hands and affixed their corporate seals the day and year first above written.

(Signed)

E. L. DU PONT DE NEMOURS & CO.

THE HAZARD POWDER CO.

By W. G. Colvin, Vice. Pres.

(The Hazard seal Powder Co.)

LAFLIN & RAND POWDER CO.

By Solomon Turck, President.

(Laflin & Rand Seal Powder Company 1869)

7960 *Plaintiff's Exhibit 1116*

ORIENTAL POWDER MILLS
By Arthur Williams, President.

(Oriental
Seal
Powder Mills)

AMERICAN POWDER MILLS
A. O. Fay, President.

AUSTIN POWDER CO
R. T. Coleman, President.

(Austin Powder Co.
7961 Seal
of Cleveland
Ohio.)

MIAMI POWDER CO.
A. O. Fay, President.

THE KING POWDER CO.
By G. M. Peters, President.

THE OHIO POWDER CO.
By Richard Brown, President.

THE SYCAMORE MFG. CO.
By E. C. Lewis, President.

7962 THE LAKE SUPERIOR POWDER CO.
By C. H. Call, President.

(The Lake Superior
Seal
Powder Company)

MARCELLUS POWDER COMPANY
W. D. Colvin, President.

(Marcellus
Seal
Powder Company
Syracuse, N. Y.
1881)

Endorsed:
Fundamental Agreement. Twelve Companies.
Taking effect Jan'y 1st, 1890.

Plaintiff's Exhibit 1146. 7963

Finance Committee.

Wilmington, Del., Dec. 23, 1902.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Gentlemen: In order to give the Finance Committee an intelligent starting basis, we would ask if you will kindly forward to us at once:

A—A general letter giving the views of your company as to the whole competitive situation. The 7964
combined facts thus obtained will afford a starting basis.

B—We would further ask that from time to time and continually, you forward everything of interest that may be picked up by any one connected with your firm bearing upon the general situation, even including gossip and rumor.

C—In event of any loss of business that you feel should have come to you under existing conditions, please advise us promptly, giving in fullest details such reasons as may be known to you accounting for your failure to receive the business. 7965

D—In addition to loss of your own business, we would ask that you should from time to time and continually, advise us of anything of interest concerning business held by competitors even though it may not be business in which you have a direct interest.

Until further advised, will you kindly address all such communications to A. J. Moxham, Wilmington, Del. Yours truly,

(Signed) A. J. MOXHAM,
Chairman.

(Exactly similar letter under same date addressed to Hazard Powder Company, Wilmington, Del., signed by A. J. Moxham, Chairman, and addressed "Finance Committeee.")

7966 **Plaintiff's Exhibit 1147.**

The Hazard Powder Company,
Manufacturers of Gunpowder.

Wilmington, Del., December 22, 1902.

Private and Confidential.
Mr. F. J. Waddell, Agent,
Cincinnati, O.

Dear Sir: We would state to you in confidence,
7967 and with a special request that the information be not in any way divulged, that arrangements have been perfected with the Laflin & Rand Powder Company by which the co-operation will be so complete as to amount to practically consolidation. We give you this information as it will doubtless govern you in your handling of our business. The Laflin & Rand Company will exist as a separate company under the same control as heretofore. As matters progress, if you find developments going on that appear to you as "playing into their hands" it may become intelligible to you when you realize that it
7968 will not be to our loss. On the other hand, if points of interest may arise whereby their co-operation will be to our good we will be glad to have you confidentially call our attention to the same.

We ask that no inkling of this should be permitted to reach any of the Laflin & Rand employees and that you give no confirmation to such rumors as may creep through the trade bearing on the matter.

Yours truly,

(Signed) A. J. MOXHAM,
President.

Plaintiff's Exhibit 1148. 7969

The Hazard Powder Company,
Manufacturers of Gunpowder.

Wilmington, Del., December 22, 1902.

Private and Confidential.
Mr. F. J. Waddell, Agent,
Cincinnati, O.

Dear Sir: I am glad to advise you that the Associates have agreed to change the policy of the past so 7970
far as investigation into causes of complaint is concerned. Hereafter principals are permitted to make a full and complete disclosure of every detail to salaried agents (but to salaried agents only), with the understanding that such complaints are to be so treated that no disclosure whatever is made to the customer interested: in other words, in submitting to you a complaint that is made of anything done in your territory, we ask that investigation be so made that the customer himself is not informed of the matter. The parties interested in agreeing to this insisted that *principals* should be 7971
held responsible if their *agents did make* any embarrassing disclosures to the customer. This in response to our agreement that an agent should in every way be accepted as representing a principal and as being treated with the same confidence in all business transactions.

I know there is no need to urge you not to make any such disclosures intentionally, but I do urge you to see that they are not made *accidentally* in future handling of such cases. I think nothing would better please those who are reluctant to the change than to be able to prove to the writer that he was wrong in the position assumed by him; hence the embarrasssment, if any occurs, will probably be greater to us than to the rest.

7972 *Plaintiff's Exhibit 1148*

As a matter of further information I would state that it has been agreed that at the will of the complainant, any dispute as to trade treatment may be referred to an Auditor, who will be Mr. O. E. Morton. This gentleman will have the fullest powers of investigation, such as examination of books, interviewing of witnesses, direct discussion with subagents, minor salesmen, or with the customers themselves if he should so elect. The defendant obli-
7973 gates himself to put at the disposal of such Auditor every shred of information that he may have. It is understood that the findings of the Auditor shall be simply as to the guilt in the particular sin that may be charged, but there is to be no disclosure beyond this finding so that there will be no danger of exposing any trade secrets to a competitor. The intent is to secure a penalty for a failure to live up to instructions that will be effective. Just what form it will take is not yet determined. As the expenses incurred will be heavy we think the weapon is one that will not be used lightly or in small
7974 differences of opinion or complaint. The cost of investigation will fall upon the party in error.

Kindly treat this as strictly confidential and not to be divulged.

Wishing you a Merry Christmas and a Happy New Year, Yours very truly,

(Signed) A. J. MOXHAM,
President.

Plaintiff's Exhibit 1164. 7975

(Government's Exhibit No. 148.)

Copy of Resolution of the Directors of the Delaware Securities Company, Sept. 23rd, 1902. Page 19 and 20.

"WHEREAS, the Laflin and Rand Powder Company is a corporation existing under the laws of the State of New York, having a capital stock of One Million Dollars, divided into ten thousand shares of the par value of One Hundred Dollars each, 7976

AND WHEREAS, T. Coleman du Pont is the owner of, or has an option upon, five thousand, five hundred and twenty-four shares of the capital stock of the said Laflin & Rand Powder Company, and is endeavoring to purchase or obtain like options on the balance of the shares of the capital stock of the said company,

AND WHEREAS, the said T. Coleman du Pont has the power to deposit seven thousand shares of the capital stock of the Eastern Dynamite Company, a corporation existing under the laws of the State of New Jersey, and also has the power to deposit ten 7977 thousand shares of the capital stock of E. I. du Pont de Nemours and Company, a corporation existing under the laws of the State of Delaware, as herein provided,

AND WHEREAS, the said T. Coleman du Pont is able and willing to secure a contract on behalf of each of the following named, to wit: John L. Riker, J. A. Haskell, Schuyler L. Parsons, William Barclay Parsons and H. de B. Parsons that they will not engage, directly or indirectly in the manufacture of powder or other explosives, which contract will be of immense advantage to this company,

AND WHEREAS, the said T. Coleman du Pont has performed work and labor and services in securing the consent of the holders of said stock in the Laflin

7978 *Plaintiff's Exhibit 1164*

& Rand Powder Company to make sale thereof as herein provided, and in formulating and carrying out the plan hereby proposed, and in the organization and financing of this company, which services are, in the judgment of this Board of great value.

And Whereas, it is proposed to make and execute the bonds of this company to the amount of Four Million Dollars, to be secured by a deed of trust pledging the shares of stock of the said Laflin & Rand Powder Company, the said Eastern Dyna-
7979 mite Company and the said E. I. du Pont de Nemours and Company.

And Whereas, the said T. Coleman du Pont has secured an agreement, on the part of the said E. I. du Pont de Nemours and Company, to guarantee the payment of the principal and interest of said bonds without further charge to this Company.

And Whereas, the said T. Coleman du Pont is willing to assign and transfer unto this company the said shares of capital stock of the Laflin & Rand Powder Company, including any stock which he may hereafter acquire, as the absolute property of
7980 this company, and is further willing to lend to and deposit with this company the said stock of the Eastern Dynamite Company and E. I. du Pont de Nemours and Company, for the sole and only purpose that the said stock may be pledged as collateral security for the payment of the said bonds, and with the distinct covenant and understanding on behalf of this company that when and as the stock of the Eastern Dynamite Company and of E. I. du Pont de Nemours and Company shall be returned to this company in accordance with the provisions of the said deed of trust that the same will be forthwith assigned and transferred unto the said T. Coleman du Pont, or his assigns,

And Whereas, in the judgment of this Board the

said stock of the said companies is properly necessary for the business of this company and is with the services aforesaid worth the amount hereinafter agreed to be paid therefor.

THEREFORE BE IT RESOLVED, that this company do purchase from the said T. Coleman du Pont the said stock of the Laflin and Rand Powder Company, and do acquire the said stock of the Eastern Dynamite Company and of the said E. I. du Pont de Nemours and Company, for the purposes and subject to the conditions aforesaid, and do further compensate the said T. Coleman du Pont for obtaining the said contracts and for the services aforesaid, and do pay for such stock and services the sum of Six Million, Two Hundred and Seven Thousand Six Hundred Dollars to be paid as follows: Three Million Nine Hundred and Ninety-Eight Thousand Dollars in the full paid, non-assessable capital stock of this company, and two thousand two hundred and nine and six-tenths five per cent. collateral trust bonds each for One Thousand Dollars, to be secured by a collateral trust deed, or mortgage, pledging all of the stock purchased and acquired as aforesaid, the said bonds to run for twenty years, with the option on the part of this company of retiring the same, or any part thereof, at any interest bearing period upon giving sixty days' notice to the registered holder thereof if registered, and paying five per cent. premium thereon, and it being further stipulated in said deed of trust, or mortgage, that one hundred and twenty-four of said bonds shall be retired annually by lot at par, and that as the same are returned five shares of the capital stock of the Eastern Dynamite Company, or ten shares of the capital stock of the E. I. du Pont de Nemours and Company shall be surrendered and transferred to this Company for each of the said bonds so paid and retired.

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7984 *Plaintiff's Exhibit 1164*

BE IT FURTHER RESOLVED, that this company do purchase from the said T. Coleman du Pont when and as the same may be tendered to it, such further or additional shares of capital stock of the said Laflin & Rand Powder Company as he may be able to acquire, at the rate of Four Hundred Dollars per share, and that when so purchased the same shall be deposited with the Trustee, and that the said Trustee shall issue to this company one bond for each two and one-half shares of stock
7985 so purchased and placed as collateral with the said Trustee, which bonds, when delivered to this company, are to be used at the same rate for the purchase from the said T. Coleman du Pont of the said stock, said bonds so to be issued to be equally secured with the other bonds issued and secured by said deed of trust, or mortgage,

BE IT FURTHER RESOLVED, that the officers of this company be and they are hereby authorized and directed from time to time to take such steps as
7986 may be necessary to carry out the terms of this resolution."

Plaintiff's Exhibit 1169.

7987

(Government's Exhibit No. 152.)

The Directors of the Eastern Dynamite Company from time to time passed resolutions in substantially the following form under which they authorized the purchase of all the real, personal and mixed property of the following companies, for the amount set opposite each respective name:

Vol.	Page.	Company.	Amount.
1	108	The Atlantic Dynamite Co., N. J.	$1,217,920.10
1	109	Hercules Powder Co. of Del.	1,289,422.89
1	111	Repauno Manufacturing Co.	2,127,939.18
1	112	Hecla Dynamite Co.	10,454.79
1	113	Giant Manufacturing Co.	814,619.10
1	114	Acme Powder Co.	13,765.65
1	115	Sterling Dynamite Co.	146,842.24
1	117	Blue Ridge Powder Co.	4,780.93
1	117	Hudson River Powder Co.	3,377.53
1	118	Columbian Powder Co.	33,061.39
1	119	Atlantic Dynamite Co. of N. Y.	6,564.55
1	120	Repauno Chem. Co., N. Y.	10,641.60
1	121	Hercules Powder Co., N. Y.	2,680.05
1	122	Unique Powder Co.	1.00
1	123	Repauno Chem. Co., Del.	1,591,478.93
1	127	Oliver Dynamite Co.	70,494.86
1	128	Weldy Dynamite Co.	38,599.25
1	129	Clinton Dynamite Co.	33,359.37
1	139	Arthur Kirk & Son Co.	220,196.65
1	145	New York Powder Co. of N. J.	224,308.44
1	146	Producers Powder Co.	782,454.80

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7990 *Plaintiff's Exhibit 1169*

1	147	Brooklyn Glyc. Mfg. & Refining Co.....	113,575.29
1	148	Electric Exploder Co....	134,358.13
1	149	Atlantic Manufacturing Co.	165,432.06
1	150	Enterprise High Explosives Co.....	37,391.64
1	151	The Climax Powder Mfg. Co.	446,999.70
1	152	Forcite Powder Co. of N.	
7991		Y.	57,005.57
1	154	Forcite Powder Co. of N. J.	1,376,092.04
1	155	Joplin Powder Co.....	82,771.16
1	156	Explosives Supplies Co..	47,779.01
1	157	Hudson River Wood Pulp Mfg. Co.....	225,105.25
1	159	National Torpedo Co....	440,390.46
1	169	Standard Explosives Co., Ltd.	29,497.63
1	170	James Macbeth & Co....	156,834.89
7992 1	170	New York Powder Co....	1,000.00
1	172	H. Julius Smith Elec. Fuze Co.....	41,503.06

"Whereas certain negotiations have been pending between the officers of this company and the officers of the Company, which have resulted in an offer to sell to this company all the real, personal and mixed property of said Company wherever situate, including the good-will of the business of said company, and all letters-patent, trade marks, trade names, brands, processes and formulas, if any, of said company, for the sum of $, the book value thereof, as shown by the books of said company (date), to be hereafter ascertained by the Secretary and inserted herein; and

Plaintiff's Exhibit 1171 7993

WHEREAS, it is in the judgment of the Board for the best interests of this company to accept said offer and purchase said property and rights for the price aforesaid;

THEREFORE BE IT RESOLVED, that this company purchase from the
Company, all its real, personal and mixed property wherever situate, including the good-will of the business of said company, and all letters-patent, trade marks, trade names, brands, processes and formulas, if any, of said Company, and pay therefor the sum of $, the book value thereof, as shown by the books of said Company (date) to be hereafter ascertained by the Secretary of this company and inserted herein; and the officers of this company are hereby authorized to do all things necessary or incident to the completion of said purchase." 7994

Plaintiff's Exhibit 1171. 7995

(Government's Exhibit No. 154.)

Copy of Resolution of Board of Directors of
The Eastern Dynamite Co.,

July 24th, '08.

Vol. 1 page 181.

"On motion of P. S. du Pont, duly seconded, the following resolution was unanimously adopted:

RESOLVED, That this company purchase from the Laflin & Rand Powder Company for the sum of $186,573.09 the following real and personal property at Newhall, Maine:

7996 *Plaintiff's Exhibit 1172*

Oriental Powder Mills, Plant Machnry.	$ 5,447.84
Water Power	133,618.00
Sebago Improvement Co. Stk	1,100.00
Plant Furniture, etc	297.25
Houses	19,560.00
Plant Real Estate	26,550.00
	$186,573.09

7997 **Plaintiff's Exhibit 1172.**

(Government's Exhibit No. 155.)

Copy of Resolution of the Directors of the The Eastern Dynamite Company,

July 10th, 1907.

Vol. 1, Page 196

"WHEREAS, certain negotiations have been pending between the officers of this company and
7998 the officers of E. I. du Pont de Nemours Powder Company, a corporation, created and organized under the laws of New Jersey, which have resulted in a proposition to purchase all the real, personal and mixed property of this company, wherever situate, including the good will of its manufacturing business and all letters patent and interests in letter patent, trade marks, trade names, brands, processes and formulas; excepting and reserving to this company all the real and personal property of this company situate in Ulster County, New York, and all raw materials and finished products situate at the various manufacturing plants of this company and all cash and all accounts and bills receivable of this company as shown by its books on the 1st day of July, 1907, and to pay therefor Four

Million Four Hundred Thousand Dollars ($4,400,000) in the preferred capital stock of E. I. du Pont de Nemours Powder Company; and

WHEREAS, it is in the judgment of the Board of Directors of this company for the best interests of this company to accept said proposition and to sell to E. I. du Pont de Nemours Powder Company, all the real, personal and mixed property of this company, except as aforesaid, for the consideration aforesaid;

THEREFORE BE IT RESOLVED, that this 8000
company do sell to E. I. du Pont de Nemours Powder Company all the real, personal and mixed property of this company, wherever situate, including the good-will of its manufacturing business, and all letters patent and interests in letters patent, trade marks, trade names, brands, processes and formulas; excepting and reserving to this company all the real and personal property of this company situate in Ulster County, New York, known as the Hudson River Wood Pulp property and all raw materials and finished products situate at the various
plants of this company and all cash and all accounts 8001
and bills receivable of this company as shown by its books on the 1st day of July, 1907, for the purchase price of Four Million Four Hundred Thousand Dollars ($4,400,000); possession of the property and assets so sold to be delivered to the purchaser on the delivery to this company of the stock so to be accepted in payment for the property so sold; and

BE IT RESOLVED, that upon the payment of the agreed purchase price for the property and assets so to be sold, the appropriate officers of this company execute and deliver to E. I. du Pont de Nemours Powder Company all necessary deeds, assignments and bills of sale to vest the title to the property so to be sold in the purchaser."

8002 **Plaintiff's Exhibit 1175.**

(Government's Exhibit No. 158.)

Vol. 1, Page 70.

"RESOLVED, That this company sell to E. I. du Pont de Nemours Powder Company, the following shares of stock at the values given:

	Shares.	Total Val. Stock.
8003 A. Kirk & Son Co.....	313	75,570.72
Climax Pdr. Mfg. Co.....	50	92.557.50
Rock Glycerine Co.....	250	4,702.50
Brooklyn Glyc. Co.	50	24,520.00
A. S. Speece Pdr. Mfg. Co.....	29	442.25
Robina Fuse Co.	25	4,526.00
H. Julius Smith Elec F. Co..	2	1,735.58
National Torpedo Co.....	34	17,803.08
	753	221,857.63

8004 AND BE IT FURTHER RESOLVED, That the proper officers of this company be and hereby are authorized to make and execute all necessary assignments and transfers of the said shares of stock."

Plaintiff's Exhibit 1176. 8005

(Government's Exhibit No. 159.)

COPY OF RESOLUTION OF THE DIRECTORS OF THE E. I. DU PONT COMPANY

August 2nd. 1904

Vol. 1, Page 82

"RESOLVED that a dividend of $1,750.00 per share be declared on the capital stock of this company, payable in cash and securities, as follows:— 8006

	Shares	Amount
Wilmington Trust Co.....	1850	92,500.00
Monarch Powder Co.....	73	7,300.00
A. Kirk & Sons Co.....	313	31,300.00
Climax Powder Mfg. Co.....	50	2,500.00
Robina Fuse Company.....	25	2,500.00
Brooklyn Glycerine Co.....	50	2,500.00
H. J. Smith Electric Fuse Company	2	200.00
Rock Glycerine Co.....	250	12,500.00
National Torpedo Co.....	34	3,400.00
duPont International Pdr. Co.	500.	16,666.67
The Northwest Coal Co.....	4 bonds	400.00
Cash		3,233.33
		$175,000.00

8007

8008 **Plaintiff's Exhibit 1177.**

(Government's Exhibit No. 160.)

The Directors of the E. I. duPont Company (Delaware) from time to time passed resolutions in substantially the following form under which they authorized the purchase of all of the real, personal and mixed property of the following companies, for the amount set opposite each respective name:—

	Vol.	Page	Company	Amount
8009	1	84	H. A, Weldy Powder Company	$323,714.93
	1	90	Ohio Powder Company	299,078.80
	1	91	Shenandoah Powder Company	75,511.73
	1,	92	Birmingham Powder Company	80,135.75
	1,	93	Chattanooga Powder Company	293,840.04
	1,	94	Mahoning Powder Company	228,779.58
	1,	97	Lake Superior Powder Company	
8010				985,618.39
	1,	124	Phoenix Powder Manufacturing Co.	629,572.45

WHEREAS, certain negotiations have been pending between the officers of this company and the officers of the Company, which have resulted in an offer to sell to this company, all the real, personal and mixed property of said Company, wherever situate, including the good-will of the business of said company, and all letters-patent, trade marks, trade names, brands, processes and formulas, if any, of said Company, for the sum of

8011

Dollars, the book value thereof, as shown by the books of said company (date) to be hereafter ascertained by the Secretary of this company and inserted herein; and

WHEREAS it is in the judgment of the Board for the best interests of this company to accept said offer and purchase said property and rights for the price aforesaid.

THEREFORE BE IT RESOLVED that this company purchase from the Company, all its real, personal, and mixed property, wherever situate, including the good-will of the business of said company, and all letters-patent, trade marks, trade names, brands, processes and formulas, if any, of said Company, and pay therefore the sum of Dollars, the book value thereof, as shown by the books of the said Company, (date to be hereafter ascertained by the Secretary of this company and inserted herein; and the officers of this company are hereby authorized to do all things necessary or incident to the completion of said purchase."

8012

8013

8014 **Plaintiff's Exhibit 1185.**

(Government's Exhibit No. 168.)

COPY OF RESOLUTION OF THE DIRECTORS OF THE E. I. DUPONT DE NEMOURS AND COMPANY,

Feb. 28th, 1902.

Vol. 1, Page 20.

8015 "WHEREAS, a proposition has been made to this company by E. I. duPont de Nemours and Company a corporation existing under the laws of the State of Delaware, to sell to this company all of the property, assets and good-will of the said E. I. duPont de Nemours and Company for the sum of Twenty-three Million Nine Hundred and Ninety-seven Thousand and Nine Hundred Dollars, of which amount Eleven Million Nine Hundred and Ninety-seven Thousand Nine Hundred Dollars is to be paid in the full paid, non-assessable capital
8016 stock of this company at par, and the remaining twelve Million Dollars in the obligations of this company in such form, amount, and for such period, and at such times, as may be determined upon by the Board of Directors of the said E. I. duPont de Nemours and Company.

AND WHEREAS, in the judgment of this Board the said property, assets and good will are necessary for the business of this company, and are of the value of Twenty three Million Nine Hundred and Ninety-seven Thousand Nine Hundred Dollars.

AND WHEREAS, the following form of obligation has been approved by the said Board, and is now approved by this Board

Plaintiff's Exhibit 1185 8017

(Here follows form of purchase note.)

NOW THEREFORE BE IT RESOLVED, That this corporation do accept the said proposition, and do purchase from the said E. I. duPont de Nemours and Company all of its property, assets and good will whether standing in the name of the said company, or in the name of any individual, or individuals, subject to the payment of all the debts and liabilities of the said company as they may be shown to exist on the first day of March, A.D. 1902, for 8018
the said sum of Twenty Three Million Nine Hundred and Ninety Seven Thousand Nine Hundred Dollars, to be paid for by this company as follows: Eleven Million Nine Hundred and Ninety Seven Thousand Nine Hundred Dollars in the full paid, non-assessable capital stock of this company at par, to be issued to the said E. I. duPont de Nemours and Company by certificates for such number of shares as the President of said company may designate, and the remaining sum of Twelve Million Dollars to be paid in the promissory notes of this 8019
company in the form aforesaid.

BE IT FURTHER RESOLVED, That the officers of this company be and they are hereby authorized and directed to carry out this resolution, and upon the transfer and assignment to this Company of the said property, assets and good-will of the said E. I. duPont de Nemours and Company to issue the said stock and deliver the said notes to the said E. I. du Pont de Nemours and Company, as and when said property, assets and good-will may be delivered to this company."

8020 **Plaintiff's Exhibit 1187.**

(Government's Exhibit No. 170.)

COPY OF RESOLUTION OF BOARD OF DIRECTORS OF THE E. I. DUPONT DE NEMOURS & COMPANY

Oct. 24th, '03.

Vol. 1, Page 173 (174)

8021 "WHEREAS, offers to purchase the stock of certain Powder Companies, to wit:—

Ohio Powder Co., Equitable Powder Co., Oriental Powder Mills, Enterprise Powder Co., Judson Powder Co., E. I. duPont Co., Hazard Powder Company, Laflin & Rand Powder Company, Ferndale Powder Co., Fairmont Powder Co., Austin Powder Co., Eastern Dynamite Co., Consumers Powder Co., H. A. Weldy Co., Monarch Powder Co., American Storage & Delivery Co., Marcellus Powder Co.,
8022 Mahoning Powder Co., Lake Superior Powder Co., Shenandoah Powder Co., Phoenix Powder Co., Birmingham Powder Co., Laflin Powder Manufacturing Co., Chattanooga Powder Co., Indiana Powder Co., Northwestern Powder Co., King Mercantile Co., Moosic Powder Co., California Powder Works, Delaware Securities Co. has been made by the Board of Directors of E. I. duPont de Nemours Powder Company giving in exchange therefor, securities of E. I. duPont de Nemours Powder Company in accordance with resolutions of Board of Directors of said Company, and

WHEREAS E. I. duPont de Nemours Powder Company is to pay for these several stocks an amount equal to ninety-five (95%) per cent of their

true value as may be fixed by the Board of Directors of the said E. I. duPont de Nemours Powder Company by an appraisal now being made, and

WHEREAS, the value has not yet been accurately determined, but estimated, said Board of Directors of E. I. duPont de Nemours Powder Company cannot in consequence at this time accurately fix the true values.

NOW THEREFORE BE IT RESOLVED, That 8024
this company purchase from the holders of shares of the Capital Stock of the said Powder Companies as many of the said shares as possible and pay on account of such purchase in full paid non-assessable preferred and Common Stock of E. I. duPont de Nemours Powder Company ninety-five (95%) per cent. of their values as may be approximately determined by the said Board of Directors of E. I. duPont de Nemours Powder Company.

AND IT IS FURTHER RESOLVED, That in 8025
as much as the true value of said securities has not yet been determined but is being determined by appraisement, and said appraisement being not at this time completed, the officers of this company be, and they hereby are empowered and authorized to execute and deliver to the holders of stocks of the companies enumerated above who deposit same with us, an adjustment certificate (as per form attached) entitling the holders thereof, or his nominee, such further sum, if any, for each share as the Board of Directors of E. I. duPont de Nemours Powder Company shall hereafter determine based on above appraisal such shares to be fairly worth over and above the estimated amount originally paid; said further payment to be made in fully paid non-as-

8026 *Plaintiff's Exhibit 1204*

sessable shares of said E. I. duPont de Nemours Powder Company and to be issued after such determination is made and upon surrender of this certificate.

AND BE IT FURTHER RESOLVED, that the officers of this company be empowered to execute the attached agreement with the Wilmington Trust Company to act as Trustee for us in the exchange of these securities."

8027 (here follows form of Adjustment Certificate and Agreement).

Plaintiff's Exhibit 1204.

(Government's Exhibit No. 187.)

Copy of Resolution of the Board of Directors of E. I. duPont deNemours Powder Company,

8028 (July 12, 1907)

The Eastern Dynamite Company

(Vol. 2, Page 90.

"WHEREAS, certain negotiations have been pending between the officers of this company and the officers of the The Eastern Dynamite Company, a corporation created and organized under the laws of New Jersey, which have resulted in a proposition to sell to this company, all of the real, personal and mixed property of the The Eastern Dynamite Company, wherever situate, including the good-will of the manufacturing business of said company, and all letters patent and interests in let-

ters patent, trade marks, trade names, brands, processes and formulas, excepting and reserving to said The Eastern Dynamite Company its real and personal property situate in Ulster County, New York, known as the Hudson River Wood Pulp property, and all raw materials and finished products, situate at the various plants of said company, and all cash and all accounts and bills receivable of said company, as shown by its books on the first day of July, 1907, and to accept in payment therefor forty-four thousand (44,000) shares of the preferred capital stock of this company of the par value of Four Million, Four Hundred Thousand Dollars ($4,400,000); and 8030

WHEREAS, said property is, in the judgment of this Board of the reasonable value of Four Million, Four Hundred Thousand Dollars ($4,400,000); and desirable for use in the business of this company, and that it is for the best interests of this company to accept said proposition and purchase said property for the consideration aforesaid; 8031

THEREFORE, BE IT RESOLVED, That this company do purchase from the The Eastern Dynamite Company, all of its real, personal and mixed property, wherever situate, including the good-will of its manufacturing business, and all letters patent and interests in letters-patent, trade names, brands, processes and formulas, excepting and excluding from the real, personal and mixed property aforesaid all the real and personal property of the The Eastern Dynamite Company, situate in Ulster County, New York, known as the Hudson River Wood Pulp property, and all raw materials and finished products at the various plants of said the

8032 *Plaintiff's Exhibit 1205*

The Eastern Dynamite Company, and all cash and all accounts and bills receivable of said company, as shown by its books on the first day of July, 1907, and deliver in payment therefor to The Eastern Dynamite Company forty-four thousand (44,000) shares of the preferred capital stock of this company of the par value of Four Million, Four Hundred Thousand Dollars ($4,400,000) upon possession of the property so to be sold, being delivered to this company; and

8033

BE IT FURTHER RESOLVED, that the appropriate officers of this company are hereby authorized and directed to deliver to the The Eastern Dynamite Company forty-four thousand (44,000) shares of preferred stock of this company in payment of the property so purchased, upon possession thereof being delivered to this company, and to take all further and necessary action to consummate the purchase of and payment for said property."

8034

Plaintiff's Exhibit 1205.

(Government's Exhibit No. 188.)

The Directors of the E. I. duPont deNemours Powder Company from time to time passed resolutions in substantially the following form under which they authorized the purchase of the stocks of the following companies, issuing in payment for each share of said stock of said companies their Preferred and Common Stock in par value equal to the amount set opposite the respective stock, as follows:—

Plaintiff's Exhibit 1205 8035

				For each share of stock of the	There was authorized to be issued in payment therefor stock of E. I. duPont de Nemours Powder Company, as follows: Pfd. Stk.	Com. Stk.	
Vol. 1,	Page	211		American Storage & Delivery Co.	$232.292	$915.52	
"	"	"	111	Austin Powder Company.....	1098.03	274.78	8036
"	"	"	112	Birmingham Powder Company.	166.71	273.17	
"	"	"	114	Chattanooga Powder Company.	137.27	162.24	
"	"	"	130	Conemaugh Powder Co.....		101.89	
"	"	"	115	California Investment Company		51.975	
"	"	"	97	California Powder Works.....	144.1123	96.9639	
"	"	(99)	87	California Vigorit Pdr. Co.....	3.83	4.90	
"	"		118	Delaware Securities Company..	81.44	152.66	
"	"		116	E.I. duPont deNemours Co. of Pa.	145.181	146.85	
"	"	"	120	Eastern Dynamite Co.....	336.91	465.83	
"	"	"	133	Globe Powder Co.....	2.2641		
"	"	"	121	Indiana Powder Co.....	159.88	332.32	
"	"	"	123	Lake Superior Powder Co.....	149.10	214.92	
"	"	"	136	Laflin & Rand Powder Co.....	764.771	604.049	
"	"	"	89	Manufacturers Con. Co.....	68.7817	195.0566	8037
"	"	"	135	Monarch Powder Co.....	33.712		
"	"	"	124	North Western Pdr. Co.....	153.06	137.86	
"	"	"	126	Oriental Powder Mills.....	177.56	50.16	
"	"	"	128	Ohio Powder Co.....	207.87	390.78	
"	"	"	129	Phoenix Pdr. Mfg. Co.....	24.68	29.48	
"	"	"	103	H. A. Weldy Pdr. Co.....1,5817.			

All of the above stock was issued in accordance with resolutions of the Board of Directors of this company, all of which resolutions were in form substantially as follows:

WHEREAS, this company owns certain shares of the capital stock of the Company and in the judgment of this Board, it is for the best interests of the Company to acquire as many more shares of such stock as may be;

8038 *Plaintiff's Exhibit 1205*

AND WHEREAS, this board has made a careful investigation of the value of the said stock, and has determined that each share of the capital stock of the said company, was on August first, nineteen hundred and three of the fair value of

NOW THEREFORE, BE IT RESOLVED, that this company do purchase from E. I. du Pont de Nemours and Company as many shares of the capital stock of the said company as may be offered
8039 for sale upon the terms and conditions hereinafter mentioned, and that it do pay for each share of the said stock par value, being shares of the full-paid and non-assessable preferred stock of this company, and par value, being shares of the full-paid and non-assessable common stock of this company to E. I. du Pont de Nemours and Company, or said stock may be issued in the names of such persons and in such amount as may be directed by the Wilmington Trust Company, which direction may be made by a
8040 letter to the transfer agent, registrar and officers of this company, signed by the President, Vice-President or Treasurer of the said Wilmington Trust Company, with which said Wilmington Trust Company the said E. I. du Pont de Nemours and Company has caused or will cause the shares of stock of the said Company to be deposited for the purpose of effecting the purchase herein provided for;

BE IT FURTHER RESOLVED, that in addition to the above purchase price to be paid in stock of this company, as herein provided, this company do pay to the persons receiving the preferred stock of this company, issued in accordance with this resolution, an amount in cash equal to interest on the

preferred stock of this company, so issued at the rate of Five Per Centum per annum from the First day of August, nineteen hundred and three, to the date of the issue of the preferred stock of this company in accordance with this resolution; 8041

PROVIDED, HOWEVER, that there shall be deducted from such payment the amount of any dividend which shall have been declared and paid upon the said stock of the Company since the First day of August, nineteen hundred and three; 8042

BE IT FURTHER RESOLVED, that the officers of this company be and they are hereby authorized to issue the stock herein provided for and to cause the same to be properly issued and registered;

AND BE IT FURTHER RESOLVED, that any previous resolution or resolutions of this Board be and hereby are rescinded and annulled in so far as the same are inconsistent herewith. 8043

8044 **Plaintiff's Exhibit 1305.**

THIS CONTRACT, made by and between The Buckeye Powder Company, of Peoria, Ill., first party, and New York Coal Company, of Columbus, Ohio, second party.

WITNESSETH: That first party hereby sells and second party buys all the black blasting powder in kegs of 25 pounds each, required for use in the mines owned or controlled by second party, or that it may desire to sell in the district named
8045 below, for the period of two years from this date, at $1.10 per keg. The following conditions are mutually accepted.

(A) First party agrees to allow second party the actual car load freight charges from shipping to delivery point.

(B) Terms are 60 days or 2% discount for cash, if remitted within 10 days from date of invoice.

(C) Second party agrees to buy from first party
8046 in car loads lots of 800 kegs each all the black blasting powder required by it for the following mines:

"Shafer" Mine at Floodwood, Ohio.
"Section 31" Mine at Buchtel, Ohio.

or for any other mines that may be acquired by the second party in the same district during the time of this contract.

(D) First party hereby guarantees the price of $1.10 per keg delivered against bona fide offers by others. Should a lower price be named party of the second part first party may elect to meet the lower price, otherwise second party is at liberty

to purchase from others until such time as first party meets the lower price.

(E) First party may furnish and the second party will accept under this contract powder of any standard brand make or quality.

(F) The first party is not to be responsible for any delays caused by strikes, accidents or causes beyond its control.

8048

Dated at Columbus, Ohio, this 21st day of July, 1904.

THE BUCKEYE POWDER COMPANY,
By R. S. Waddell,
President.

NEW YORK COAL COMPANY,
By E. W. Poston,
President.

8049

Plaintiff's Exhibit 1306.

THIS CONTRACT, made between the BUCKEYE POWDER COMPANY, of Peoria, Illinois, first party, and the NORTHWESTERN COAL & MINING COMPANY, of Bevier, Missouri, second party.

WITNESSETH: That first party hereby sells, and second party buys, all the black blasting powder in kegs twenty-five (25) pounds each, required for its use and for sale by second party to others, for the period of one year (1) from this date, at the net carload price of 800 kegs or over, of $1.04 per keg delivered at Bevier, Missouri, including all

8050 *Plaintiff's Exhibit 1306*

other mines in that vicinity that may be acquired by the party of second part, during the life of this contract.

The above price is guaranteed against any lower price made on Buckeye powder in the same district. Should a better price be made by other reputable powder companies to party of second part, and should party of first part decline to meet such lower price, party of second part shall be at liberty to purchase from said other company until such
8051 time as party of first part may elect to accept the lower price, when purchases shall be resumed under this contract.

The option is hereby given party of second part for a renewal of this contract and under same terms and conditions, for an additional year provided that at least thirty days written notice be given by party of second part prior to the expiration of the first year.

8052 The quality of the powder to be supplied under this contract is guaranteed to be fully up to standard and of same grade as heretofore furnished by party of first part.

Terms of payment under this contract are sixty days from date of invoice, subject to cash discount of two (2) per cent within ten days.

First party may furnish and second party will accept under this contract, powder of any standard brand, make and quality.

First party is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

Signed in duplicate at Peoria, Illinois, this 20th day of May, 1905.
(First party)

BUCKEYE POWDER COMPANY,
By R. S. Waddell, President.

(Second party)

NORTHWESTERN COAL & MINING COMPANY, 8054
By C. G. Thurston, Treasurer.

(SEAL)

Plaintiff's Exhibit 1307.

MEMORANDUM OF AGREEMENT.

MEMORANDUM OF AGREEMENT entered into this first day of June, 1905, between the BUCKEYE POWDER COMPANY, party of the first part, and the WHITEBREAST FUEL COMPANY 8055
of Illinois, party of the second part.

The party of the first part hereby sells and the party of the second part hereby purchases all its supply of black blasting powder for the mines of the party of the second part located at:

Dunfermline, Illinois.
Cardiff, Illinois.
Cleveland, Iowa.
Pekay, Iowa.
Hilton, Iowa.

for one year from June 1, 1905, at price of ninety-two cents (92c) per keg of 25 pounds each f. o. b. cars Edwards, Illinois.

8056 *Plaintiff's Exhibits 1307, 1309*

TERMS, 60 days net or two per cent 2%) discount for cash in 10 days from date of invoice.

DELIVERIES, are to be made in carload lots of not less than 800 kegs.

WHITEBREAST FUEL CO. OF ILLINOIS,
By C. V. Shelft, Vice Prest.
BUCKEYE POWDER CO.,
By John G. Miller, Agent.

8057

This contract covers
supply of powder
for Cardiff Coal Co.
Cardiff, Ill.
Chicago, June 1, 1905.
J. G. M.

Plaintiff's Exhibit 1309.

8058 THIS CONTRACT entered into this 23rd day of February, 1907, by and between the BUCKEYE POWDER COMPANY, a corporation of PEORIA, ILLINOIS, party of the first part, and THE UNITED STATES GYPSUM COMPANY, of CHICAGO, ILLINOIS, party of the second part;

WITNESSETH:—

(1) That the party of the first part hereby sells and the party of the second part hereby purchases all of the Blasting Powder ordered by the party of the second part within one year from date, for use in its operations at:

FORT DODGE, IOWA.

At the price of .98 per keg of 25 lbs. each, deliv-

8059

ered f. o. b. Fort Dodge, in carloads of eight hundred (800) kegs; if delivered in smaller lots, this price to prevail plus the increase of freight charges if any there is.

(3) Deliveries to be made from time to time as ordered by the second party, all goods to be of equal and uniform quality as sample of ten (10) kegs shipped on order No. 24144, and powder guaranteed at all times satisfactory to said second party.

Terms: Sixty (60) days, or two per cent (2%) discount within ten days (10) from date of invoice. 8060

(4) The party of the first part is not to be responsible for delays caused by strikes, accidents, or other causes beyond its control.

(5) Terms of this agreement to be obligatory and binding upon both parties hereto, their successors, legal representatives or assigns.

UNITED STATES GYPSUM COMPANY

By S. R. Fulton, 1st V. Prest. 8061

BUCKEYE POWDER COMPANY
By R. S. Waddell, Prest.
(SEAL)

8062 **Plaintiff's Exhibit 1310.**

MEMORANDUM OF AGREEMENT, entered into this 1st day of February, 1904, by and between the Buckeye Powder Company, party of the first part, and The Wear Coal Company, party of the second part, WITNESSETH:

Party of the first part hereby sells and party of the second part hereby purchases all the blasting powder required for its use in the mines in which second party is interested at Huntsville and Bevier, Missouri, for one year from the above date, or until
8063 February 1, 1905, at the following prices and upon the following terms:

Price—One Dollar and sixteen cents ($1.16) per keg, of twenty-five (25) pounds each, delivered as ordered at Huntsville and Bevier, Missouri.

Terms—The acceptance of party of the second part at sixty (60) days from date of invoices of the party of the first part, after deducting the amount of freight charges from point of shipment to destination.

It is also understood that in the event party of
8064 the second part should use powder in carload lots on the Missouri Pacific Railroad tracks at St. Louis, the price is to be one dollar thirteen cents ($1.13) per keg F.O.B. cars Missouri Pacific tracks St. Louis, same terms of payment as above.

This contract is to cover an annual consumption of, approximately, thirty thousand (30,000) kegs.

It is further understood that the party of the first part guarantees that the quality of the powder to be delivered under this contract shall be equal to that purchased by any of the regular or standard companies, and satisfactory to the miners of the party of the second part; and if demands are made for other brands of powder by the miners of the party of the second part, the party of the first part will furnish such other brands, or will permit party

of the second part to purchase same until the miners of the party of second part can be prevailed upon to return to the use of the powder of the party of the first part.

Witness our hands this the date above written.

BUCKEYE POWDER COMPANY
By R. S. Waddell.
THE WEAR COAL COMPANY
By F. E. WEAR, President. 8066

Plaintiff's Exhibit 1311.

THIS CONTRACT, made between the BUCKEYE POWDER COMPANY of Peoria, Illinois, first party, and the RANDOLPH-MACON COAL COMPANY, principal office Huntsville, Missouri, second party.

WITNESSETH: That first party hereby sells, 8067
and second party buys, all the black blasting powder, in kegs twenty-five (25) pounds each, required for its use and for sale by second party to associate companies, for the period of one (1) year from this date, at the net carload price of 800 kegs or over, of $1.04 per keg delivered to Huntsville, Bevier, Renick, Yates, Higbee, and Elliott, Missouri, including all other mines in vicinity of these places, that may be acquired by the party of second part during the life of this contract.

The above price is guaranteed against any lower price made on Buckeye powder in the same district. Should a better price be made by other reputable powder companies to party of second part, and should party of first part decline to meet such

8068 *Plaintiff's Exhibit 1311*

lower price, party of the second party shall be at liberty to purchase from said other company until such time as party of first part may elect to accept the lower price, when purchases shall be resumed under this contract.

The option is hereby given party of second part for a renewal of this contract and under same terms and conditions, for an additional year provided that at least thirty days written notice be given by party of second part prior to the expiration of the
8069 first year.

The quality of the powder to be supplied under this contract is guaranteed to be fully up to standard and of same grade as heretofore furnished by party of first part.

Terms of payment under this contract are sixty days from date of invoice, subject to cash discount of two (2) per cent within fifteen days.

First party may furnish and second party will accept under this contract, powder of any stand-
8070 ard brand, make and quality.

First party is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

Signed in duplicate at Peoria, Illinois, this 12th day of May, 1905.

(First part)

BUCKEYE POWDER COMPANY,
By R. S. Waddell, Prest.

(Second party)
RANDOLPH-MACON COAL COMPANY,
(SEAL) By M. E. Minlin, Gen. Mngr.

Plaintiff's Exhibit 1312. 8071

AGREEMENT made this thirty-first day of May, 1904, between the BUCKEYE POWDER COMPANY, of Peoria, Illinois, party of the first part, and C. G. BRECHNITZ, of Belleville, Illinois, second party.

WITNESSETH: The party of the first part, hereby appoints the party of the second part, its net price agent for the sale of its product at Belleville, Illinois, for the term of two (2) years from June 1, 1904. 8072

The party of the first part hereby agrees to sell, and the party of the second part, buys all the BLACK BLASTING POWDER, not exceeding 25,000 kegs per year, that may be ordered by party of the second part, for delivery to himself and the following customers, whose trade is hereby set apart and reserved for party of second part.

The price of said powder to be $1.15 per keg, delivered in carloads of 800 kegs at Belleville, Illinois, and mine location of parties named. Bills subject to 2% discount for cash in ten (10) days from date of invoice. The following is the list of reserved customers: 8073

Name.	Location.
D. Zihlsdorf,	Marissa, Ill.
L. D. Jones,	Coulterville, Ill.
Johnson Coal Company,	Lenzburg, Ill.
Tirre Coal & Mining Co.,	Lenzburg, Ill.
Kolb Coal Company,	Mascoutah, Ill.
Illinois & Missouri Coal Co.,	St. Louis, Md.
Glendale Coal Mining Company,	Belleville, Ill.
Suburban Coal & Mining Co.,	Belleville, Ill.
Superior Coal & Mining Co.,	Belleville, Ill.
Enterprise Mining Co.,	

8074 *Plaintiff's Exhibit 1312*

Rentchler Sta.,	St. Clair Co., Ill.
Walnut Hill Coal Co.,	St. Louis, Mo.
Oak Hill Coal Co.,	Belleville, Ill.
Lenz Coal & Mining Co.,	Belleville, Ill.
Germantown Coal & Mining Co.,	Germantown, Ill.
Valley Coal & Mining Co.,	St. Louis, Mo.
Royal Coal & Mining Co.,	Belleville, Ill.
Summit Coal & Mining Co.,	Belleville, Ill.
Wm. Ratican,	St. Louis, Mo.
8075 Horn Coal & Mining Co.,	Belleville, Ill.
Highland Coal Company,	Belleville, Ill.
Belleville & O'Fallon Coal Co.,	Belleville, Ill.
St. Louis & O'Fallon Coal Co.,	Belleville, Ill.
Roseborough Coal Company,	Percy, Ill.
S. B. Eaton & Co.,	DuQuoin, Ill.
Jupiter Coal Company,	DuQuoin, Ill.
Humbolt Coal Company,	Belleville, Ill.
Crown Coal Company,	St. Louis, Mo.
Muren Coal Company,	Belleville, Ill.
A. P. Murray,	Nashville, Ill.
8076 Little Muddy Coal Company,	DuQuoin, Ill.

Should party of the second part desire that contracts of standard form be made direct between first party and either or all of said customers at prices exceeding the net price to party of second part, such contracts will be executed between party of first part and said customers and for account of party of second part, and the excess above said net price shall be allowed to party of second part.

All powder under this contract to be purchased and invoiced by party of second part. In witness hereto parties have affirmed their names and seals this 31st day of May, 1904.

BUCKEYE POWDER COMPANY,
By R. S. Waddell, Prest.

(SEAL) C. G. Brechnitz.

Plaintiff's Exhibit 1313. 8077

THIS CONTRACT, made between the BUCKEYE POWDER COMPANY, of Peoria, Illinois, first party, and CHAS. F. KEELER COAL COMPANY, of Chicago, Illinois, second party.

WITNESSETH: That first party hereby sells, and second party buys, all the black blasting powder, in carloads of seven hundred and fifty (750) kegs or over, required for use in mines owned or controlled by second party as noted below, for a period of one (1) year from this date, at one dollar and ten cents ($1.10) per keg, delivered at Atherton, Indiana. 8078

THE TERMS are that the powder should be paid for monthly as consumed or sold.

Second party agrees to buy from first party in carload lots of seven hundred fifty (750) kegs or over.

This CONTRACT to also cover Powder for any other mines that might be acquired by the second party in the same locality, during the term of this contract. 8079

The first party may furnish, and the second party will accept under this contract, powder of any standard brand, make or quality.

The first party is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

Dated at Peoria, Illinois, January 11th, 1905.

By
BUCKEYE POWDER COMPANY,
By R. S. Waddell, Prest.
CHAS. F. KEELER COAL COMPANY,
By Chas. F. Keeler.

8080 **Plaintiff's Exhibit 1314.**

THIS CONTRACT, made between the BUCKEYE POWDER COMPANY, of Peoria, Illinois, first party, and the GREAT NORTHERN FUEL COMPANY, principal office Kansas City, Missouri, second party.

WITNESSETH: That first party hereby sells, and second party buys, all the Black Blasting Powder, in kegs twenty-five (25) pounds each required for its use in mines located at Billy's Creek, Davis Creek, in Chariton Valley, Spring Valley, in the
8081 vicinity of Novinger, Missouri, for a period of three (3) years from this date, at the net carload price in carloads of 800 kegs or over, at $1.15 per keg delivered at Kansas City, Missouri, or Novinger, Mo.

This contract also covers supplies in carloads at all other mines that may be acquired by party of second part during the life of this contract.

The quality of the powder to be supplied under this contract, is guaranteed to be fully up to standard and of same grade as heretofore furnished by party of first part.

Terms of payment for all powder delivered under
8082 this contract, are sixty (60) days from date of invoice, subject to cash discount of two (2) per cent, in ten (10) days.

First party may furnish and second party will accept under this contract, powder of any standard brand, make and quality.

First party is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

(First Party)

Signed in duplicate at Peoria, Illinois, this 25th day of May, 1905.

BUCKEYE POWDER COMPANY,

By R. S. Waddell, Prest.

(Second Party)

GREAT NORTHERN FUEL COMPANY,

(SEAL). By W. S. McCoull, President.

Plaintiff's Exhibit 1315. 8083

THIS CONTRACT, made between the BUCKEYE POWDER COMPANY, OF PEORIA, ILLINOIS, first party, and the WILLIS COAL MINING COMPANY and its successors, of ST. LOUIS, MISSOURI, second party.

WITNESSETH: That first party hereby sells and second party buys all the BLACK BLASTING POWDER required for use in the mines owned and controlled by the second party; also all the powder it may sell to other mines between E. St. Louis and 8084
Murphysboro on Mobile & Ohio Railroad; E. St. Louis, De Quoin and Cartersville, on Illinois Central Railroad; also on Southern Railroad between E. St. Louis and New Baden, Ill., on Louisville & Nashville Road, between E. St. Louis and Mt. Vernon, Ill. The net price for said powder to be One Dollar and ($1.10) Ten Cents per keg, subject to actual freight allowance on carloads. All sales and all contracts between the BUCKEYE POWDER COMPANY and other coal companies, payment for which is guaranteed by WILLIS COAL & MINING 8085
COMPANY, this contract governs absolutely. Other contracts submitted by WILLIS COAL & MINING COMPANY, to be made between other coal companies and BUCKEYE POWDER COMPANY, are subject to approval and acceptance by the BUCKEYE POWDER COMPANY. This contract to remain in force for the period of two years. Deliveries of powder under same to be made in carloads Eight Hundred (800) kegs or over at railroad stations in district named, freight on all shipments to be paid by consignee and amount deducted from invoices. This contract is to cover a maximum quantity of Thirty-five Thousand (35,000) kegs per year.

First party may furnish and second party will

8086 *Plaintiff's Exhibit 1315*

accept under this contract, powder of any standard brand, make and quality.

The first party is not responsible for delays caused by strikes, accidents or causes beyond its control.

The terms of payment for said powder: The WILLIS COAL & MINING COMPANY to send its acceptance on receipt of invoice for powder and bear-
8087 ing same date, payable in sixty (60) days thereafter for the amount of each invoice, less the actual freight charges paid. All invoices may be discounted at 2% for cash in ten (10) days from date of same, at the option of the WILLIS COAL MINING COMPANY.

Dated at St. Louis, Mo., this thirty-first day of May, 1904.

BUCKEYE POWDER CO.,
By R. S. Waddell, Prest.

8088

THE WILLIS COAL & MINING CO.,
By E. J. Krause, Prest.

(SEAL).

Plaintiff's Exhibit 1316. 8089

THIS CONTRACT, made between the BUCKEYE POWDER COMPANY, of Peoria, Illinois, first party, and THE NORTHWESTERN COAL & MINING CO., of Bevier, Missouri, second party.

WITNESSETH: That first party hereby sells, and second party buys, all the Black Blasting Powder, in kegs twenty-five (25) pounds each, required for use in the mines owned or controlled by second party as noted below, for the period of one year from this date, at $1.17 per keg.

The following conditions are mutually accepted: 8090

(A) First party agrees to allow second party the actual carload freight charges from shipping to delivery point.

(B) Terms are 60 days, or two per cent (2%) discount for cash if remitted within ten (10) days from date of invoice.

(C) Second party agrees to buy from first party in carload lots of 800 kegs of 25 lbs. each, all the Black Blasting Powder required by it for the following mines: 8091

Name.	Location.
Northwestern C. & M. Co., Mines Nos. 8 and 9.	Bevier, Mo.

(Should the miners or the Local Union condemn or refuse to use the powder furnished under this contract, the party of the second part shall be released from all obligations under said contract.)

or for any other mines that may be acquired by the second party, in the same district, during the time of this contract.

(D) The first party may furnish, and the second party will accept under this contract, powder of any standard brand, make and quality.

8092 *Plaintiff's Exhibits 1316, 1317*

(E) The first party is not to be responsible for delays caused by strikes, accidents, or causes beyond its control.

Dated at Peoria, Ill, June 4, 1904.

NORTHWESTERN COAL & MINING CO.
By C. G. Thurston.

BUCKEYE POWDER COMPANY,
8093 By R. S. Waddell, Prest.
(SEAL)

Plaintiff's Exhibit 1317.

THIS CONTRACT, made between the BUCKEYE POWDER COMPANY of Peoria, Illinois, first party, and the DE CAMP COAL MINING COMPANY of Illinois, office of St. Louis, Missouri, second party.

8094 WITNESSETH: That first party hereby sells, and second party buys, all the Black Blasting Powder, in kegs twenty-five (25) pounds each, required for its use, for the period of three (3) years from this date, at the net carload price of 800 kegs or over, of $1.05 per keg delivered at mine of said Company near Staunton, Illinois, including all other mines in that vicinity that may be acquired by the party of second part during the life of this contract.

The quality of the Powder to be supplied under this contract is guaranteed to be fully up to standard and of same grade as heretofore furnished by party of first part.

Terms of Payment for all Powder delivered under this contract, are sixty (60) days from date of

 8095

invoice, subject to cash discount of two (2) per cent in ten (10) days.

First party may furnish and second party will accept under this contract, Powder of any standard brand, make and quality.

First party is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

Signed in duplicate at Peoria, Illinois this 8th day of June, 1905. 8096

(First Party)

BUCKEYE POWDER COMPANY,
By R. S. Waddell, Prest.

(Second Party)

DE CAMP COAL MINING COMPANY,
By F. R. Johnson, Secty. and Gen. Mgr.
(SEAL)

8097

Plaintiff's Exhibit 1125.

DYNAMITE.

CAPACITIES OF AND NUMBER OF LBS. OUTPUT OF ALL DU PONT DYNAMITE MILLS DURING THE YEARS 1903 TO 1908 INCLUSIVE.

LOCATION	STARTED TO MFGR.	1903 CAPACITY	1903 OUTPUT	1904 CAPACITY	1904 OUTPUT	1905 CAPACITY	1905 OUTPUT	1906 CAPACITY	1906 OUTPUT	1907 CAPACITY	1907 OUTPUT	1908 CAPACITY	1908 OUTPUT
Ashburn, Mo.	Prior to Jan., 1903	...	12,518	13,860	13,351	13,860	15,201	15,000	12,819	15,000	16,103	15,000	13,239
Barksdale, Wis.	June, 1905	...	...	...	...	8,663	4,928	19,500	14,087	24,000	18,827	24,000	21,844
Emporium, Pa.	Prior to Jan., 1903	...	7,452	6,930	4,653	6,930	4,596	7,800	7,797	8,100	7,183	8,100	6,848
Nasequehoning, Pa.	Prior to Jan., 1903	...	1,251	1,485	784	1,485	1,263	1,500	1,744	1,800	1,838	...	...
Landing, N. J.	Prior to Jan., 1903	...	9,179	9,900	8,027	9,900	6,001	9,000	9,425	9,600	8,860	9,600	9,769
Hartford City, Ind.	July, 1907	...	...	...	...	...	...	...	...	1,750	900	6,000	
Pinole, Cal.	Prior to Jan., 1903	...	22,798	22,770	20,498	22,770	24,606	31,000	32,266	35,700	32,438	36,000	31,394
Joplin, Mo.	Prior to Jan., 1903	...	108	1,485	1,285	2,228	1,855	2,250	2,317	3,375	2,594	4,500	281
Kenvil, N. J.	Prior to Jan., 1903	...	13,019	14,850	10,834	14,850	11,150	15,000	14,313	15,000	12,395	15,000	693
Louviers, Colo.	May, 1908	...	...	...	...	...	...	...	...	...	...	6,050	4,670
Marquette, Mich.	Prior to Jan., 1903	...	5,901	6,930	4,749	6,930	6,592	7,800	6,943	8,100	8,398	8,100	6,949
Mauch Chunk, Pa.	Prior to Jan., 1903	...	1,221	1,782	1,190	1,782	1,115	1,500	1,499	2,700	1,856	3,000	9
Nobel, Cal.	Prior to Jan., 1903	...	7,124	5,280	6,972	7,920	4,091	...	...	...	...	...	...
Oliver Mills, Pa.	Prior to Jan., 1903	...	880	1,500	593	...	...	...	...	...	...	...	...
Gibbstown, N. J.	Prior to Jan., 1903	...	24,542	29,700	25,841	35,640	31,012	35,100	37,040	40,000	36,493	40,000	31,802
Lewisburg, Ala.	Prior to Jan., 1903	...	781	4,950	1,233	4,950	2,415	3,000	2,738	4,500	2,523	6,000	207
Pt. Isabel, Cal.	Prior to Jan., 1903	...	2,313	3,960	2,542	3,960	3,921	8,500	10,170	12,000	11,431	7,000	4,092
Tamaqua, Pa.	Prior to Jan., 1903	...	406	644	635	644	868	765	101	...	...	...	...
		...	109,493	126,026	103,187	142,512	119,614	157,715	153,259	181,625	161,839	188,350	131,804

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Plaintiff's Exhibit 1125-A.

DYNAMITE.

CAPACITIES OF AND NUMBER OF LBS OUTPUT OF ALL COMPETITIVE DYNAMITE COMPANIES FOR THE YEARS 1903 TO 1908 INCLUSIVE.

LOCATION	STARTED TO MFGR.	1903 CAPACITY	1903 OUTPUT	1904 CAPACITY	1904 OUTPUT	1905 CAPACITY	1905 OUTPUT	1906 CAPACITY	1906 OUTPUT	1907 CAPACITY	1907 OUTPUT	1908 CAPACITY	1908 OUTPUT
Co.....Aetna, Ind.	Prior to Jan., 1903	9,600	6,467	9,600	6,429	9,600	9,039	15,000	12,839	20,000	12,009	22,800	10,300
Co.....Thebes, Ill.	Aug. 1, 1907	...	...	...	...	...	...	...	...				
ks.....Kawkawlin, Mich. ..	Prior to Jan. 1, 1903	600	400	600	500	600	360	600	410	1,200	425	1,200	600
Wks....Eldred, Pa.....	Prior to Jan. 1, 1903	300	160	300	170	Shut down		...	...	...	...	...	...
Pdr. Co. Guths Sta., Pa.....	Oct. 1, 1905	...	...	...	...	450	56	1,800	670	1,800	570	1,800	366
ite Co...Amherst, Ohio	Jan. 1, 1907	...	...	...	...	...	...	...	...	1,200	110	1,200	340
r Co....Ishpeming, Mich. ..	Prior to Jan. 1, 1903	1,800	750	1,800	900	1,170	820	Plant completely destroyed 8-25-'05. Never rebuilt.					
Co..										3,000	1,247	6,000	2,616
Co.)...Coverts Sta., Pa....	July 1, 1907	...	...	...	...	...	...	...	...	Out of business 1907.			
Co.....Lambert, Mo.	Aug. 1903	1,500	1,200	3,600	450	3,600	473	3,600	326	...	...	...	...
.....Franklin Forge, Pa.	1899	500	120	Plant blew up 4-30-03.		Never Rebuilt		...	...	...	...	...	...
.....Eldred, Pa.....	1901	900	80	900	85	900	113	900	81	900	66	900	60
d. Co....Emporium, Pa.	Prior to Oct. 10, 1904	...	...	2,000	80	9,000	4,796	9,000	5,412	9,000	6,417	9,000	4,672
.....	Sept., 1902	6,000	540	1,000	119	Shut down Mar., 1904		...	...	...	...	...	...
.....Greenup, Ill.	1902	900	400	900	240	338	80	Plant removed to Bonhampton, N. J., May 15, 1905					
Co.....Elmira, N. Y.						1,500	150	1,800	60	Out of business Mar. 1906. Plant Dism			
pany ...Bonhampton, N. J...	May 15, 1905	...	...	...	...								

Plaintiff's Exhibit 1125-A (cont'd)

Co.....Wharton, N. J.....	Sept. 1, 1905	...	...	...	...	1,200	75	3,600	1,205	Destroyed Explosion 2-18-08			
Cons.....Giant, Cal.	Prior to Jan., 1902	12,000	8,796	12,000	9,376	12,000	10,489	12,000	14,079	3,600	1,000	450	15
P. Co....Toledo, Ohio	1886	1,200	120	1,200	380	1,200	50	1,000	30	16,200	13,103	16,200	11,166
Co.....Dollar Bay, Mich...	1886	2,400	1,560	2,400	1,800	2,400	1,961	2,400	1,803	Out of business since Oct., 1906			
o.....Grafton, Ill.....	Dec. 15, 1907									2,400	1,838	2,400	2,095
Co.....Carthage, Mo.	Sept. 1902	4,500	1,000	4,500	1,500	6,000	3,121	6,000	3,971	375	32	9,000	2,250
.....Sayreton, Ala.	Mar. 1, 1906							2,500	533	9,000	6,130	9,000	6,363
Co.....Emporium, Pa.	Sept. 1900	6,000	2,881	9,000	5,270	9,000	6,632	9,000	6,977	3,000	975	3,000	1,324
& O.										9,000	8,255	9,000	5,432
t Penn.													
.....Shenks Ferry, Pa...	Apr. 1905												
Co.....Masury, Ohio	Apr. 1, 1903	450	200	600	450	3,375	3,091	1,875	1,196	Plant destroyed June 9, 1906			
.....Seattle, Wash.	Oct., 1905					600	581	2,400	651	2,400	835	2,400	1,200
o.....White Haven, Pa....	Oct., 1900	300	28	300	40	300	2	1,200	61	300	3	Out of business Apr.	
Co.....Grosse Ile, Mich....	July 1908					300	19	300	27	300	16	300	40
.....Kingston, N. Y.....	1896	3,000	864	3,000	963	4,500	1,127	4,500	436			750	342
Co.....Roberts Sta., Cal....	1907	...	...	...	...	...	...	...	...	4,500	624	4,500	750
.....Reynolds Sta., Pa...	June 1, 1907	...	...	...	...	...	...	...	...	400	35	1,200	550
A.P.Co..Mukilteo, Wash....	Jan., 1908	...	...	...	...	...	...	...	...	2,800	935	4,600	3,116
.....Hoffmanville, Md...	Feb., 1902	3,750	500	3,750	600	3,750	999	3,750	828	...	...	1,800	291
P.M. Co.,Sinamahoning, Pa...	Aug. 1, 1906	...	...	...	...	...	...	3,125	1,255	3,750	632	3,750	400
..... Beaumont, Tex.	Oct. 1, 1906	...	...	...	...	...	...	750	30	7,500	3,288	7,500	2,809
o.....Overton, Colo.	Mar., 1907	...	...	...	...	...	...	...	...	3,000	205	3,000	115
r. Co....Tunnelton, Pa.	Mar. 1, 1907	...	...	...	...	...	...	...	...	1,000	38	1,200	260
L										7,500	1,706	9,000	625
		55,700	26,066	57,450	29,353	71,783	44,034	87,100	52,880	114,128	60,494	121,950	58,097

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Plaintiff's Exhibit 1126.

BLACK POWDER.

CAPACITIES OF AND NUMBER OF KEGS OUTPUT

OF ALL DU PONT BLASTING MILLS DURING THE YEARS 1903 TO 1908 INCLUSIVE.

LOCATION	STARTED TO MFGR.	1903		1904		1905		1906		1907		1908	
		CAPACITY	OUTPUT	CAPACITY	OUTPUT	CAPACITY	OUTPUT	CAPACITY	OUTPUT	CAPACITY	OUTPUT	CAPACITY	OUTPUT
Belleville, Ill.	Prior to Jan. 1, 1903	180	181	240	192	240	208	300	262	353	317	360	9
Birmingham, Ala.	Jan. 1, 1903	75	44	74	16	Discontinued		...	...	...	...	...	...
Montchanin, Del.	Jan. 1, 1903	585	396	435	178	249	156	390	172	356	318	390	88
Coltewah, Tenn.	Jan. 1, 1903	330	320	330	287	330	310	330	319	353	298	330	171
Turck, Kans.	Jan. 1, 1903	360	338	345	342	345	337	390	341	540	445	480	382
Seward, Pa.	Jan. 1, 1903	120	84	Discontinued		...	...	...	...	...	...	...	...
Conneable, Ala.	Apr. 1, 1904	...	...	180	129	240	240	330	302	353	213	390	163
Storrs Jct., Pa.	Prior to Jan. 1, 1903	180	171	210	188	225	224	240	179	218	220	210	235
Newburg, Ind.	Jan. 1, 1903	195	186	180	44	Discontinued		...	...	...	...	...	...
Gracedale, Pa.	Jan. 1, 1903	144	98	150	118	150	139	150	123	165	161	158	173
Fairchance, Pa.	Jan. 1, 1903	240	218	240	236	240	238	240	243	390	384	480	244
Farmingdale, N. J.	Jan. 1, 1903	180	67	180	52	Discontinued		...	...	...	...	...	...
Ferndale, Pa.	Jan. 1, 1903	300	250	150	154	150	152	225	152	240	238	300	162
Fontanet, Ind.	Jan. 1, 1903	420	380	480	381	480	372	540	371	450	252	Discontinued	
Hazardville, Conn.	Jan. 1, 1903	263	201	...	1	Discontinued		..	...	...	...	...	...

Plaintiff's Exhibit 1126 (cont'd).

.....Kellogg, W. Va.....	Jan. 1, 1903	195	84	150	162	150	66	195	164	225	208	225	124
.....Marquette, Mich. ..	Jan. 1, 1903	83	45	120	11	Discontinued		...	...	...	...	...	...
.....Meadowbrook, West Virginia ..	May, 1903	87	43	132	23	Discontinued		...	...	...	...	...	...
.....Mooar, Ia.	Prior to Jan. 1, 1903	900	843	930	874	930	866	1,170	1,140	1,185	1,172	1,260	1,090
.....Moosic, Pa.	Jan. 1, 1903	270	234	270	271	278	274	270	243	270	265	270	269
.....Powder, W. Va....	Aug. 29, 1904	...	...	210	70	240	242	315	258	360	278	360	158
.....Newhall, Me.	Prior to Jan. 1, 1903	221	96	90	59	Discontinued		...	...	...	...	...	...
.....Laurel Run, Pa.....	Jan. 1, 1903	300	229	240	221	240	225	250	219	270	243	270	255
.....Patterson, Okla.....	Sept. 17, 1907	...	...	...	...	...	...	...	...	50	35	300	134
.....Pittsburg, Kans.....	Feb. 1903	98	76	120	109	180	131	263	267	278	272	285	225
.....Pl. Prairie, Wis.....	Prior to Jan. 1, 1903	450	370	420	332	420	393	420	361	525	494	600	575
.....Punxsutawney, Pa..	Jan. 1, 1903	180	157	180	153	180	147	180	143	Discontinued		...	...
.....Rosendale, N. Y....	Jan. 1, 1903	240	235	240	57	240	4	240	179	240	192	240	25
.....Jermyn, Pa.	Jan. 1, 1903	150	135	180	157	180	194	210	187	225	221	210	230
.....Krebs Sta., Pa.....	Jan. 1, 1903	90	70	90	82	105	109	113	75	113	99	120	103
.....Santa Cruz, Cal.....	Jan. 1, 1903	270	223	270	224	270	272	390	401	405	395	450	256
.....Sycamore, Tenn. ..	Jan. 1, 1903	165	141	165	88	Discontinued		...	...	...	...	...	...
.....Tamaqua, Pa.	Jan. 1, 1903	105	102	150	127	150	139	113	89	53	21	Discontinued	
.....Wapwallopen, Pa...	Jan. 1, 1903	255	296	300	289	315	314	330	299	330	331	315	324
.....Wayne, N. J.....	Jan. 1. 1903	140	111	7	7	28	28	40	40	63	63	51	51
.....Youngstown, O. ...	Jan. 1, 1903	210	219	210	208	210	152	225	215	240	228	240	189
		7,981	6,643	7,668	5,842	6,765	5,932	7,859	6,744	8,250	7,363	8,294	5,635

Plaintiff's Exhibit 1127.

BLACK POWDER.

CAPACITIES OF AND NUMBER OF KEGS OUTPUT OF ALL
COMPETITIVE BLASTING POWDER COMPANIES FOR THE YEARS 1903 TO 1908 INCLUSIVE.

LOCATION	STARTED TO MFGR.	1903		1904		1905		1906		1907		1908	
		CAPACITY	OUTPUT	CAPACITY	OUTPUT	CAPACITY	OUTPUT	CAPACITY	OUTPUT	CAPACITY	OUTPUT	CAPACITY	OUTPUT
Mills. Maynard, Mass.	Prior to Jan. 1903	90	25	90	25	90	20	90	31	90	17	90	30
Co.....Falls Jct., Ohio....	Jan., 1903	480	434	480	429	480	420	480	403	480	502	480	414
.....Houcks St., Pa.....	Dec. 1905	...	...	...	...	5	1	60	18	60	32	60	46
.....Edwards Sta., Ill...	Nov. 1, 1903	60	15	300	120	300	154	300	73	300	85	300	50
Co.....Quaker Falls, Pa...	Aug. 1, 1904	...	...	100	18	180	172	300	209	300	170	300	205
Co.... Treverton, Pa.	Prior to '03	144	100	144	125	144	33	144	24	144	59	144	43
Co....Cressona, Pa.	Prior to Jan., 1903	90	75	90	75	90	64	90	53	90	60	90	53
Co....Marion, Ill.	Feb. 4, 1904	...	...	247	100	270	144	360	138	360	257	360	165
Co.....E. Alton, Ill.	Jan., 1893	300	289	300	288	363	304	600	536	600	643	600	415
Co.....Ft. Smith, Ark.....	Oct. 15, 1905	...	...	...	...	200	44	300	121	300	194	300	134
Co.....Holmes Park, Mo...	May 1, 1905	...	...	...	...					38	23	90	44
.....Clipper Gap, Cal....	Sept. 1, 1906							40	5	120	40	120	54
Co.....Sayerton, Ala.	Sept., 1906												
..... Kings Mills, Pa....	Prior to Jan., 1903	420	250	420	225	420	260	420	285	420	224	420	210
Co....Mahanoy Jct., Pa...	Nov., 1900	105	25	105	50	105	60	105	48	105	24	Plant dismantled	

Plaintiff's Exhibit 1127 (cont'd)

D. Co.	Krebs Sta., Pa.....	Mar. 16, 1904	Suc O' Hare Pdr. Co. March 16, 1904		47	35	60	24	60	21	60	19	45	27
	.....Lofty, Pa.	1900	45	30	45	30	45	22	45	23	45	18	45	15
	.....Goes, Ohio	Prior to Jan., 1903	480	272	480	225	480	433	730	581	780	585	780	438
	.....Thebes, Ill.	Mar. 1, 1906	...	...	...	...	...	...						
Co.	....White Haven, Pa...	1900	60	40	60	30	60	19	60	7	60	17	90	45
o.	.....Tomhicken, Pa.	1904	Suc. Tomhicken Pdr. Co. ...	...	68	25	68	29	68	23	68	22	68	31
	.....Krebs Sta., Pa.....	1887	60	30	13	15	Suc. By Locust Mnt. P. & D. Co., March 16, 1904					...	...	...
F. Co.	..Brandonville, Pa. ..	Dec., 1903	6	3	75	36	75	55	75	41	44	57	Plant destroyed Aug. 8, 1907	
	.....Pittsford, N. Y.....	Prior to Jan., 1903	45	35	45	30	45	23	45	10	45	11	45	20
enna.	..Fairchance, Pa.	July, 1900	180	150	180	200	120	120	Plant totally destroyed by explosion Sept. 2, 1905					
enn.	...Marlow, Tenn.	Aug. 23, 1905	...	...	...	...	65	34	180	136	270	149	270	154
	.....Krebs Sta., Pa.....	Prior to Jan., 1903	75	40	75	50	75	50	75	45	75	67	75	60
	.....Hoffmanville, Md...	July 1, 1901	150	75	150	100	150	39	150	10	150	5	150	Idle
	.....Morrow, Ohio	Oct. 14, 1904	...	...	62	40	189	150	240	193	300	209	300	155
	.....Shamokin, Pa.....	Prior to Jan., 1903	173	75	173	100	173	87	173	69	173	76	173	67
	.....Horrell, Pa.	Feb. 1, 1904	...	...	248	100	270	136	Plant destroyed Jan. 10, 1907. Resumed oper. Nov. 15, 1908					
									270	119	9	2	22	7
o.	.....Jellico, Yehn.....	Aug. 1, 1907	...	...	...	...	...	...	...	...	75	43	180	58
o.	.....Tomhicken, Pa. ...	Prior to Jan., 1903	68	10	Suc. by Nuremburg Pdr. Co., 1904.									
Co.	.....Coalmont, Ind.	Nov. 1, 1904	...	...	8	4	180	161	240	196	300	265	300	236
g. Co.	Edwards Sta., Ill...	Nov. 1, 1908	...	...	...	...	...	...	...	...	...	...	60	30
			3,031	1,973	4,005	2,475	4,702	3,058	5,700	3,418	3,418	3,875	5,957	3,206

Over 500 considered 1,000, less than 500 not considered.

8122 **Plaintiff's Exhibit 1143.**

Applegate and Lewis Coal Company, Cuba, Illinois; date of contract, August first, 1903, three years, rebate fifteen cents per keg. Applegate and Lewis Coal Company was supplied du Pont powder through Dooley Brothers at Peoria, Illinois.

Athens Mining Company, Athens, Illinois; date of contract, May first, 1903, three years, net one dollar and twenty cents.

Auburn and Alton Coal Company, Auburn, Illinois; date of contract, May first, 1903, three years, one dollar and twenty cents net.

8123 Barkley Coal and Mining Company, Barkley, Illinois. That contract was afterwards covered by one with the West End Coal Company, which succeeded the Barkley Coal Company.

Barrett Hardware Company, Joliet, Illinois; had a special price of one dollar and twenty-five cents per keg. No contract; simply a special price under instructions from the home office.

Big Creek Coal Company, Kewannee, Illinois; date of contract, July fifteenth, 1904, for three years, net one dollar and seventeen and one-half cents.

Blue Mound Coal Company, Blue Mound, Illi-
8124 nois; date of contract, May first, 1904, for three years, one dollar and twenty-five cents per keg.

C. C. and Edward Brown, Springfield, Illinois. I think that covered the three companies, referred to later on—date of contract May first, 1904, for three years, one dollar and fifteen cents net.

Bruce and Burdick, Joliet, Illinois; had a special price of one dollar and ten cents per keg.

Canton Union Coal Company, Canton, Illinois; date of contract, August first, 1903; for three years, one dollar and twenty-five cents per keg.

Cantrall Co-operative Coal Company, Cantrall, Illinois; date of contract, May first, 1903, for three

years; price one dollar and twenty cents, rebate increased two and a half cents; making the net one dollar and seventeen and a half cents. The increase occurred Aufust second, 1904.

Capital Coal Company, Springfield, Illinois; date of contract, May first, 1904; written for three years; net price one dollar and seventeen and a half cents; changed by increase of rebate to one dollar and fifteen cents.

Chicago Springfield Coal Company, Springfield, Illinois; date of contract, September first, 1904, for three years; one dollar and twenty-five cents 8126
per keg.

Chicago Virden Coal Company, Virden, Illinois; date of contract, March first, 1904, for one year; one dollar and twelve and one-half cents.

Citizens Coal Mining Company, Lincoln, Illinois; date of contract, May first, 1903, for three years; one dollar and twenty cents.

Citizens Coal Mining Company, Lincoln, Illinois; date of contract, May first, 1903, for three years; one dollar and twenty cents; and the Citizens Coal Mining Company, Springfield, Ill., date of contract May first, 1903; for three years at one dollar and seventeen and one-half cents. 8127

Clark Coal and Coke Company, Peoria, Illinois; du Pont powder supplied through Dooley Brothers; contract dated August first, 1903, for three years; one dollar and twenty cents.

Colfax Co-operative Company, Colfax, Illinois; date of contract, May first, 1904, for three years; one dollar and twenty-five cents.

Coal Valley Mining Company, Coal Valley, Illinois; date of contract, November first, 1904; written for one year, at one dollar per keg. This was free on board company's mills, the coal mining company being owned by the Rock Island road who

owned several other mines; and covered the requirements of different mines in one contract.

Collier Co-operative Coal Company, Peoria, Illinois; date of contract, May first, 1903, for three years; one dollar and twenty cents per keg; du Pont powder supplied through C. J. Off and Company.

Colorado Fuel and Iron Company, Denver, Colorado; contract dated June first, 1902, for three years, at one dollar net, f. o. b. company's mills, Keokuk, Iowa.

8129 Co-operative Coal Company, Fairbury, Illinois; one dollar and twenty-five cents price pending further instructions.

Crescent Coal Company, Oskaloosa, Iowa; contract dated February first, 1904, for three years; rebate was fifteen cents. Net price one dollar and thirty cents.

Henry Darts' Sons, Rock Island, Illinois; until further advice, one dollar and twenty-five cents.

Decatur Coal Company, Decatur, Illinois; contract dated September first, 1903, for three years; one dollar and twenty-five cents.

C. T. Deffenbaugh, Peoria, Illinois; contract
8130 dated August first, 1903, for three years; one dollar and twenty-five cents; Hazard powder supplied through Oakford & Fahnestoch.

Des Moines Coal and Mining Company, Des Moines, Iowa; contract dated May first, 1903, for three years; one dollar and twenty-five cents.

Drake Hardware Company, Burlington, Iowa; an open, or special price, of one dollar and thirty-five cents.

Stephen Drake, Canton, Illinois; date of contract, November first, 1904, for three years; one dollar and twenty-five cents.

East Peoria Coal Company, East Peoria, Illinois;

date of contract, September first, 1904, for three years; one dollar and twenty-five cents.

Economy Coal Company, Des Moines, Iowa; date of contract May first, 1904, for three years; one dollar and thirty-five cents.

Essex and Fritz Coal Mining Company, Galesburg, Illinois; date of contract September first, 1904, for three years; one dollar and twenty-five cents; du Pont powder supplied through Dooley Brothers, Peoria.

Farmington Coal Company, Farmington, Illinois; date of contract May first, 1903, for three 8132
years; one dollar and twenty-five cents; du Pont powder supplied through Charles J. Off and Company, Peoria, Illinois.

Flint Brick and Coal Company, Des Moines, Iowa; date of contract January first, 1904, for three years; one dollar and thirty-five cents.

W. E. Foley, Mapleton, Illinois; contract dated August first, 1903, for three years; one dollar and twenty cents; Hazard powder supplied through Oakford and Fahnestoch, Peoria.

J. B. Gardner, Canton, Illinois; date of contract April twenty-eighth, 1904; special price of one dollar and twenty-five cents. 8133

Garfield Coal Company, Beacon, Iowa; date of contract May first, 1903, three years; one dollar twenty-seven and one-half cents.

The Green View Coal and Mining Company, Green View, Illinois; date of contract May first, 1903, for three years; one dollar seventeen and one-half cents.

Peter Grant, Junior, Peoria, Illinois; date of contract August first, 1903, for three years; one dollar and twenty-five cents; du Pont powder supplied through Dooley Brothers, Peoria.

Haw and Semmons Company, Ottumwa, Iowa;

8128 *Plaintiff's Exhibit 1143*

owned several other mines; and covered the requirements of different mines in one contract.

Collier Co-operative Coal Company, Peoria, Illinois; date of contract, May first, 1903, for three years; one dollar and twenty cents per keg; du Pont powder supplied through C. J. Off and Company.

Colorado Fuel and Iron Company, Denver, Colorado; contract dated June first, 1902, for three years, at one dollar net, f. o. b. company's mills, Keokuk, Iowa.

8129 Co-operative Coal Company, Fairbury, Illinois; one dollar and twenty-five cents price pending further instructions.

Crescent Coal Company, Oskaloosa, Iowa; contract dated February first, 1904, for three years; rebate was fifteen cents. Net price one dollar and thirty cents.

Henry Darts' Sons, Rock Island, Illinois; until further advice, one dollar and twenty-five cents.

Decatur Coal Company, Decatur, Illinois; contract dated September first, 1903, for three years; one dollar and twenty-five cents.

C. T. Deffenbaugh, Peoria, Illinois; contract
8130 dated August first, 1903, for three years; one dollar and twenty-five cents; Hazard powder supplied through Oakford & Fahnestoch.

Des Moines Coal and Mining Company, Des Moines, Iowa; contract dated May first, 1903, for three years; one dollar and twenty-five cents.

Drake Hardware Company, Burlington, Iowa; an open, or special price, of one dollar and thirty-five cents.

Stephen Drake, Canton, Illinois; date of contract, November first, 1904, for three years; one dollar and twenty-five cents.

East Peoria Coal Company, East Peoria, Illinois;

date of contract, September first, 1904, for three years; one dollar and twenty-five cents.

Economy Coal Company, Des Moines, Iowa; date of contract May first, 1904, for three years; one dollar and thirty-five cents.

Essex and Fritz Coal Mining Company, Galesburg, Illinois; date of contract September first, 1904, for three years; one dollar and twenty-five cents; du Pont powder supplied through Dooley Brothers, Peoria.

Farmington Coal Company, Farmington, Illinois; date of contract May first, 1903, for three 8132
years; one dollar and twenty-five cents; du Pont powder supplied through Charles J. Off and Company, Peoria, Illinois.

Flint Brick and Coal Company, Des Moines, Iowa; date of contract January first, 1904, for three years; one dollar and thirty-five cents.

W. E. Foley, Mapleton, Illinois; contract dated August first, 1903, for three years; one dollar and twenty cents; Hazard powder supplied through Oakford and Fahnestoch, Peoria.

J. B. Gardner, Canton, Illinois; date of contract April twenty-eighth, 1904; special price of one dollar and twenty-five cents. 8133

Garfield Coal Company, Beacon, Iowa; date of contract May first, 1903, three years; one dollar twenty-seven and one-half cents.

The Green View Coal and Mining Company, Green View, Illinois; date of contract May first, 1903, for three years; one dollar seventeen and one-half cents.

Peter Grant, Junior, Peoria, Illinois; date of contract August first, 1903, for three years; one dollar and twenty-five cents; du Pont powder supplied through Dooley Brothers, Peoria.

Haw and Semmons Company, Ottumwa, Iowa;

8134 *Plaintiff's Exhibit 1143*

date of contract July first, 1904, for one year; one dollar and twenty-five cents.

D. Heenan Mercantile Company, Streator, Illinois; special price of one dollar twenty cents.

Hollingsworth Coal Company, Des Moines, Iowa; date of contract June first, 1904, for three years; one dollar and twenty-seven and a half cents.

Illinois and Iowa Fuel Company, Ottumwa, Iowa; date of contract May first, 1903, for three years; one dollar and thirty cents per keg.

Jefferson Coal Mining Company, Springfield, Ill-
8135 inois; date of contract September first, 1903, for three years; rebate increased from ten cents to seventeen and a half cents, making a net price, during a portion of the contract period, of one dollar and seventeen and one-half cents.

The Jones and Adams Company, Chicago, Illinois; date of contract May first, 1903, for three years; one dollar and fifteen cents. Deliveries on this contract were made at Springfield, Illinois.

C. B. Kramm and Brothers, Edwards Station, Illinois; date of contract August first, 1903, for three years; one dollar and twenty-five cents; Hazard powder supplied through Oakford and Fahnestoch,
8136 Peoria.

Krapp and Lees, Coal Valley, Illinois; date of contract May first, 1903, for three years; original rebate ten cents, increased to fifteen cents; net one dollar and twenty cents, under instructions of October twenty-second, 1904.

Lake Erie Coal and Mining Company, East Peoria, Illinois; date of contract September first, 1904, for three years; one dollar and twenty-five cents; du Pont powder supplied through Dooley Brothers.

Lincoln Park Coal Mining Company, Springfield, Illinois; date of contract September first, 1903, for

three years, rebate ten cents. Net one dollar and twenty-five cents. I beg your pardon.

Lynchfield Mining and Powder Company, Lynchfield, Illinois, J. D. Krabb, Receiver; date of contract May first, 1903, for three years; one dollar and twenty cents.

Edward Little, Peoria, Illinois; date of contract May first, 1903, for three years; one dollar and twenty-five cents.

Monmouth Vein Coal Company, Hamilton, Iowa; date of contract May first, 1903, for three years; one dollar and twenty-five cents. 8138

Manufacturers Coal and Coke Company, Chicago; date of contract May first, 1903, for three years, original rebate seventeen and one-half cents, increased to twenty-two and one-half cents, making one dollar and twelve cents net.

Maplewood Coal Company, Farmington, Illinois; date of contract May first, 1903, for three years; rebate increased from seventeen and one-half cents to twenty cents; net one dollar and fifteen cents.

P. W. Meehan, Cuba, Illinois; date of contract August first, 1903, for three years; rebate ten cents, increased to fifteen cents; net, one dollar and twenty cents. C. J. Off and Company supplying du Pont 8139 powder, and Oakford and Fahnestoch supplying Hazard.

The Middleton Coal Company, Middleton, Illinois; date of contract September first, 1904, for three years; one dollar and seventeen and one-half cents.

Monarch Coal and Mining Company, Farmington, Illinois; date of contract May first, 1903, for three years; one dollar and twenty-five cents; du Pont powder supplied through C. J. Off and Company, Peoria.

Monmouth Coal Company, Brereton, Illinois:

8140 *Plaintiff's Exhibit 1143*

date of contract May first, 1903, for three years; rebate originally seventeen and one-half cents, increased to twenty cents; net one dollar and fifteen cents.

Newcomb Brothers, Peoria, Illinois; date of contract May first, 1903, for three years; one dollar and fifteen cents; du Pont powder supplied through C. J. Off and Company, Peoria.

Norris Supply Company, Norris, Illinois, date of contract May first, 1903, for three years; rebate ten cents, increased to fifteen cents; net one dollar
8141 and twenty cents; du Pont powder supplied through C. J. Off and Company, Peoria.

Oskaloosa Coal and Mining Company, Oskaloosa, Iowa; date of contract May first, 1903, for three years; one dollar and thirty-cents.

Petersburg Coal Mining Company, Petersburg, Illinois; date of contract October twenty-second, 1903, for three years; one dollar and twenty-five cents.

Rainbow Coal and Mining Company, Sullivan, Indiana; date of contract May first, 1903, for three years; one dollar and twenty cents.

A. Rentz and Brother, Kramm Station, Illinois;
8142 date of contract August first, 1904, for three years; one dollar and twenty-five cents; du Pont powder supplied through Dooley Brothers, Peoria.

Republic Iron and Steel Company, Springfield, Illinois; date of contract May first, 1903, for three years; one dollar and twenty cents per keg.

Rock Island Coal Company, Chicago, Illinois; contract dated November first, 1904, for one year; net price company's Iowa mills, one dollar per keg.

Roanoke Coal and Mining Company, Roanoke, Illinois; date of contract August first, 1904, for three years; one dollar and twenty cents.

Sangamond Coal Company, Springfield, Illinois;

date of contract May first, 1902, for three years; one dollar and seventeen and one-half cents.

Sholl Brothers, Peoria, Illinois; date of contract August first, 1903, for three years; one dollar and seventeen and one-half cents; du Pont powder supplied through Dooley Brothers, Peoria.

Smoky Hollow Coal Company, Avery, Iowa; date of contract October seventeenth, 1903, for three years; one dollar and twenty-five cents.

South Mountain Coal Company, Petersburg, Illinois; date of contract September first, 1903, for 8144
three years; one dollar and twenty-five cents.

Spalding Coal Company, Spalding, Illinois; date of contract May first, 1903, for three years; one dollar and fifteen cents.

Spoon River Coal Company, Galesburg, Illinois; date of contract October first, 1904, for three years; one dollar and twenty-five cents; du Pont powder supplied through Dooley Brothers, Peoria.

Springfield Coal Mining Company, New York; date of contract, March twelfth, 1903, for three years; rebate twenty-two and one-half cents increased to twenty-five cents, September twentieth, 8145
1904. Deliveries on this contract were made to mines at Springfield, or in the immediate vicinity of Sagamond County, Ohio, at one dollar and ten cents.

Springfield Co-operative Coal Company, Springfield, Illinois; date of contract, May first, 1903, for three years; one dollar and seventeen and one-half cents.

Star Coal Company, Streator, Illinois; date of contract May first, 1903, for three years; one dollar and seventeen and one-half cents.

Tallulla Coal Company, Tallulla, Illinois; date of contract, September first, 1903, for three years; one dollar and twenty cents per keg.

8146 *Plaintiff's Exhibit 1143*

Tazwell Coal Company, Pekin, Illinois; date of contract August first, 1903, for three years; one dollar and twenty-five cents; Hazard powder supplied through Oakford and Fahnestoch, Peoria.

Tuxhorn Coal Company, date of contract, January first, 1904, for three years; one dollar and twenty-five cents.

Treasurer Coal Company, Bartonville, Illinois; date of contract September first, 1903, for three years; one dollar and twenty-five cents; du Pont
8147 powder supplied through Dooley Brothers, Peoria.

Trutter Coal Company, Pleasant Plains, Illinois; date of contract September first, 1903, for three years; one dollar and twenty-five cents.

United States Gypsum Company, Chicago; contract dated July first, 1904, for one year; one dollar and seventeen and one-half cents; used du Pont, Austin and Hazard powder.

Vicary Brothers, Peoria, Illinois; date of contract August first, 1903, for three years; one dollar and twenty cents; du Pont powder supplied through Dooley Brothers, Peoria.

8148 Victor Fuel Company, Denver, Colorado; date of contract July first, 1903, for three years; sold at net price f. o. b. Iowa mills, one dollar per keg.

H. S. Vincent, Fort Dodge, Iowa; special price, pending further instructions, one dollar and thirty-five cents.

Wabash Coal Company, Springfield, Illinois; date of contract May first, 1903, for three years; one dollar and fifteen cents.

Mr. James Walker, Mapleton, Illinois; date of contract August first, 1903, for three years; one dollar and twenty-five cents; du Pont powder supplied through C. J. Off and Company, Peoria.

Walton Brothers, Fairbury, Illinois; date of contract May first, 1903, for three years; one dollar and twenty-five cents.

Plaintiff's Exhibit 1143

8149

I. Wantling and Sons, Peoria, Illinois; date of contract October first, 1904, for three years; one dollar and twenty cents per keg.

Wapello Coal Company, Hiteman, Iowa; date of contract May first, 1903, for three years; one dollar and twenty-five cents.

West End Coal Company, Springfield, Illinois; date of contract October first, 1903, for three years; one dollar and fifteen cents.

What Cheer Fuel Company, What Cheer, Iowa; date of contract August thirteenth, 1904; one dollar and thirty cents; special price.

8150

White Breast Fuel Company, Chicago, Illinois; date of contract June first, 1902, for three years; one dollar and ten cents.

Williamsville Coal Company, Williamsville, Ilinois, date of contract May first, 1903, for three years; one dollar and twenty cents.

R. L. Wilson, Coal Valley, Illinois; special price, pending further instructions, one dollar and twenty-five cents.

Winters Coal Company, Bartonville, Illinois; date of contract August first, 1903, for three years; one dollar and twenty-five cents; Hazard powder supplied through Oakford and Fahnestoch, Peoria.

8151

S. Wolschlag Brothers, Peoria, Illinois; date of contract August first, 1903, for three years; one dollar and seventeen and one-half cents; supplied du Pont powder through Dooley Brothers, Peoria.

Wyoming Coal Company, Wyoming, Illinois; date of contract January first, 1904, for three years; one dollar and twenty-five cents; Hazard powder supplied through Oakford and Fahnestoch, Peoria.

Yates City Coal Company, Yates City, Illinois; date of contract February first, 1904, for three years; one dollar and twenty-five cents; Hazard powder supplied through Oakford and Fahnestoch, Peoria.

8152 **Plaintiff's Exhibit 1144.**

No. 238, Applegate and Lewis Coal Company;
Athens Mining Company, No. 199;
Auburn and Altan Coal Company, No. 119;
Barrett Hardware ompany, No. 342;
Big Creek Coal Company, No. 131;
Blue Mound Coal Company, No. 506;
C. C. & Edward Brown, No. 118;
Bruce and Burdick, No. 266;
Canton Union Coal Company, No. 132;
Cantrall Co-operative Coal Company, No. 39;
8153 Capital Coal Company, No. 14;
Central Coal and Coke Company, No. 375;
Chicago Springfield Coal Company, No. 570;
Chicago Virden Coal Company, No. 12.
Citizens Coal Mining Company, No. 282;
Citizens Coal Mining Company, Springfield, No. 282;
Clarke Coal and Coke Company, No. 267;
Colfax Co-operative Company, No. 502;
Coal Valley Mining Company, No. 324;
Collier Co-operative Coal Company, No. 96;
8154 Colorado Fuel and Iron Company, No. 399;
Co-operative Coal Company, Fairbury, No. 553;
Crescent Coal Company, No. 368;
Henry Darts' Sons, No. 228;
Decatur Coal Company, No. 304;
C. T. Deffenbaugh, No. 272;
Des Moines Coal and Mining Company, No. 8;
Drake Hardware Company, No. 292;
Stephen Drake, No. 579;
East Peoria Coal Company, No. 560;
Economy Coal Company, No. 392;
Essex and Fritz Coal Mining Company, No. 386;
Farmington Coal Company, No. 213;
Flint Brick and Coal Company, No. 111;
W. E. Foley, No. 99;
J. B. Gardner, No. 186;

Plaintiff's Exhibit 1144 8155

Garfield Coal Company, No. 49;
The Green View Coal and Mining Company, No. 202;
Peter Grant, Jr., No. 303;
Haw and Semmons Company, No. 135;
D. Heeman, Mercantile Company, No. 55.
Hollingsworth Coal Company, No. 513;
Illinois and Iowa Fuel Company, No. 50;
Jefferson Coal Mining Company, No. 372;
The Jones and Adams Company, No. 151;
C. B. Kramm and Brothers, No. 279; 8156
Krapp and Lees, No. 17;
Lake Erie Coal and Mining Company, No. 558;
Latham Coal Company, No. 200;
Lincoln Park Coal Mining Company, No. 371;
Lynchfield Mining and Power Company, No. 177;
Edward Little, No. 41;
Monmouth Vein Coal Company, No. 77;
Manufacturers Coal and Coke Company, No. 122;
Maplewood Coal Company, No. 52;
P. W. Meehan, No. 203;
Middleton Coal Company, No. 542; 8157
Monarch Coal and Mining Company, No. 325;
Monmouth Coal Company, No. 10;
Newsomb Brothers, No. 128;
Morris Supply Company, No. 6;
Oskaloosa Coal and Mining Company, No. 34;
Petersburg Coal Mining Company, No. 340;
Rainbow Coal and Mining Company, No. 81;
A. Rentz and Brother, No. 337;
Republic Iron and Steel Company, No. 201;
Rock Island Coal Company, No. 434;
Roanoke Coal and Mining Company, No. 562;
Sangamond Coal Company, No. 294;
Shell Brothers, No. 285;
Smoky Hollow Coal Company, No. 33;
South Mountain Coal Company, No. 36;

8158 *Plaintiff's Exhibit 1144*

Spalding Coal Company, No. 38;
Spoon River Coal Company, No. 87;
Springfield Coal Mining Company, No. 226;
Springfield Co-operative Coal Company, No. 149;
Star Coal Company, No. 44;
Tallulla Coal Company, No. 126;
Tazwell Coal Company, No. 240;
Tuchorn Coal Company, No. 420;
Treasurer Coal Company, No. 290;
Trutter Coal Company, No. 310;
8159 United States Gypsum Company, No. 178;
Vickary Brothers, No. 265;
Victor Fuel Company, No. 63;
H. S. Vincent, No. 100;
Wabash Coal Company, No. 148;
James Walker, No. 245;
Walton Brothers, No. 121;
I. Wantling and Sons, No. 573;
Wapello Coal Company, No. 11;
West End Coal Company, No. 109;
What Cheer Fuel Company, No. 284;
White Breast Fuel Company, No. 4;
8160 Williamsville Coal Company, No. 108;
R. L. Wilson, No. 256;
Winters Coal Company, No. 336;
S. Wolschlog Brothers, No. 277;
Wyoming Coal Company, No. 262;
Yates City Coal Company, No. 348.

Plaintiff's Exhibit 1219.

STATEMENT SHOWING AVERAGE YEARLY GROSS PRICE OBTAINED FOR A. BLASTING AND B. BLASTING FOR YEARS SHOWN AT THE FOLLOWING OFFICES.

E. I. du PONT de NEMOURS POWDER CO.

	Marquette		Boston		New York		Philadelphia		Hazelton		Pittsburg		Huntington		San Francisco	
	A. Blast	B. Blast	A. Blast	B. Blast	A. Blast	B. Blast	A. Blast	B. Blast	A. Blast	B. Blast	A. Blast	B. Blast	A. Blast	B. Blast	A. Blast	B. Blast
1903.....	0	1.42	2.41	1.58	2.42	1.31					1.84	1.18				
1904.....	0	1.38	2.43	1.44	2.18	1.31	1.94	1.13	2.63	.95	1.87	1.10	0	1.14	*	*
1905.....	0	1.34	Consolidated with		2.12	1.38	1.87	1.08	2.59	.94	1.88	1.04	0	1.12	2.41	1.36
1906.....	0	1.26	New York		2.36	1.36	1.88	1.04	1.51	.95	1.84	.98	0	1.01	2.27	1.18
1907.....	0	1.37			2.24	1.50	1.85	1.04	1.52	.94	1.91	.97	0	1.01	2.53	1.16
1908.....	Office Discontinued				2.31	1.60	2.10	1.14	1.64	1.01	2.32	1.11	2.43	1.12	3.07	1.34

	Cincinnati		Nashville		Birmingham		St. Louis		Chicago		Denver		Duluth		Scranton	
	A. Blast	B. Blast	A. Blast	B. Blast	A. Blast	B. Blast	A. Blast	B. Blast	A. Blast	B. Blast	A. Blast	B. Blast	A. Blast	B. Blast	A. Blast	B. Blast
1903.....	2.95	1.22					2.31	1.25	2.31	1.22	0	1.69				
1904.....	2.89	1.19					2.33	1.24	2.35	1.15	0	1.56	0	1.41		
1905.....	2.27	1.10			2.07	1.15	2.31	1.12	2.30	1.04	0	1.47	0	1.29	0	1.17
1906.....	2.26	1.02			2.19	1.06	2.26	1.03	2.14	.98	0	1.11	0	1.25	0	1.17
1907.....	2.30	1.02	2.22	1.06	0	1.04	2.22	1.01	2.21	.98	0	1.05	0	1.22	0	1.13
1908.....	Office Discontinued		2.38	1.14	0	1.05	2.59	1.10	2.62	1.08	2.45	1.11	0	1.22	0	1.18

*Records not Obtainable.

Checked O. K.
Compiled from
Company record
A true copy
10/23/13
W. P. Zaran

E. I. du Pont de Nemours
Powder Company
10/23/13

2721

8163

8162

8161

8164 **Plaintiff's Exhibit 1247-B.**

THIS CONTRACT entered into this Ninth day of November, 1907, by and between the E. I. du Pont de Nemours Powder Company, a corporation of the State of New Jersey, party of the first part, and Dooley Brothers, of Peoria, Illinois, party of the second part.

(1) WITNESSETH: That the party of the part hereby purchases all of the black blasting powder required by the party of the second part, dur-
8165 ing the period of this contract, for use or sale in the Peoria Coal Mining District at the following prices:

CARLOAD LOTS—f. o. b. Peoria, Illinois, direct sale to party of the second part for local sale and distribution by party of second part: 800 kegs or more, one shipment, $1.05 net; 400 kegs or less than 800 kegs, one shipment, $1.07½ net.

Carload shipments made by party of the first part direct to customers of party of the second part
8166 in the Peoria coal mining district, f. o. b. nearest railway station: 800 kegs or more, one shipment, $1.05; less 5c per keg commission to party of the second part; 400 kegs or less than 800 kegs, one shipment, $1.07½; less 5c per keg commission to party of the second part.

The above prices are based on present freight rates, and present minimum carload quantity, but in case the present freight rates or present minimum carload quantity are increased or decreased during the existence of this contract, the amount of such increase or decrease shall be added to or deducted from the above prices.

The above prices are also based on present method of packing and transporting powder, but in case the present method of packing and transport-

Plaintiff's Exhibit 1247-B 8167

ing powder is prevented by law, or railroad association regulations during the existence of this contract, then in that event this contract, may at the election of the party of the first part, be terminated.

The following conditions are mutually accepted:

(2) Party of the second part to make car load sales only to such customers as may be approved by party of the first part.

Sales of less than carload lots by party of the second part are to be confined to Peoria County, Illinois, and to the Pekin mining district in Tazewell County, Illinois, unless special permission be first secured from party of the first part. 8168

(3) (Crossed out).

(4) The party of the first part is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

(5) This contract to go into effect on ninth day of November, 1907, and continue in force until ninth day of November, 1908, and thereafter from year to year unless written notice is mailed to the address of either party, by the other, sixty (60) days prior to ninth day of November of any year, in which event upon the arrival of such date the contract is to be terminated. 8169

(6) This contract does not become binding until accepted by the E. I. DU PONT DE NEMOURS POWDER COMPANY, at its main office at Wilmington, Delaware.

E. I. DU PONT DE NEMOURS POWDER COMPANY,
By P. H. Donnelly, Salesman, &c.

Dooley Bros.
By J. B. Dooley.

ACCEPTED at Wilmington, Del.,
Nov. 19, 1907.

E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Wm. Coyne.

8170 **Plaintiff's Exhibit 1247-AA.**

THIS CONTRACT entered into this 27th day of November, 1908, by and between the E. I. DU PONT DE NEMOURS POWDER COMPANY, a corporation of the State of New Jersey, party of the first part, and DOOLEY BROTHERS, Peoria, Illinois, party of the second part.

(1) WITNESSETH: That the party of the first part hereby sells and the party of the second part hereby purchases all of the explosives and blasting
8171 supply requirements, required by the party of the second part, during the period of this contract, for use of Sholl Brothers, Peoria, Illinois, mines at Peoria, Illinois, at the following prices.

BLASTING POWDER CARLOADSS 800 kegs or over, $1.10 per keg, delivered f. o. b. nearest railway station; less 5c per keg commission to Messrs. Dooley Brothers.

Any other explosives or blasting supplies not specified in this contract to be furnished at current prices which are charged by the du Pont Company
8172 in the district in which the explosives or blasting supplies are to be used.

The prices herein are based on present freight rates, and present minimum carload quantity, but in case the present freight rates or present minimum carload quantity are increased or decreased during the existence of this contract, the amount of such increase or decrease shall be added to or deducted from the above prices.

The prices herein are also based on present method of packing and transporting powder, but in case the present method of packing and transporting powder is prevented by law or railway associations during the existence of this contract, then in that event this contract may, at the election of the party of the first part, be terminated.

Plaintiff's Exhibit 1247-AA 8173

The following conditions are mutually accepted:

(2) TERMS ARE 30 days or 2% for cash if paid within 10 days of date of invoice.

(3) It is agreed that explosives furnished under this contract are for consumption of the party of the second part only and not for sale except to its own sub-contractors or employes and that a violation of this clause gives the party of the first part the option of cancellation of this contract.

8174

(4) The party of the first part is to be responsible for delays caused by strikes, accidents or causes beyond its control.

(5) This contract to go into effect on 27th day of November, 1908, and continue in force until 1st day of January, 1910, and thereafter from year to year unless written notice is mailed to the address of either party, by the other, sixty (60) days prior to 1st day of January of any year, in which event upon the arrival of such date the contract is to be terminated. 8175

(6) This contract does not become binding until accepted by the E. I. DU PONT DE NEMOURS POWDER COMPANY, at its main office at Wilmington, Delaware.

E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Dale Bumstead
DOOLEY BROS.,
By R. A. Dooley.

Accepted at Wilmington, Del.,
Nov. 19, 1908.
E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Wm. Coyne.

8176 **Plaintiff's Exhibit 1247-R.**

THIS CONTRACT entered into this 30th day of November, 1908, by and between the E. I. DU PONT DE NEMOURS POWDER COMPANY, a corporation of the state of New Jersey, party of the first part, and DOOLEY BROTHERS, PEORIA, ILLINOIS, party of the second part.

(1) WITNESSETH: That the party of the first part hereby sells and the party of the second part hereby purchases all of the explosive and blast-
8177 ing supply requirements, required by the party of the second part, during the period of this contract for use of Applegate & Lewis Coal Co., of Peoria, Ills., mines at Hanna City, Ill., at the following prices:

BLASTING POWDER: 800 kegs or over, $1.10 per keg, delivered f.o.b. nearest Railway Station. Less 5c per keg commission to Dooley Brothers.

BLASTING SUPPLIES.

8178 Any other explosives or blasting supplies not specified in this contract to be furnished at current prices which are charged by the du Pont Company in the district in which the explosives or blasting supplies are to be used.

The prices herein are based on present freight rates, and present minimum carload quantity, but in case the present freight rates or present minimum carload quantity are increased or decreased during the existence of this contract, the amount of such increase or decrease shall be added to or deducted from the above prices.

The prices herein are also based on present method of packing and transporting powder, but in case the present method of packing and transporting powder is prevented by law or Railway Association regulations during the existence of this con-

tract, then in that event this contract may, at the election of the party of the first part, be terminated.

The following conditions are mutually accepted:

(2) TERMS ARE 30 days or 2% off for cash if paid within 10 days from date of invoice.

(3) It is agreed that explosives furnished under this contract are for consumption of the party of the second part only and not for sale except to its own sub-contractors or employes and that a vio- 8180
lation of this clause gives the party of the first part the option of cancellation of this contract.

(4) The party of the first part is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

(5) This contract to go into effect on 30th day of November, 1908, and continue in force until 1st day of January, 1910, and thereafter from year to year unless written notice is mailed to the address of either party, by the other, sixty (60) days prior 8181
to 1st day of January of any year, in which event upon the arrival of such date the contract is to be terminated.

(6) This contract does not become binding until accepted by the E. I. DU PONT DE NEMOURS POWDER COMPANY, at its main office, Wilmington, Delaware.

E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Dale Bumstead.

DOOLEY BROS.,
By R. A. Dooley.

ACCEPTED at Wilmington, Del.,
Nov. 19, 1908.

E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Wm. Coyne.

8182 *Plaintiff's Exhibit 1247-R*

Plaintiff's Exhibit 1247-A, is a contract dated January 1, 1908, identical in all respects with Plaintiff's Exhibit 1247-R except that the customer to be supplied is the Champion Coal Company of Pekin, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs or over, $1.10 per keg, delivered f.o.b. nearest Railway Station. Carloads: 400 kegs or less than 800 kegs, $1.12½ per keg,
8183 delivered f.o.b. nearest Railway Station. Less 5c per keg commission to Dooley Bros."

The contract goes into effect Jan. 1, 1908, and continues in force to Jan. 1, 1910.

Plaintiff's Exhibit 1247-T, is a contract dated October 23rd, 1908, identical in all respects with Plaintiff's Exhibit 1247-R, except that the customer to be supplied is the Fairbury Coal Company, Fairbury, Illinois, and the prices for blasting powder are as follows:

"Blasting Powder: 800 kegs or over, $1.10 per
8184 keg delivered f.o.b. nearest Railway Station; 400 kegs and not less than 800 kegs, $1.12½ per keg, delivered f.o.b. nearest Railway Station. Less 5c per keg commission to Messrs. Dooley Brothers."

The contract goes into effect Oct. 23, 1908, and continues in force to Jan. 1, 1910.

Plaintiff's Exhibit 1247-U, is a contract dated November 29th, 1908, identical in all respects with Plaintiff's Exhibit 1247-R, except that the customer to be supplied is Harry C. Hill, Fairview, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs or over, $1.10 per keg, delievered f.o.b. nearest Railroad Station; 400 kegs or less than 800 kegs, $1.12½ per keg, delivered

f.o.b. nearest Railroad Station. Less 5c per keg commission to Dooley Brothers."

The contract goes into effect Nov. 29, 1908, and continues in force until Jan. 1, 1910.

Subdivision (3) reads: "It is agreed that explosive furnished under this contract are to be sold by the party of the second part to the mines located in and around Fairview, Illinois, and the minimum retail price to be $1.40 per keg f.o.b. Fairview, Illinois."

8186

Plaintiff's Exhibit 1247-V, is a contract dated November 30, 1908, identical in all respects with Plaintiff's Exhibit 1247-R, except that the customer to be supplied is Mapleton Coal Company (Successors to W. E. Foley, Mapleton, Illinois, and the prices for blasting powder are as follows:

"Carloads 800 kegs or over, $1.10 per keg, delivered f.o.b. nearest Railway Station. Carloads: 400 kegs or less than 800 kegs, $1.12½ per keg, delivered f.o.b. nearest Railway Station. Less 5c per keg commission to Dooley Brothers." 8187

The contract goes into effect Nov. 30, 1908, and continues in force until Jan. 1, 1910.

Plaintiff's Exhibit 1247-X, is a contract dated November 25th, 1908, identical in all respects with Plaintiff's Exhibit 1247-R, except that the customer to be supplied is Olympia Coal Company of Edwards, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs or over, $1.10 per keg, delivered f.o.b. nearest Railroad Station. Carloads: 400 kegs or less than 800 kegs, $1.12½ per keg, delivered f.o.b. nearest Railway Station. Less than 5c per keg commission to Dooley Bros."

The contract goes into effect Nov. 25, 1908, and continues in force until Jan. 1, 1910.

8188 *Plaintiff's Exhibit 1247-R*

Plaintiff's Exhibit 1247-Z, is a contract dated November 29th, 1908, identical in all respects with Plaintiff's Exhibit 1247-R, except that the customer to be supplied is Spoon River Coal Company of Ellisville, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs or over, $1.10 per keg, delivered f.o.b. nearest Railroad Station. Carloads: 400 kegs or less than 800 kegs, $1.12½ per keg, delivered, f.o.b. nearest Railroad Station. Less 5c
8189 per keg commission to Messrs. Dooley Bros."

The contract goes into effect Nov. 29, 1908, and continues in force until Jan. 1, 1910.

Plaintiff's Exhibit 1247-BB, is a contract dated November 30, 1908, identical in all respects with Plaintiff's Exhibit 1247-R, except that the customer to be supplied is Simmons Coal Company, of Canton, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs or over, $1.10 per keg, delivered f.o.b. nearest Railway Station. Less 5c per
8190 keg commission to Messrs. Dooley Bros."

The contract goes into effect Nov. 30, 1908, and continues in force until Jan. 1, 1910.

Pliantiff's Exhibit 1247-CC, is a contract dated November 27th, 1908, identical in all respects with Plaintiff's Exhibit 1247-R, except that the customer to be supplied is Treasure Coal Company of Bartonville, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs or over, $1.10 per keg, delivered f.o.b. nearest Railroad Station. Less 5c per keg commission to Dooley Brothers."

The contract goes into effect Nov. 27, 1908, and continues in force until Jan. 1, 1910.

Plaintiff's Exhibit 1247-R 8191

Plaintiff's Exhibit 1247-DD, is a contract dated November 27th, 1908, identical in all respects with Plaintiff's Exhibit 1247-R, except that the customer to be supplied is George Vicary of Peoria, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs or over, $1.10 per keg, delivered f.o.b. nearest Railway Station. Carloads: 400 kegs or less than 800 kegs, $1.12½ per keg, f.o.b. delivered nearest Railway Station. Less 5c commission per keg to Dooley Bros."

The contract goes into effect Nov. 27, 1908, and 8192
continues in force until Jan. 1, 1910.

Plaintiff's Exhibit 755, is a contract dated November 29th, 1908, identical in all respects with Plaintiff's Exhibit 1247-R, except that the customer to be supplied is I. Wantling Coal Company, of Peoria, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs or over, $1.10 per keg delivered f.o.b. nearest Railroad Station. Carloads: 400 kegs or less than 800 kegs, $1.12½ per keg, f.o.b. delivered nearest Railway Station. Less commission of 5c per keg to Messrs. Dooley Brothers." 8193

This contract goes into effect Nov. 29, 1908, and continues in force until Jan. 1, 1910.

Plaintiff's Exhibit 1247-EE, is a contract dated November 30th, 1908, identical in all respects with Plaintiff's Exhibit 1247-R, except that the customer to be supplied is Winters Coal Company, Peoria, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs or over, $1.10 per keg delivered f.o.b. nearest Railway Station. Less commission of five cents (5c) per keg to Dooley Brothers."

8194 *Plaintiff's Exhibit 1247-R*

This contract goes into effect Nov. 30, 1908, and continues in force until Jan. 1, 1910.

Plaintiff's Exhibit 1247-FF is a contract dated November 30, 1908, identical in all respects with Plaintiff's Exhibit 1247-R, except that the customer to be supplied is Wolschlag Co-operative Coal Company, Peoria, Illinois, and the prices for blasting powder are as follows:

"Carloads: 800 kegs or over, $1.10 per keg delivered f.o.b. nearest Railway Station. Less 5c per
8195 keg commission to Messrs. Dooley Bros."

This contract goes into effect Nov. 30, 1908, and continues in force until Jan. 1, 1910.

Plaintiff's Exhibit 1247-V.

THIS CONTRACT entered into this 10th day of November, 1908, by and between the E. I. DU PONT DE NEMOURS POWDER COMPANY, a corporation of the State of New Jersey, party of the first part, and Messrs. Dooley Brothers, Peoria, Illinois,
8196 party of the second part.

(1) WITNESSETH: That the party of the first part hereby sells and the party of the second part hereby purchases all of the explosives and blasting supply requirements, required by the party of the second part, during the period of this contract, for use or sale in the Peoria coal mining district, at the following prices:

BLASTING POWDER, CARLOAD LOTS: f. o. b. Peoria, Illinois, direct sale to the party of the second part for local sale and distribution by the

party of the second part: 800 kegs or more, one shipment, $1.10 per keg, net; 400 kegs or less than 800 kegs, one shipment, $1.12½ per keg, net. Carload shipments: Made by the party of the first part direct to customers of the party of the second part in the Peoria coal mining district, f. o. b. nearest railroad station: 800 kegs or more, one shipment, $1.10 per keg, less 5c per keg commission to party of the second part; 400 kegs or less than 800 kegs, one shipment, $1.12½ per keg, less 5s per keg commission to party of the second part.

Any other explosives or blasting supplies not 8198
specified in this contract to be furnished at current prices which are charged by the du Pont Company in the district in which the explosives or blasting supplies are to be used.

The prices herein are based on present freight rates, and present minimum carload quantity, but in case the present freight rates or present minimum carload quantity are increased or decreased during the existence of this contract, the amount of such increase or decrease shall be added to or deducted from the above prices.

The prices herein are also based on present method of packing and transporting powder, but 8199
in case the present method of packing and transporting powder is prevented by law or railway association regulations during the existence of this contract, then in that event this contract may, at the election of the party of the first part, be terminated.

The following conditions are mutually accepted:

Party of the second part to make carload sales only to such customers as may be approved by the party of the first part.

Sales of less than carload lots by party of the second part are to be confined to Peoria County,

8200 *Plaintiff's Exhibit 1247-V*

Illinois, and to the Pekin mining district in Tazewell County, Illinois, unless special permission be first secured from party of the first part.

(4) The party of the first part is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

(5) This contract to go into effect on the tenth day of November, 1908, and continue in force until thirty-first day of December, 1909, and thereafter from year to year unless written notice is mailed to the address of either party, by the other, sixty
8201 (60) days prior to thirty-fist day of December of any year, in which event upon the arrival of such date the contract is to be terminated.

(6) This contract does not become binding until accepted by the E. I. DU PONT DE NEMOURS POWDER COMPANY, at its main office at Wilmington, Delaware.

E. I. DU PONT DE NEMOURS POWDER COMPANY,

By P. H. Donnelly, Salesman,

DOOLEY BROS.
By J. B. Dooley.

8202 ACCEPTED at Wilmington, Del.,
Aug. 17, 1908.
E. I. DU PONT DE NEMOURS POWDER COMPANY,
By Chas. L. Patterson.

Exhibit 1248.

95c PRICE AUTHORIZED BY SALES BOARD FOR OPEN OR CONTRACT TRADE BETWEEN MAY 1ST, 1905, AND OCTOBER 14TH, 1907, IN CINCINNATI, CHICAGO, ST. LOUIS AND KANSAS CITY DISTRICTS.

1905

DIST.	NAME	LOCATION	DATE AUTHORIZED	REMARKS
St. Louis	Willis Coal & Mng. Co.	Belleville, Ill.		
"	" " "	Willisville, Ill.		
"	" " "	Boyden, Ill.		
"	" " "	Sparta, Ill.	5/5/05	
"	" " "	Percy, Ill.		
"	Inc. in W. C. & M. Co's			
	Cont. is Oak Hill C. & M. Co.	Belleville, Ill.		
St. Louis	Western Anthracite C. & C. Co. covering			
"	St. Louis & O'Fallon C. Co.	Sparta, Ill.	5/9/05	
"	" " " "	Belleville, Ill.		
Chicago	Harder & Hafer covering the	following		
"	Keller Coal Co.	Clinton, Ind.		
"	" "	Shelburn, Ind.		
"	Union Coal Co.	Sullivan, Ind.	5/10/05	
"	No. Jackson Hill C. & M. Co.	Shelburn, Ind.		
"	Hymera C. & M. Co.	Hymera, Ind.		
"	Sullivan County C. Co.	Hymera, Ind.		
"	Glendora Mine Co.	Glendora, Ind.		
Chicago	Clinton Coal Co.	Clinton, Ind.		
"	No. Linton Coal Co.	Linton, Ind.	5/11/05	
"	Jasonville Coal Co.	Jasonville, Ind.		
"	Lewis C. & Mng. Co.	Coalmont, Ind.		
Chicago	Summit C. & M. Co.	Linton, Ind.	5/15/05	
"	Seller McClellan & Co.	Brazil, Ind.	5/15/05	
"	McClellan Sons & Co.	Clinton, Ind.	5/15/05	
"	Maple Valley Coal Co.	Clinton, Ind.	5/15/05	
"	Miami Coal Co.	Brazil, Ind.	5/15/05	
"	United C. M. Co. covering the	following		
"	Rock Run Coal Co.	Mecca, Ind.	5/15/05	
"	" " "	Montezuma, Ind.		
"	Linton Bituminous C. Co.	Linton, Ind.	5/15/05	Sales B. Min. 9/18/05 lists cont. dated 8/29/05 for 1 year.
"	Dering Coal Co.	Chicago, Ill.	5/15/05	
"	Central Coal Co. covering the	following		
"	Seeleyville C. & M. Co.	Seeleyville, Ind.		
"	Minshall Vein C. & M. Co.	Jessup, Ind.		
"	Raccoon Valley Mng. Co.	Coxville, Ind.	5/16/05	
"	Sugar Creek Coal Co.	W. Terre Haute,		
"	Greenfield C. & M. Co.	" " Ind.		
"	Asherville Mng. Co.	Asherville, Ind.		
"	Parke County Coal Co.	Rosedale, Ind.	5/16/05	
"	Ogara King & Co. covering the	following		
"	Vivian C. & Mng. Co.	Jasonville, Ind.		
"	Linco C. & Mng. Co.	Lyford, Ind.	5/16/05	
"	Jackson Hill C. & Co. Co.	Jackson Hill, Ind.		
"	" " "	Kolsem, Ind.	5/16/05	
"	So. Indiana Coal Co.	Chicago, Ill.	5/16/05	

Plaintiff's Exhibit 1248

DIST.	NAME	LOCATION	DATE AUTHORIZED	REMARKS
Cinn.	David Ingle	Ayrshire, Ind.	5/17/05	
"	" "	Evansville, Ind.		
Chicago	Brazil Block C. Co.	Brazil, Ind.	5/17/05	
"	Cloverleaf Coal Co.	Dugger, Ind.	5/17/05	
"	Sunflower Coal Co.	Dugger, Ind.		
"	White Rose Coal Co.	Bloomfield, Ind.	5/17/05	
Chicago	West Indiana C. Co.	Linton, Ind.	5/18/05	
"	Coal Bluff Mng. Co.	Terre Haute, Ind.	5/18/05	
"	India Southern C. Co.	Chicago, Ill.	5/18/05	
Cinn.	Chesapeake Cons. Co.	Maderia, Ohio	5/18/05	
"	John M. Murphy	" "	5/18/05	
Chicago	R. S. Tennants interests as follows			
"	Indiana Bituminous C. Co.	Turner, Ind.	5/18/05	
"	Cloverland C. & Mng. Co.	Silverwood, Ind.	5/18/05	
"	" "	Cloverland, Ind.		
Chicago	Peabody, Alwart C. M. Co.	Shelburn, Ind.	5/23/05	
"	Keystone Coal Co.	Midland, Ind.	5/23/05	
Chicago	Consolidated Indiana C. Co.	covering their interests.	5/24/05	S. B. Min. 8/22/05 lists cont. dated 7/1/05 for 1 year.
Chicago	Oak Hill C. & Mng. Co.	Clinton, Ind.	5/29/05	S. B. Min. 6/8/05 lists cont. dated 5/20/05 for 1 yr.
St. Louis	Bessemer Washed C. Co.	covering the following.		
"	Hippard Coal Co.	Belleville, Ill.		
"	Kolb Coal Co.	New Athens, Ill.		
"	Tirre C. & M. Co.	Lenzburg, Ill.		
"	Borders Coal Co.	Marissa, Ill.		
"	Johnson Coal Co.	Freeburg, Ill.		
"	" " "	Marissa, Ill.		
"	Avery C. & M. Co.	Freeburg, Ill.		
"	" " "	Belleville, Ill.		
"	" " "	Marissa, Ill.	5/31/05	
"	Tilden Coal Co.	Tilden, Ill.		
"	Crystan Coal Co.	" "		
"	J. A. Green	Coulterville, Ill.		S. B. Min. 1/26/06 authd. $1.00 price
Chicago	Marissa C. & M. Co.	White Oak, Ill.		
"	T. M. Meek Coal Co.	" " "		
St. Louis	White Walnut C. Co.	Pinckneyville, Ill.		
"	Herman Pfuhl	Belleville, Ill.		
"	D. Zihlsdorf	Marissa, Ill.		
"	Coulterville Mng. Co.	Counterville, Ill.		
St. Louis	Donk Bros. C. & C. Co.	Donkville, Ill.	6/13/05	
"	" " "	Maryville, Ill.		
Chicago	Mt. Olive & Staunton C. Co.	Staunton, Ill.	6/15/05	
"	Edwardsville Coal Co.	Edwardsville, Ill.	6/15/05	
Cinn.	Domestic Coal Company	Wellston, Ohio	6/23/05	
Chicago	Chas. F. Keefer C. Co.	Chicago, Ill.	7/20/05	
St. Louis	Chicago & Big Muddy C. & C. Co.	Marion, Ill.	7/28/05	

DIST.	NAME	LOCATION	DATE AUTHORIZED	REMARKS
Chicago	Eureka Block Coal Co.	Coal Bluff, Ind.		
"	" " " "	Linton, Ind.		
"	" " " "	Clay City, Ind.		
"	" " " "	Carbon, Ind.	8/1/05	
"	" " " "	Farmersburg, Ind.		
"	" " " "	Shirley Hill, Ind.		
"	" " " "	Perth, Ind.		
Chicago	Sullivan County C. Co.	Dugger, Ind.	8/7/05	S. B. Min. 8/22/05 lists cont. dated 8/15/05 for 1 year.
Chicago	Brazil Clay Co.	Brazil, Ind.	8/17/05	S. B. Min. 9/18/05 list cont. dated 8/26/05 for 1 year.

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DIST.	NAME	LOCATION	DATE AUTHORIZED	REMARKS
Chicago	Grant C. & M. Co.	Burnett, Ind.	8/23/05	
"	Collins Coal Co.	Brazil, Ind.	8/23/05	
"	Freeman Coal Co.	Bicknell, Ind.	8/23/05	
St. Louis	Kolb Coal Co.	Mascoutah, Ill.	8/28/05	
"	" " "	Belleville, Ill.		
St. Louis	O'Gara Coal Co.	Harrisburg, Ill.		
"	" " "	Ellorado, Ill.	8/30/05	
"	" " "	Ledford, Ill.		
"	" " "	Carrier Mills, Ill.		
Cinn.	New York Coal Co.	Columbus, Ohio	9/4/05	
St. Louis	Southern Coal Co.	Belleville, Ill.		
"	" " "	Germantown, Ill.	9/5/05	
Chicago	" " "	Southern, Ill.		
St. Louis	" " "	New Baden, Ill.		
Chicago	Lincoln C. & M. Co.	Chicago, Ill.	9/11/05	S. B. Min. 9/11/05 show cont.
"	Big Vein Mng. Co.	Coalmont, Ind.	9/11/05	dated 8/1/05 for 1 year.
Kansas	Kansas City So. R. R.	Pittsburg, Kans.	9/12/05	F. O. B. Pittsburg, Kans.
Cinn.	Vandalia Coal Co.	Indianapolis, Ind.	9/14/05	
St. Louis	Albert Hucke	Belleville, Ill.	9/14/05	
Chicago	Crawford Coal Co.	Brazil, Ind.	10/2/05	
"	" " "	Center Pt., Ind.		
Cinn.	Columbus Bk. & T. C. Co.	Union Furnace, O.	10/4/05	
Cinn.	Buckeye F. B. & Clay Co.	Scioto Furnace, O.	10/9/05	
"	Peebles Paving Bk. Co.	Portsmouth, Ohio	10/9/05	
"	Richardson Neudorfer & Silcox	" "	10/9/05	
Cinn.	Nelsonville Sewer P. Co.	Nelsonville, O.	10/11/05	
Chicago	Linn Coal Co.	Bicknell, Ind.	10/12/05	
Cinn.	C. A. Simms	Maderia, Ohio	10/13/05	
"	" "	Loveland, Ohio		
Chicago	McRoy Clay Works	Brazil, Ind.	10/16/05	
"	Davis Coal Co.	" "	10/16/05	
Cinn.	The Cochran Coal Co.	Jackson, Ohio	10/16/05	
Cinn.	Peabody Coal Co.	Shawanee, Ohio	10/17/05	
Chicago	Haatt & Persons	Jacksonville, Ind.	10/19/05	
Cinn.	New Pitts Coal Co.	Columbus, Ohio	10/19/05	
"	Halley Coal Co.	Pedro, Ohio	10/19/05	
Cinn.	Sunday Creek Coal Co.	Gloucester, Ohio		
"	" " " "	Jacksonville, O.		
"	" " " "	Nelsonville, O.		
"	" " " "	Hunterdon, O.	10/20/05	
"	" " " "	Rendville, Ohio		
"	" " " "	Floodwood, O.		
"	" " " "	Chauncey, O.		
"	" " " "	Continental, O.		
Cinn.	Mahoning Ore & Steel Co.	Hibbing, Minn.	10/24/05	
"	The Black Fork C. Co.	Black Fork, Ohio	10/24/05	
"	Ada Coal Co.	Cornelia, Ohio	10/24/05	
"	Portsmouth Harbinson & Walker Co.	So. Webster, Ohio	10/24/05	
"	Tropio Mng. Co.	Deaverton, Ohio	10/24/05	
Cinn.	Emma Coal Co.	Jackson, Ohio	10/26/05	
"	Wellston Coal Co.	Wellston, Ohio	10/26/05	
Cinn.	Tom Corwin C. Co.	Glenroy, Ohio	10/27/05	
Chicago	H. L. Metzer	Jasonville, Ind.	10/30/05	
Cinn.	Alma Coal Co.	Glen Roy, Ohio	11/6/06	
"	Chapman Coal Co.	Jackson, Ohio	11/6/05	
Chicago	Vulcan Coal Co.	Linton, Ind.	11/16/05	
Chicago	Letsinger C. Co.	Jasonville, Ind.	11/17/05	
Cinn.	Elkhorn Coal Co.	Jackson, Ohio	11/27/05	
Cinn.	Logan Brick Co.	Logan, Ohio	12/1/05	
Cinn.	E. O. Roberts	Chapman, Ohio	12/4/05	
St. Louis	Willis C. & M. Co.	Murphysboro, Ill.	12/8/05	

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DIST.	NAME	1906 LOCATION	DATE AUTHORIZED	REMARKS
Cinn.	The Johnson C. M. Co.	Hocking, Ohio	12/11/05	
"	Clark Bros.	Gloucester, Ohio	12/11/05	
Cinn.	The Indian Run Mng. Co.	Wellston, Ohio	12/12/05	
"	Hisylvania Store Co.	Trinble, Ohio	12/12/05	
Cinn.	McGee Coal Co.	Wellston, Ohio	12/14/05	
Cinn.	Moore & Co.	Ironton, Ohio	12/18/05	
Cinn.	Gallia Mng. Co.	Clarion, Ohio	12/22/05	
"	Hocking Mng. Co.	Carbondale, O.	12/22/05	
Cinn.	Mohr & Minton	McArthur, Ohio	12/26/05	
Cinn.	Morgan & Horton	Eiford, Ohio	12/27/05	
"	Pitts Mng. Co.	Minersville, O.	12/27/05	
Cinn.	Minshall C. M. Co.	Columbus, Ohio	12/28/05	
"	" " "	Carlton, Ohio		
"	" " "	New Lexington, O.		
	Successors to			
St. Louis	New Ohio Washed C. Co.	E. Cartersville, Ill.	1/2/06	
Cinn.	Alma Cement Co.	Wellston, Ohio	1/3/06	
St. Louis	Lumaghi Coal Co.	Collinsville, Ill.	1/10/06	
"	Williamson County C. Co.	Johnson, City, Ill.	1/10/06	S. B. Min. 2/18/06 lists cont. dated 2/3/06 for 1 year.
Cinn.	G. A. Davis & Co.	Shawnee, Ohio	1/10/06	
Cinn.	Essex Coal Co.	New Straitsville, O.	1/11/06	
"	Diamond Brick Co.	Oak Hill, Ohio	1/11/06	
Chicago	Kelly Coal Co.	Danville, Ill.	1/15/06	
Cinn.	A. Juniper & Sons	Nelsonville, O.	1/18/06	
Cinn.	Ohio F. B. Co.	Oak Hill, Ohio	1/19/06	
"	The Wellston Fuel Co.	Wellston, Ohio	1/19/06	
"	Comet Coal Co.	" "	1/19/06	
"	Manufactures Fuel Co.	Glencoe, Ohio	1/19/06	S. B. Min. 1/19/06 show cont. dated 1/1/05 for 1 year.
Cinn.	Oak Hill F. B. Co.	Oak Hill, Ohio	1/23/06	
Chicago	Bicknell Coal Co.	Bicknell, Ind.	1/22/06	
"	Illinois Collieries Co.	Virden, Ill.		
"	" " "	Chatham, Ill.		
"	" " "	Auburn, Ill.		
"	" " "	Litchfield, Ill.		
"	" " "	Springfield, Ill.		
"	Latham Coal Co.	Lincoln, Ill.	1/22/06	
"	Lincoln Coal Co.	" "		
"	Citizens C. M. Co.	Springfield, Ill.		
"	" "	Lincoln, Ill.		
"	Pettinger Davis M. & M. Co.	Centralia, Ill.		
"	Centralia M. & M. Co.	" "		
"	Sandoval C. & M. Co.	Sandoval, Ill.		
Cinn.	The Black Diamond C. Co.	Gallia, Ohio	1/24/06	
"	Chris. Holl	Logan, Ohio	1/24/06	
Cinn.	Jones & Morgan	Jackson, Ohio	1/25/06	
Cinn.	Imperial Mng. Co.	Belle Valley, Ohio	1/29/06	
"	Princeton C. M. Co.	Princeton, Ind.	1/29/06	
Cinn.	J. C. Garland & Co.	Dayton, Ohio	2/9/06	
Chicago	Utica Cement Mfg. Co.	Utica, Ill.	2/23/06	
Chicago	Hart & Page	Rockford, Ill.	2/27/06	
"	Utica Hydraulic C. Co.	Utica, Ill.	2/27/06	S. B. Min. 2/27/06 show cont. dated 2/26/05 for 1 year.
Chicago	Silverwood Coal Co.	Silverwood, Ind.	3/1/06	
St. Louis	Chicago & Carterville C. Co.	Herrin, Ill.	3/6/06	
"	Carterville Mng. Co.	Carterville, Ill.	3/6/06	
"	Sunnyside Coal Co.	Herrin, Ill.	3/6/06	
Cinn.	Louisville Cement Co.	Milltown, Ind.	3/8/06	
"	" " "	Speeds, Ind.		
"	Williams Coal Co.	McHenry, Ky.	3/8/06	
"	Taylor Coal Co.	Taylor Mines, Ky.	3/8/06	

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DIST.	NAME	LOCATION	DATE AUTHORIZED	REMARKS
Chicago	Chicago Linton C. Co.	Linton, Ind.	3/15/06	S. B. Min. 3/15/06 show cont. dated 3/1/06 for 1 yr.
St. Louis	Lake Creek Coal Co.	Johnson City, Ill.	3/19/06	
Cinn.	Valley Coal Co.	Inghams, Ohio	4/6/06	
Cinn.	The Buckeye Salt Co.	Pomeroy, Ohio	4/9/06	
Chicago	So. F. B. & Clay Co.	Hillsdale, Ind.	4/9/06	
"	C. F. Keeler Coal Co.	Atherton, Ind.	4/9/06	S. B. Min. 4/9/06 show cont. dated 5/1/06 for 1 yr.
Cinn.	Buckhorn Coal Co.	Olive Furnace, O.	4/10/06	
"	Mike Riley	Center Sta., O.	4/10/06	
St. Louis	C. G. Brechnitz	Belleville, Ill.	4/11/06	S. B. Min. dated 5/2/06 list cont. dated 4/11/06 for 1 yr.
Cinn.	Buckeye F. B. & Clay Co.	Siota Furnace, O.	4/18/06	
"	Straitsville Imp. Bk. Co.	New Straitsville, O.	4/18/06	
"	Wells Creek Supply Co.	Byesville, Ohio	4/18/06	
"	John Evans L. & S. Co.	Marion, Ohio	4/18/06	
Cinn.	Patrick Kehone & Co.	Sandusky, Ohio	4/23/06	
Cinn.	Hillsboro Stone Co.	Hillsboro, Ohio	4/24/06	
Cinn.	Avonelle Coal Co.	Zaleski, Ohio	4/25/06	
Chicago	Carter Constr. Co.	Independence, Ind.	4/26/06	S. B. Min. 7/30/06 lists cont. dated 5/9/06 for 1 yr.
"	" " "	Moran, Ind.		
St. Louis	Odin Coal Co.	Odin, Ill.	4/30/06	
"	Boyd Coal & Coke Co.	Sparta, Ill.	4/30/06	
"	White Walnut Coal Co.	Pinckneyville, Ill.	4/30/06	
Cinn.	Henking-Bovie Co.	Gallepolis, Ohio	4/30/06	
St. Louis	Marissa C. & Mng. Co.	Marissa, Ill.	4/30/06	
"	Watson Coal Co.	Herrin, Ill.	4/30/06	S. B. Min. 6/27/06 lists cont. dated 6/9/06 for 1 yr.
"	Hemlock Coal Co.	Herrin, Ill.	4/30/06	S. B. Min. 6/28/06 lists cont. dated 6/9/06 for 1 yr.
Chicago	Spencer Stone Co.	Spencer, Ind.	5/4/06	
Cinn.	Martin & Sines	New Straitsville, O.	5/4/06	
Cinn.	Moores Lime Co.	Cold Springs, O.	5/7/06	
Chicago	Bell & Zollar Coal Co.	Centralia, Ill.	5/23/06	
St. Louis	St. Louis & O'Fallon	French Village, Ill.	5/28/06	S. B. Min. 5/28/06 show cont. dated 5/10/06 for 1 year.
St. Louis	S. B. Eaton & Co.	Du Quoin, Ill.	6/4/06	
"	Muddy Valley M. & M. Co.	Hallidayboro, Ill.	6/4/06	
"	Forester C. & C. Co.	" "	6/4/06	
"	Carterville & Big M. C. Co.	Carterville, Ill.	6/4/06	S. B. Min. dated 6/28/06 lists cont. dated 6/9/06 for 1 yr.
"	Carterville Coal Co.	" "	6/4/06	S. B. Min. 6/27/06 lists cont. dated 6/7/06 for 1 yr.
"	Donaly-Koennocke C. Co.	" "	6/4/06	
"	Bresse Trenton Mng. Co.	Breese, Ill.	6/4/06	
"	" " "	Trenton, Ill.		
Chicago	" " "	Buxton, Ill.		
St. Louis	Rutledge & Taylor C. Co.	Trenton, Ill.	6/11/06	S. B. Min. 6/27/06 lists cont. dated 6/16/06 for 1 yr.
"	" " "	Worden, Ill.		
"	Joseph Taylor	O'Fallon, Ill.	6/11/06	S. B. Min. 6/28/06 lists cont. dated 6/19/06 for 1 yr.
Cinn.	C. A. Sims & Co.	Clare, Ohio	6/11/06	
Cinn.	New England Coal Co.	Columbus, Ohio	6/12/06	
St. Louis	The Benton Coal Co.	Benton, Ill.	6/13/06	
Cinn.	R. L. Sharp Stone Co.	Columbus, Ohio	6/15/06	
St. Louis	Chicago & Marion C. Co.	Marion, Ill.	6/18/06	S. B. Min. 7/16/06 lists cont. dated 7/14/06 for 1 yr.

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DIST.	NAME	LOCATION	DATE AUTHORIZED	REMARKS
Cinn.	Aberdeen Coal Co.	Winslow, Ind.	6/21/06	
"	W. A. Gosline & Co.	Jackson, Ohio	6/21/06	
Chicago	C. Ehrlich Coal Co.	Turner, Ind.	6/21/06	S. B. Min. 11/1/06 lists cont. dated 9/29/06 for 1 yr.
Chicago	Diamond C. & Mng. Co.	Chicago, Ill.	6/22/06	
"	Prairie State C. & C. Co.	Nilwood, Ill.	6/22/06	S. B. Min. 7/16/06 lists contract dated 5/1/06 for 1 year.
"	So. Mountain Coal Co.	Petersburg, Ill.	6/22/06	
"	Athens Mining Co.	Athens, Ill.	6/22/06	
St. Louis	Centralia Coal Co.	Centralia, Ill.	6/22/06	
Chicago	Refrior Barr Co.	Ottawa, Ill.	6/22/06	
"	Wabash Coal Co.	Dawson, Ill.	6/22/06	
"	Springfield C. M. Co.	Springfield, Ill.	6/22/06	
"	Spencer Stone Co.	Sullivan, Ind.	6/22/06	
St. Louis	Summit C. & M. Co.	Belleville, Ill.	6/25/06	
"	Johnson Coal Co.	" "	6/25/06	
"	" " "	Freeburg, Ill.		
"	" " "	Marissa, Ill.		
"	Carterville Dist. C. Co.	Marion, Ill.	6/25/06	
"	Fullerton C. & M. Co.	Belleville, Ill.	6/25/06	
"	Boehmer Coal Co., covering the following		6/25/06	
"	Suburban C. & M. Co	Belleville, Ill.		
"	Superior C. & M. Co.	" "		
"	Pittsburg Coal Co.	" "		
"	Murphy Mine	" "		
Chicago	Auburn & Alton C. Co.	Auburn, Ill.	6/27/06	
"	Tuxhorn Coal Co.	Keys, Ill.	6/27/06	S. B. Min. 7/16/06 lists contract dated 6/1/06 for 1 year.
"	Chicago Collieries Co.	Catlin, Ill.	6/27/06	
St. Louis	Chicago & Big M. C. & C. Co.	Marion, Ill.	6/27/06	S. B. Min. 6/27/06 show cont. dated 7/1/06 for 1 yr.
Chicago	" " "	Bicknell, Ind.		
Chicago	Empire Coal Co.	Viola, Ill.	6/27/06	S. B. Min. 6/27/06 show contract dated 6/9/06 for 1 yr.
Chicago	Keller Coal Co.	Chicago, Ill.	6/28/06	
"	Superior Coal Co.	Terre Haute, Ind.	6/28/06	
"	Vigo County Coal Co.	Seeleyville, Ind.	6/28/06	
"	Brazil Block Coal Co.	Brazil, Ind.	6/28/06	
"	Grant C. & M. Co.	Burnett, Ind.	6/28/06	
"	Vandalia Coal Co.	Chicago, Ill.	6/28/06	
"	Indiana So. Coal Co.	Chicago, Ill.	6/28/06	
"	Coal Bluff Mng. Co.	Terre Haute, Ind.	6/28/06	
St. Louis	Kolb Coal Co.	Mascoutah, Ill.	6/28/06	S. B. Min. 6/28/06 show cont. dated 6/18/06 for 1 yr.
"	" " "	New Athens, Ill.		
Chicago	Petersburg C. M. Co.	Petersburg, Ill.	7/2/06	
"	Cantrall Co-Oper. C. Co.	Cantrall, Ill.	7/2/06	S. B. Min. 7/30/06 lists cont. dated 5/1/06 for 1 yr.
"	Black Diamond C. Co.	Auburn, Ill.	7/2/06	S. B. Min. 11/13/06 lists cont. dated 6/1/06 for 1 year.
St. Louis	Brilliant C. & C. Co.	Du Quoin, Ill.	7/2/06	
St. Louis	Little Muddy Coal Co.	Tamaroa, Ill.	7/5/06	
Chicago	Middletown Coal Co.	Middletown, Ill.	7/10/06	
St. Louis	Silver Creek C. & M. Co.	O'Fallon, Ill.	7/11/06	S. B. M. 8/12/06 lists cont. dated 8/19/06 for 1 year.
Chicago	Superior Block C. Co.	Brazil, Ind.	7/11/06	
"	United C. M. Co.	Mecca, Ind.	7/11/06	
"	O'Gara Coal Co.	Springfield, Ill.	7/11/06	
"	Lower Vein Block C. Co.	Brazil, Ind.	7/11/06	S. B. Min. 8/13/06 lists cont. dated 8/19/06 for 1 year.
"	Collins Coal Co.	" "	7/11/06	S. B. Min. 10/3/06 lists cont. dated 8/15/06 for 1 year.

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DIST.	NAME	LOCATION	DATE AUTHORIZED	REMARKS
St. Louis	Robert Dick Coal Co.	Cambria, Ill.	7/16/06	
Chicago	Woodside Coal Co.	Springfield, Ill.	7/16/06	S. B. Min. 7/16/06 show cont. dated 5/1/06 for 1 year.
"	Diamond C. & M. Co.	Hymera, Ind.	7/16/06	S. B. Min. 7/16/06 show cont. dated 7/15/06 for 1 year.
"	Wabash Coal Co.	Dawson, Ill.	7/18/06	S. B. Min. 7/16/06 show cont. dated 5/1/06 for 1 year.
"	" " "	Athens, Ill.		
"	Tirre Coal & Mng. Co.	Lenzburg, Ill.	7/16/06	S. B. Min. 7/16/06 show cont. dated 6/26/06 for 1 year.
"	Middletown Coal Co.	Middletown, Ill.	7/16/06	S. B. Min. 7/16/06 show cont. dated 6/1/06 for 1 year.
"	Luhrig Coal Co.	Luhrig, Ohio	7/16/06	S. B. Min. 7/16/06 show cont. dated 7/3/06 for 1 year.
"	Standard Washed Coal Co.	Bissell, Ill.	7/16/06	S. B. Min. 7/16/06 show cont. dated 5/1/06 for 1 year.
"	" " " "	Spaulding, Ill.		
"	Calora Coal Ci.	Jasonville, Ind.	7/16/06	S. B. Min. 7/16/06 show cont. dated 6/29/06 for 1 year.
"	Jasonville Coal Co.	Cleveland, Ohio	7/16/06	
"	Springfield Coll. Co.	Springfield, Ill.	7/16/06	
"	Springfield Co-op. C. Co.	" "	7/16/06	S. B. Min. 7/30/06 lists cont. dated 5/1/06 for 1 year.
"	Queen Coal Mng. Co.	Jasonville, Ind.	7/16/06	S. B. Min. 11/28/06 lists cont. dated 11/7/06 for 1 year.
"	Sangamon Coal Co.	Springfield, Ill.	7/16/06	
Chicago	Capital Coal Co.	Springfield, Ill.	7/18/06	S. B. Min. 9/5/06 show cont. dated 5/1/06 for 1 year.
Cinn.	Ayrshire Coal Co.	Ayrshire, Ind.	7/23/06	
Chicago	Williamsville Coal Co.	Williamsville, Ill.	7/26/06	S. B. Min. 9/5/06 lists cont. dated 5/1/06 for 1 year.
Chicago	Crystal Coal Co.	Tilden, Ill.	7/30/06	S. B. Min. 8/31/06 lists cont. dated 8/2/06 for 1 year.
Cinn.	New Pittsburg Coal Co.	New Pitts., Ohio		
"	" " " " "	Consol, Ohio		
"	" " " " "	Buchtel, Ohio	7/30/06	S. B. Min. 7/30/06 show cont dated 7/17/06 for 1 year.
"	" " " " "	Murray City, O.		
"	" " " " "	Monday, Ohio		
"	" " " " "	Beaumont, Ohio		
"	Armstrong Coal Co.	Jackson, Ohio	7/30/06	S. B. Min. 7/30/06 show cont. dated 7/13/06 for 1 year.
Cinn.	Hocking Mng. Co.	Carbondale, Ohio	7/31/06	
Cinn.	Ohio Portland Cem. Co.	Cornelia, Ohio	8/2/06	
Cinn.	J. H. Sellers	Gloucester, Ohio	8/6/06	
Cinn.	The Peabody Coal Co.	McCunesville, O.	8/8/06	
Cinn.	O'Gara Coal Co.	Fairmont, Ohio		
"	" " "	Bell Valley, O.	8/9/06	
Chicago	Barclay C. & Mng. Co.	Barclay, Ill.	8/9/06	
"	Cora Coal Co.	Springfield, Ill.	8/9/06	
St. Louis	Bailey Bros. Coal Co.	Sunfield, Ill.	8/13/06	
Cinn.	Globe Iron Co.	Jackson, Ohio	8/13/06	
Cinn.	C. L. Poston	Nelsonville, Ohio	8/20/06	
Chicago	Cora Coal Co.	Andrews, Ill.	8/24/06	
"	Electric Coal Co.	Danville, Ill.	8/24/06	
"	Tilton Coal Co.	" "	8/24/06	
Cinn.	The Williams Bros. & Morse Co.	Macedonia, Ohio	8/24/06	
Chicago	Johnson City & Big Muddy C. & M. Co.	Chicago, Ill.	8/29/06	
Chicago	Rush Coal Co.	Cates, Ind.	8/31/06	S. B. Min. 8/31/06 show cont. dated 8/23/06 for 1 year.
"	A. H. Whitsett Coal Co.	Shelburn, Ind.	8/31/06	S. B. Min. 8/31/06 show cont. dated 8/4/06 for 1 year.

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DIST.	NAME	LOCATION	DATE AUTHORIZED	REMARKS
"	Peabody Coal Co.	Shawnee, Ohio	8/31/06	S. B. Min. 8/31/06 show cont. dated 8/4/06 for 1 year.
"	Kettle Creek Mng. Co.	Shelburn, Ind.	8/31/06	S. B. Min. 8/31/06 show cont. dated 8/1/06 for 1 year.
"	Penn. & Indiana Coal Co.	Midland, Ind.	8/31/06	S. B. Min. 8/31/06 show cont. dated 7/30/06 for 1 year.
Cinn.	New England Coal Co.	Santoy, Ohio	9/3/06	
St. Louis	Imperial C. & Mng. Co.	Du Quoin, Ill.	9/3/06	
St. Louis	Missouri & Illinois C. Co.	Wilderman, Ill.		
"	" " "	Belleville, Ill.		
"	" " "	Rentchler, Ill.	9/5/06	S. B. Min. 9/5/06 show cont. dated 8/1/06 for 1 year.
"	" " "	Willisville, Ill.		
Chicago	Sunflower Coal Co.	Bloomfield, Ind.	9/5/06	
"	Harrison C. & Mng. Co.	Clay City, Ind.	9/5/06	
"	Newsam Bros.	Peoria, Ill.	9/5/06	
"	Blue Mound C. Co.	Blue Mound, Ill.	9/5/06	
Cinn.	Gallia Mng. Co.	Clarion, Ohio	9/13/06	
Chicago	P. F. Sullivan	Linton, Ind.	9/13/06	
Cinn.	Cochran & Pinkerton	Malta, Ohio	9/19/06	
Chicago	S. Wolschlag & Bros.	Peoria, Ill.	9/30/06	
St. Louis	Forester C. & C. Co.	Du Quoin, Ill.		
Chicago	Big Creek Coal Co.	St. David, Ill.	9/26/06	
Cinn.	Dayton Coal & Iron Co.	Wellston, Ohio		
St. Louis	Breese-Trenton Mng. Co.	Beckmeyer, Ill.	10/1/06	
St. Louis	Buckeye Coal Co.	Coalton, Ohio	10/3/06	
Chicago	Lower Vein Coal Co.	W. Terre Haute, Ind.	10/3/06	S. B. Min. 10/3/06 show cont. dated 9/15/06 for 1 year.
"	Sullivan County C. Co.	Dugger, Ind.	10/3/06	S. B. Min. 10/3/06 show cont. dated 9/15/06 for 1 year.
"	Brazil Clay Co.	Brazil, Ind.	10/3/06	S. B. Min. 10/3/06 show cont. dated 8/25/06 for 1 year.
St. Louis	Majestic C. & C. Co.	Du Quoin, Ill.	10/5/06	
Chicago	West End Coal Co.	Springfield, Ill.	10/9/06	
"	Clinton Coal Co.	Clinton, Ind.	10/9/06	
"	Monmouth Coal Co.	Bereton, Ill.	10/9/06	
"	The Coalfield Co.	Coal City, Ill.	10/9/06	
St. Louis	Columbus Quarry Co.	St. Louis, Mo.	10/12/06	
Cinn.	Superior Coal Co.	Wellston, Ohio	10/12/06	
Chicago	Smith Lohr. C. Mng. Co.	Chicago, Ill.	10/22/06	
St. Louis	Borders Coal Co.	Marissa, Ill.	10/24/06	
Chicago	Rush Coal Co.	Toledo, Ohio	10/26/06	
"	United Coal Mng. Co.	Chicago, Ill.	10/26/06	
"	Bradfield & Dixon	Mecca, Ind.	10/26/06	
St. Louis	Donk Bros. C. & C. Co.	Troy, Ill.	11/1/06	
Cinn.	Superior Port. Cem. Co.	Bartles, Ohio	11/1/06	
Chicago	Peabody Alwart C. Mng. Co.	Shelburn, Ind.	11/1/06	
"	Krapp & Less	Coal Valley, Ill.	11/1/06	
"	Cayuga Bk. & Coal Co.	Cayuga, Ind.	11/1/06	S. B. Min. 11/1/06 show cont. dated 10/6/06 for 1 year.
St. Louis	So. Coal & Mng. Co.	Belleville, Ill.		
"	" " "	New Baden, Ill.	11/1/06	S. B. Min. 11/1/06 show cont. dated 10/1/06 for 1 year.
"	" " "	Germantown, Ill.		
Chicago	Grant Coal Mng. Co.	Burnett, Ind.	11/1/06	
St. Louis	Hafer Washed C. Co.	Carterville, Ill.	11/5/06	S. B. Min. 11/1/06 show cont. dated 10/11/06 for 1 year.
Cinn.	The Hocking Coal Ex. & Mng. Co.	Buchtel, Ohio	11/5/06	
Chicago	Spring Creek Coal Co.	Springfield, Ill.	11/5/06	
Chicago	Vulcan Coal Co.	Indianapolis, Ind.	11/13/06	
"	Knox Coal Co.	Bicknell, Ind.	11/13/06	
Cinn.	Moore & Co.	Ironton, Ohio	11/13/06	
Chicago	Decatur Coal Co.	Decatur, Ill.	11/13/06	S. B. Min. 11/13/06 show cont. dated 9/1/06 for 1 year.

Plaintiff's Exhibit 1248

DIST.	NAME	LOCATION	DATE AUTHORIZED	REMARKS
"	Tallula Coal Co.	Yallula, Ill.	11/13/06	S. B. Min. 11/13/06 show cont. dated 9/1/06 for 1 year.
"	Carlisle Coal & Clay Co.	Carlisle, Ind.	11/13/06	S. B. Min. 11/13/06 show cont. dated 10/27/06 for 1 yr.
St. Louis	Jones Bros. C. & M. Co.	Marissa, Ill.	11/26/06	
Chicago	Norris Coal Mng. Co.	Norris, Ill.	11/28/06	S. B. Min. 11/28/06 show cont. dated 8/1/06 for 1 year.
St. Louis	Miller-Horn Coal Co.	Du Quoin, Ill.	12/3/06	
Chicago	Roanoke C. & Mng. Co.	Roanoke, Ill.	12/6/06	
Chicago	The Jones & Adams Co.	Springfield, Ill.	12/14/06	
St. Louis	Southern C. & M. Co.	Miller Sta., Mo.	12/14/06	

1907

DIST.	NAME	LOCATION	DATE AUTHORIZED	REMARKS
Chicago	Zeller McClellan & Co.	Brazil, Ind.	1/3/07	S. B. Min. 1/3/07 shows cont. dated 1/4/07 for one year.
Chicago	Northern Fuel Co.	Jacksonville, O.	1/3/07	S. B. Min. 1/3/07 shows cont. dated 12/29/06 for one year.
Chicago	New England Coal Co.	San Toy, O.	1/3/07	S. B Min. 1/3/07 shows cont. dated 12/29/06 for one year.
St. Louis	Southern Coal M. Co.	St. Louis, Mo.	1/3/07	
Cinn.	Silver Run Coal Co.	Silver Run, O.	1/3/07	
St. Louis	Rutledge & Taylor C. Co.	Trenton, Ill.	1/8/07	
St. Louis	Hafer Washed Coal Co.	Carterville, Ill.	1/8/07	
St. Louis	Ziegler Dist. Coll. Co.	Christopher, Ill.	1/8/07	
St. Louis	Sesser Constr. Co.	Chicago, Ill.	1/10/07	
St. Louis	Greenwood-Davis C. Co.	Du Quoin, Ill.	1/15/07	
Chicago	Eureka Block Coal Co.	Perth, Ind.	1/15/07	S. B. Min. 1/15/07 shows cont. dated 1/10/07 for one year.
Chicago	Knox Coal Co.	Bicknell, Ind.	1/15/07	S. B. Min. 1/15/07 shows cont. dated 1/1/07 for one year.
St. Louis	Borders Coal Co.	St. Louis, Mo.	1/15/07	S. B. Min. 8/1/07 lists cont. dated 7/12/07 for one year.
St. Louis	Sligo Furnace Co.	St. Louis, Mo.	1/15/07	
Cinn.	Buckhorn Coal Co.	Buckhorn, O.	1/15/07	
Chicago	Grant Coal & Mng. Co.	Burnett, Ind.	1/22/07	
Cinn.	Chicago & Hocking C. Co.	Columbus, O.	1/29/07	
Chicago	Illinois Coll. Co.	Auburn, Ill.	1/29/07	
Chicago	Williamsville C. Co.	Williamsville, Ill.	1/29/07	
Chicago	Barclay C. & Mng. Co.	Barclay, Ill.	1/29/07	
Chicago	Vandalia Coal Co.	Indianapolis, Ind.	1/29/07	
St. Louis	Tirre C. & Mng. Co.	Lenzburg, Ill.	2/5/07	S. B. Min. 8/1/07 lists contract dated 7/3/07 for 1 year.
Chicago	Coal Bluff Mng. Co.	Fontanet, Ind.	2/5/07	S. B. Min. 2/5/07 shows contract dated 1/5/07 for 1 year.
"	" " " "	Coal Bluff, "		
Chicago	Star Coal Co.	Streator, Ill.	2/5/07	
Chicago	Vivian C. & Mng. Co.	Chicago, Ill.	2/5/07	
Chicago	Canton Coal Co.	Canton, Ill.	2/5/07	
Chicago	United C. & Mfg. Co.	Chicago, Ill.	2/5/07	
St. Louis	Carterville Dist. C. Co.	Marion, Ill.	2/7/07	S. B. Min. 4/18/07 lists cont. dated 4/10/07 for one year.
Chicago	Woodside Coal Co.	Springfield, Ill.	2/7/07	
Chicago	Parke Co. Coal Co.	Rosedale, Ind.	2/7/07	S. B. Min. 2/12/07 shows cont. dated 1/28/07 for one year.
Chicago	Hudson C. & Mng. Co.	Chicago, Ill.	2/12/07	
Chicago	Lincoln Mng. Co.	Lincoln, Ill.	2/19/07	
Cinn.	Chicago & Hocking C. Co.	Corning, Ohio	2/26/07	

Plaintiff's Exhibit 1248

DIST.	NAME	LOCATION	DATE AUTHOR IZED	REMARKS
Chicago	Horney & Winterbottom	Washington, Ind.	3/5/07	
Cinn.	F. H. Blodgett & Co.	Alpine, Ky.	3/5/07	
Cinn.	New Pitts Coal Co.	Columbus, O.	3/21/07	
Chicago	John McVey	Danville, Ill.	3/21/07	
Chicago	Clarke C. & C. Co.	Bartlett, Ill.	3/26/07	
Kansas C.	Western C. & Mng. Co.	Corono, Mo.	3/26/07	
Cinn.	New Pitts Coal Co.	New Pittsburgh, O.		
"	" " " "	Monday, O.		
"	" " " "	Orbiston, O.	3/28/07	
"	" " " "	Murray, O.		
"	" " " "	Consol, O.		
Cinn.	Breakwater Const. Co.	Sandusky, O.	4/2/07	
Chicago	Clarke Coal & C. Co.	Peoria, Ill.	4/2/07	
Cinn.	The Ironclay Brick Co.	Shawnee, O.	4/16/07	
St. Louis	United Coal Mng. Co.	Christopher, Ill.	4/18/07	
"	Muddy Valley M. & M. Co.	Hallidayboro. Ill.	4/18/07	
St. Louis	Paradise C. & C. Co.	DuQuoin, Ill.	4/18/07	S. B. Min. 4/18/07 shows cont. dated 4/4/07 for 60 days.
St. Louis	Western Lime Works	St. Genevieve, Mo.	4/25/07	S. B. Min. 4/18/07 shows cont. dated 4/4/07 for 60 days.
St. Louis	Imperial Coal & Mng. Co.	DuQuoin, Ill.	4/30/07	
Cinn.	B. R. Billingsley	Wellston, O.	4/30/07	
St. Louis	G. W. Bigger	Marceline, Mo.	5/7/07	
Cinn.	Bristol Coal Co.	Newark, Ohio	5/7/07	
Cinn.	Kentucky C. M. Co.	Waverly, Ky.	5/7/07	
St. Louis	St. L. Port. Cement Co.	St. Louis, Mo.	5/14/07	
Chicago	O'Reilly Callahan & Given	Switz City, Ind.	5/14/07	
Chicago	Smith Lobo. C. Mng. Co.	Pana, Ill.	5/14/07	
Chicago	Avery Coal & Mng. Co.	White Oak Sta., Ill.	5/16/07	
Cinn.	Potaka River C. & C. Co.	Hartwell Jct., Ind.	5/21/07	
Cinn.	S. T. Copenhaver	Middletown, O.	5/21/07	
Cinn.	Ironclay Brick Co.	Shawnee, Ohio	5/21/07	
St. Louis	Avery C. & Mng. Co.	St. Louis, Mo.	5/23/07	
Kansas C.	The Wear Coal Co.	Pittsburgh, Kans.	5/30/07	
St. Louis	Saline Co. Coal Co.	Ledford, Ill.	6/11/07	
Cinn.	The Cochran & Pinkerton Co.	McConnellsville, O.	6/11/07	
Cinn.	Carter Constr. Co.	Indianapolis, Ind.	6/11/07	
St. Louis	Johnson Coal Co.	St. Louis, Mo.	6/13/07	S. B. Min. 6/11/07 shows cont. dated 5/9/07 for one year.
St. Louis	Mo. & Ill. Coal Co.	Willisville, Ill.	6/20/07	
"	Boehmer Coal Co.	Belleville, Ill.	6/20/07	
"	Carterville Coal Co.	Carterville, Ill.	6/20/07	S. B. Min. 6/20/07 shows cont. dated 6/13/07 for one year.
Chicago	T. J. O'Gara	Lyford, Ind.	6/20/07	S. B. Min. 6/20/07 shows cont. dated 6/6/07 for one year.
St. Louis	Breese-Trenton M. Co.	Beckemeyer, Ind.		S. B. Min. 6/20/07 shows cont. dated 6/4/07 for one year.
"	" " "	Breese, Ind.	6/20/07	
"	" " "	Trenton, Ill.		S. B. Min. 6/20/07 shows cont.
St. Louis	Paradise C. & Mng. Co.	Winkle Sta., Ill.	6/25/07	dated 6/1/07 for one year.
St. Louis	Jupiter C. & Mng. Co.	DuQuoin, Ill.	7/2/07	
Kansas C.	The J. R. Rowe C. Mng. Co.	Cherokee & Crawford Counties, Kas.	7/2/07	S. B. Min. 7/2/07 shows cont.
St. Louis	Johnson & Allen C. Co.	Cutler, Ill.	7/2/07	dated 6/24/07 for one year.
Kansas C.	The Cherokee & Pitts C. & Mng. Co.	Crawford Co., Ill.	7/18/07	S. B. Min. 7/2/07 shows cont. dated 7/1/07 for one year.
Kansas C.	Mo. Kas. & Tex. Ry.	Parsons, Kans.	7/25/07	S. B. Min. 7/18/07 shows cont. dated 6/1/07 for one year.
"	" " " "	Mineral, Kans.		
Chicago	Indiana Sou. Coal Co.	Gilmore, Ind.	7/25/07	
Chicago	Jos. Taylor Coal Co.	O'Fallon, Ill.	8/1/07	

Plaintiff's Exhibit 1248

DIST.	NAME	LOCATION	DATE AUTHORIZED	REMARKS
				S. B. Min. 8/1/07 shows cont.
Chicago	Chg. & Big Muddy C. & C. Co.	Becknell, Ind.	8/1/07	dated 7/5/07 for one year.
St. Louis	" " " "	Marion, Ill.		S. B. Min. 8/1/07 shows cont.
St. Louis	Kolb Coal Co.	Mascoutah, Ill.		dated 7/1/07 for one year.
"	" " "	New Athens, Ill.	8/1/07	
"	" " "	Berkners, Ill.		S. B. Min. 8/1/07 shows cont.
St. Louis	Benton Coal Co.	Benton, Ill.	8/8/07	dated 7/19/07 for one year.
				S. B. Min. 8/8/07 shows cont.
St. Louis	Fullerton Coal Co.	Belleville, Ill.	8/15/07	dated 7/26/07 for one year.
St. Louis	Cluley Miller Coal Co.	Furmans, Ill.	8/15/07	
Cinn.	Straitsville Imperv. Bk. Co.	New Straitsville, O.	8/15/07	
St. Louis	Centralia Coal Co.	Centralia, Ill.	8/22/07	
St. Louis	Co-operative Coal Co.	Breese, Ill.	8/22/07	
Cinn.	Hocking Fuel Co.	Gore, Ohio	9/3/07	
St. Louis	Robt. Dick Coal Co.	Cambria, Ill.	9/5/07	
Kansas C.	Fidelity C. Mng. Co.	Stone City, Kan.		
"	" " " "	Soammon, Kans.	9/10/07	
Cinn.	Gem Coal Co.	Greendale, O.	9/26/07	
Cinn.	Geo. Gibbs	Shawnee, O.	10/1/07	
"	S. B. Baker	Longstreth, O.	10/1/07	
St. Louis	Sou. C. & Mng. Co.	Belleville, Ill.		
"	" "	New Baden, Ill.	10/8/07	
"	" "	Germantown, Ill.		

Plaintiff's Exhibit 1300.

(Being summary of Plaintiff's Exhibits 1130 to 1137—also known as Government's Exhibits 17 to 24—Relating to Contracts).

DELIVERIES ON EXPIRED CONTRACTS:

Exhibit No. 1130 (Gov. Ex. No. 17).

Name and Address	Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. 3 Page No.
Big Muddy C. & I. Co., St. Louis Mo.	2/15/00	1 Yr.	1.25	15	1.10	13389	Equit.	1229 1338
Biwabik Ore Co., Biwabik, Minn.	6/2/99	2 "		12½		4000	Ohio	1201
Black Diamond Coal Co., Springfield, Ills.	1/1/01	1 "	1.25	10	1.15	7000	L. & R.	1251
Brannan, A. & Son, Bridgeport, Ohio	4/19/01	1 "	1.25	10	1.15	1700	du Pont	1281
Brown, C. C., Petersburg, Ills.	5/1/99	3 "	1.25	10	1.15	800	"	
Browning, J. L., Pocahontas, Va.	7/11/99	3 "	1.30	20	1.10	900	"	1203
Cable & Co., Cable, Ills.	7/1/99	3 "	1.25	15	1.10	10100	Hazard	
Cahaba South. Mfg. Co., Hargroove, Ala.	1/1/98	1 "	1.35	15	1.20	3600	Sycamore	1106
Canton Union C. & C. Co., Canton, Ills.	4/1/01	1 "	1.25	05	1.20	1717	Phoenix	1286
Chic. Wilmington & Vermil. C. Co., Chicago, Ills.	8/26/99	2 "	1.25	15	1.10	5500	Ohio	1197
Christy, C. Co., Des Moines, Iowa	5/1/99	3 "	1.35	10	1.25	2600	du Pont	1199
Coaldale C. & C. Co., Coaldale, West Va.	7/14/97	2 "	1.30	20	1.10	5000	King	1080
Coffeyville Vitrified B. & C. Co., Cherryvale, Kan.	4/27/01	1 "	1.25	10	1.15	800	du Pont	1295
Crawford C. Co., Brazil, Ind.	11/3/98	2 "	1.25	20	1.05	5000	Ohio	1177

CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT.

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
6/2/99	2 Yr.			1.30	Ohio	77
12/16/02	2 "	1.42½	12½	1.30	"	78
4/19/01	1 "	1.25	10	1.15	du P. & Co.	79
5/1/04	3 "			1.15		1143
5/1/99	3 "	1.25	10	1.15	du P. & Co.	80
12/16/02	2 "			1.15	Ohio	81
8/1/03	3 "	1.35	10	1.25	du P. Co.	720
1/1/08	1 "	1.05		1.05	du P. Co.	721-3

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Dana, J. E., Coaburg, West Va.	7/28/97	2 "	1.25	15	1.10	3900	King	1079							
Davison & Fulton, Sparta, Ills.	1/7/01	1 "	1.25	05	1.20	1400	Phoenix	1269 1337							
Dayton C. & I. Co., Ltd., Dayton, Tenn.	1/28/01	1 "	1.35	25	1.10	3300	Chatt.	1325							
Dick Robt. Coal Co., Carterville, Ills.	3/20/01	1 "	1.25	05	1.20	800	du Pont	1289	3/20/01	1 "	1.25	05	1.20	du P. & Co.	82
									3/20/02	1 "	1.25	05	1.20	"	82
									6/22/03	1 "	1.35	10	1.25	"	83
Western Antra C. & C. Co., Du Quoin, Ills.	6/15/98	2 Yr.	1.25	15	1.10	6400	Phoenix								
Eagle C. Co., Lexington, Ky.	1/1/00	2 "	1.30	15	1.15	5600	Chatt.								
East Tenn. C. Co., Jellico, Tenn.			1.35	10	1.25	800	du Pont	1294							
Ehrlick, Jul., Steeleyville, Ind.	11/10/99	2 "	1.25	20	1.05	1600	Ohio	1219							
Ellsworth J. W. & Co., Mich., W. Va. & Pa.	7/10/00	2 "		15		3200	Austin	1284							
Francy, John Co., Toronto, Ohio	4/18/01	1 "	1.25	10	1.15	2250	du Pont	1294	4/18/01	1 Yr.	1.25	10	1.15	du P. & Co.	84
Gen. Hocking C. Co., Columbus, Ohio	12/8/98	3 "	1.25	15	1.10	400	King								
Great Elk C. Co., Carbon Hill, Ala.	5/22/01	1 "	1.35	10	1.25	800	du Pont	1295	5/22/01	1 "	1.35	10	1.25	"	855
									5/22/02	1 "	1.35	10	1.25	"	86
									6/23/03	3 "	1.45	10	1.35	"	87
Illinois Fuel Co., Sparta, Ills.	1/5/01	1-4mo.	1.25	05	1.20	1600	Phoenix	1301							
Jackson Hill C. & C. Co., Jackson Hill, Ind.			1.25	15	1.10	400	Hazard								
Jefferson & Clearfield C. & I. Co., Rochester, N. Y.	4/1/99	2 Yr.	1.25	20	1.05	13500	du Pont		4/1/99	2 "	1.25	15	1.10	"	88
									4/10/01	1 "	1.25	15	1.10	"	89
Kansas & Texas Coal Co., Missouri	7/1/99	3 "		20		91050	Equit.	1207							
Kelley, A. F., Pa.	5/26/01	1 "	1.25	20	1.05	7000	du Pont	1363	5/26/01	1 "	1.25	15	1.10	"	92

Plaintiff's Exhibit 1300

DELIVERIES ON EXPIRED CONTRACTS.

(Exhibit No. 1130. Gov. Ex. No. 17)

Name and Address	Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. 3 Page No.
Kerens-Donnewald C. Co., Worden, Ills.	6/1/01	9 mo.	1.25	10	1.15	1732	Phoenix	1375
Kramm, C. B. & Bros., Edwards, Ills.	4/1/01	1 Yr.	1.25	05	1.20	1483	"	1286
Logan Cons. C. Co., Roanoke, Va.	10/25/00	1 "	1.35	10	1.25	4400	King	1240 1356
Lorain Coal & Dock Co., Bridgeport, Ohio			1.25	15	1.10	4400	Ohio	1324
McAllester, C. M. Co., Buck, I. T.			1.50	20	1.30	7200	L. & R. & du Pont	
McCormick, L., Monongahela City, Pa.	4/22/01	1 "	1.25	12½	1.12½	3800	du Pont	1309
McDougall, J. B., Coalgate, I. T.	9/13/97	2 "	1.50	15	1.35	17600	Ohio	1079
McElhose & McCracken, Pennsylvania	6/28/97	2 "	1.25	20	1.05	800	Ohio	1079
McHenry Coal Co., McHenry, Ky.	8/3/99	2 Yr.	1.30	15	1.15	2400	Chatt.	1210
Madison Coal Co., St. Louis, Mo.	6/3/98	2 "	1.25	15	1.10	6755	Equit.	
Mahoning Ore & Steel Co., Hibbing, Minn.	7/3/99	1 "	1.42½	12½	1.30	5913	Ohio	1205
Means Kyle & Co., Hanging Rock, O.	11/16/97	2 "	1.25	15	1.10	400	"	1079
Mingo Coal Mg. Co., Alma Sdg., W. Va.	4/15/01	1 "		05		1300	Hazard	1275

CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
8/1/03	3 "	1.35	10	1.25 du P. Co.		1070

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weaqua C. M. & Mfg. Co., Moweaqua, Ills.	2/10/00	1-1 mo.	1.25	15	1.10	2150	Equit.	1216						
tional C. & I. Co.,														
st End C. Co., Springfield, Ills.	5/1/99	3 Yr.	1.25	10	1.15	4000	du Pont	1199	10/1/03				1.15	1143
ld Rose C. Co., Des Moines, Iowa			1.35	10	1.25	800	"	1207						
illiams Coal Co., McHenry, Ky.	5/8/00		1.30	05	1.25	800	Chatt.							
illiamsville Coal Co., Williamsville, Ills.	5/1/00	2 Yr.	1.25	10	1.15	3650	du Pont	1247	5/1/03	3 Yr.			1.20	1143
inston Brothers & Dear, Mesaba Range, Minn.				12½		1190	Lake Sup.	1205						
olschlag & Brother, Peoria, Ills.	4/1/01	1 Yr.	1.25	05	1.20	3770	Phoenix	1286	8/1/03	3 Yr.			1.17½	1143
									11/30/07	1 "			1.05	du P P. Co. P
									11/30/08	1 "			1.10	" EE
oodward Iron Co., Woodward, Ala.	1/27/00	2 "	1.35	20	1.15	1800	du Pont							
ire, J. B., Cleveland, Ohio	3/1/01	1 "	1.25	10	1.15	700	Austin	1285						
rr, John Sons, Steubenville, Ohio	3/5/01	1 "	1.25	10	1.15	2509	du Pont	1294	3/5/01	1 Yr.	1.25	10	1.15	du P & Co. 93
Brien & Sheehan, Plattsburg, N. Y.	3/25/99		1.25	15	1.10	400	Hazard	1193 1227						
reka Supply Co., Philadelphia, Pa.	12/13/99	2 "	1.15 (or 1.05)			8000	L. & R.	1373						
						411658								

Plaintiff's Exhibit 1300

CONTRACTS EXPIRING PERIOD ENDING DEC. 31, 1912

(Exhibit No. 1131, Gov. Ex. No. 18)

Name and Address	Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. 3 Page No.
...nback Hdwe. Co., J. H., Phillipsburg, Pa.	4/9/01	20 Mo.	1.25	10	1.15	3750	L. & R.	
...rlinville C. Co., Carlinville, Ills.	11/28/00	2 Yr.	1.25	10	1.15	3950	Equit.	
...apman Coal Co., Pittsburg, Kansas	12/17/01	1 "	1.35	15	1.20	2400	"	
...ton, S. B., Du Quoin, Ills.	10/22/00	2 "	1.25	15	1.10	3800	Oriental	1264
...lon C. & M. Co., Ottumwa, Iowa	9/21/00	2 "	1.35	05	1.30	0	L. & R.	1259
...mpire C. & C. Co., Empire, Ala.	10/5/01	1 "	1.35	10	1.25	0	Birmingham	
...deral Supply Co., Pittsburg, Pa.	7/17/00	2 "	1.25 (or 1.05)	20	1.05 (or .80)	16898	Ohio	
...ady Trading Co., Indian Ty.	5/9/02	7 Mo.	1.50	20	1.30	17000	du Pont	1246
...een Hill C. Co., Sullivan, Ind.	9/11/01	1 Yr.	1.25	15	1.10	)	Miami	1332
...ms Colliery Co., Du Quoin, Ills.	10/13/99	3 "	1.25	10	1.15	1400	King	1208
...lle, C. E., Salem, Ills.	12/11/99	3 "	1.25	10	1.15	400	du Pont	
...patrick Bros. & Collins, Beatrice, Nebr.	9/5/00	2 "	1.40	15	1.25	2000	American	
Follette C. I. & Ry. Co., La Follette, Tenn.	12/24/01	1 "	1.35	15	1.20	2950	Hazard	1376
Kinney, F. O., Prest., Zanesville, Ohio	10/11/00	2 "	1.25	15	1.10	2800	Miami	
Guffin, J. A., Sewell, W. Va.	9/1/00	2 "	1.25	15	1.10	5800	Hazard	1267
...ner C. & Ry. Co., New Castle, Ala.	10/5/01	1 "	1.35	10	1.25	)	Birmingham	

CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
5/9/00	2 Yrs.	1.50	20	1.30	du P.&Co.	113
4/16/02	7 Mos.	1.50	20	1.30	"	112
12/15/02	1 Yr.			1.30	"	111
12/10/03	2 Yrs.	1.60	20	1.40	"	110

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Plaintiff's Exhibit 1300

ton, C. L., Nelsonville, Ohio	9/26/00	2 "	1.25	15	1.10	3200	Ohio	1259	9/1/00	2 Yr.	1.40	10	1.30	du P.& Co.	114
									9/24/02	3 "	1.40	10	1.30	"	115
urie Creek C. Co., Huntingdon, Ark.	9/1/00	2 "		10		5600	du Pont	1249 1227							
ck Run C. Co., Brazil, Ind.	12/9/99	3 "	1.25	15	1.10	1600	King	1319							
					(1131—1)										
Pineville, Ky.			1.35	10	1.25	1700	du Pont	1336							
brick, J. C. & Son, Cumberland, Md.	1/7/01	1 Yr.	1.35	15	1.20	300	"	1294							
ange Trading Co., Kribbs, I. T.	2/20/00	2 "	1.50	17½	1.32½	1000	Oriental		5/1/99	3 Yrs.	1.25	15	1.10	du P. & Co.	94
									5/1/03	3 "			1.30		1143
kaloosa C. M. Co., Oscaloosa, Iowa	5/1/99	3 "	1.35	15	1.20	3000	du Pont	1215							
rry Brothers, Coalgate, I. T.			1.50	15	1.35	4000	Ohio								
neville Coal Co., Pineville, Ky.	10/17/00		1.35	10	1.25	2000	Chatt.								
plar Creek Coal Co., Oliver Springs, Tenn.	5/5/00		1.35	15	1.20	450	"		5/1/99	3 Yr.	1.25	10	1.15	Dup. & Co.	96
									5/1/02	3 "	1.25	15	1.10	"	97
nsay, George H., Iowa	5/1/99	3 Yr.		15		5000	du Pont	1207	5/1/03	3 "	1.35	17½	1.17½	"	98
nd, W. P., Chicago, Ills.	12/5/99	2 "	1.25	15	1.10	6200	Ohio								
public S. & I. Co., Birmingham, Ala.	5/18/00		1.35	10	1.25	1600	Chatt.	1245							
ynolds, J. H., nville, Mo.	5/25/01		1.35	10	1.25	6400	Austin	1323							
yster & Ziegler, Peoria, Ills.	1/26/01	1 Yr	1.25	05	1.20	1715	Phoenix		12/11/99	3 Yr.	1.25	10	1.15	DuP. & Co.	99
									4/14/03		1.35	15	1.20	"	100
ndoval, C. & M. Co., Sandoval, Ills.			1.25	10	1.15	4000	du Pont	1228							
eleyville C. & M. Co., Seeleyville, Ind.			1.25	15	1.10	400	Ohio	1270							
					(1130—3)										

Plaintiff's Exhibit 1300

DELIVERIES ON EXPIRED CONTRACTS:

(Exhibit No. 1130, Gov. Ex. No. 17)

Name and Address	Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. J Page No.
oky Hollow Coal Co., Avery, Iowa			1.35	15	1.20	11000	Oriental	1204
ow Shoe Mining Co., Snow Shoe, Pa.	3/26/01	1 Yr.	1.25	10	1.15	2000	du Pont	1281
aulding Coal Co., Spaulding, Ills.	5/1/99	3 "	1.25	10	1.15	3500	"	1199
ndard Iron Co., Goodrich, Tenn.			1.35	15	1.20	400	Chatt.	1380
r Coal Co., Streator, Ills.	5/1/99	3 "	1.25	10	1.15	5320	du Pont	1206
r C. & C. Co., Red Star, West Va.			1.25	10	1.15	360	Hazard	1311
el & Co., Pennsylvania	3/16/01	1 "	1.25	15	1.10	6000	du Pont & Oriental	1286
ll Hill Coulter Co., Leechburg, Pa.	3/21/01	1 "	1.25	15	1.10	6140	du Pont	1363
ylor Supply Co., Ltd., Uniontown, Pa.	3/18/01	1 "	1.25	15	1.10	1615	"	1288
nnessee C. Co., Knoxville, Tenn.	10/16/00		1.35	10	1.25	1200	Chatt.	
ropp, J. E., Keanny, Pa.	4/17/01	1-8 mo.	1.25	10	1.15	400	L. & R.	1304
rkey Knob Coal Co., Loup Creek, West Va.			1.25	15	1.10	600	Hazard	1302
ion Pac. C. Co., Omaha, Neb.	5/21/01	1 Yr.	1.35	15	1.20	38650	du Pont	

CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
10/17/03	3 Yr.			1.25		1143
3/26/01	1 "	1.25	10	1.15	du P.& Co.	101
5/1/03	3 "			1.15		1143
5/1/99	3 "	1.35	10	1.25	"	104
5/1/02	3 "	1.25	10	1.15	do	105
5/1/03	3 "			1.17½		1143
3/21/01	1 "	1.25	10	1.15	du P.& Co.	106
3/18/01	1 "	1.25	10	1.15	du P.& Co.	107

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Plaintiff's Exhibit 1300

n Kirk C. & M. Co., Mineral City, O.	11/27/00	11 mo.	1.25	10	1.15	2650	Austin	1266						
est End C. Co., Springfield, Ills.	5/1/99	3 Yr.	1.25	10	1.15	4000	du Pont	1199	10/1/03				1.15	1143
ild Rose C. Co., Des Moines, Iowa			1.35	10	1.25	800	"	1207						
illiams Coal Co., McHenry, Ky.	5/8/00		1.30	05	1.25	800	Chatt.							
illiamsville Coal Co., Williamsville, Ills.	5/1/00	2 "	1.25	10	1.15	3650	du Pont	1247	5/1/03	3 Yr.			1.20	1143
inston Brothers & Dear, Mesaba Range, Minn.				12½		1190	Lake Sup.	1205						
olschlag & Brother, Peoria, Ills.	4/1/01	1 "	1.25	05	1.20	3770	Phoenix	1286	8/1/03	3 "			1.17½D	1143
									11/30/07	1 "			1.05D	du P. Pdr. Co. P
									11/30/08	1 "			1.10D	" EE
oodward Iron Co., Woodward, Ala.	1/27/00	2 "	1.35	20	1.15	1800	du Pont							
ire, J. B., Cleveland, Ohio	3/1/01	1 "	1.25	10	1.15	700	Austin	1285						
rr, John Sons, Steubenville, Ohio	3/5/01	1 "	1.25	10	1.15	2509	du Pont	1294	3/5/01	1 "	1.25	10	1.15	du P.& Co. 93
brien & Sheehan, Plattsburg, N. Y.	3/25/99		1.25	15	1.10	400	Hazard	1193 1227						
reka Supply Co., Philadelphia, Pa.	12/13/99	2 "	1.15 (or 1.05)			8000	L. & R.	1373						
						411658								

Plaintiff's Exhibit 1300

CONTRACTS EXPIRING PERIOD ENDING DEC. 31, 1912

(Exhibit No. 1131, Gov. Ex. No. 18)

Name and Address	Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. 3 Page No.
urnback Hdwe. Co., J. H., Phillipsburg, Pa.	4/9/01	20 Mo.	1.25	10	1.15	3750	L. & R.	
arlinville C. Co., Carlinville, Ills.	11/28/00	2 Yr.	1.25	10	1.15	3950	Equit.	1198
apman Coal Co., Pittsburg, Kansas	12/17/01	1 "	1.35	15	1.20	2400	"	
ton, S. B., Du Quoin, Ills.	10/22/00	2 "	1.25	15	1.10	3800	Oriental	1264
don C. & M. Co., Ottumwa, Iowa	9/21/00	2 "	1.35	05	1.30	0	L. & R.	1259
mpire C. & C. Co., Empire, Ala.	10/5/01	1 "	1.35	10	1.25	0	Birmingham	1302
deral Supply Co., Pittsburg, Pa.	7/17/00	2 "	1.25 (or 1.05	20	1.05 (or .80)	16898	Ohio	
ndy Trading Co., Indian Ty.	5/9/02	7 mo.	1.50	20	1.30	17000	du Pont	1246
reen Hill C. Co., Sullivan, Ind.	9/11/01	1 yr.	1.25	15	1.10	)	Miami	1332
rns Colliery Co., Du Quoin, Ills.	10/13/09	3 "	1.25	10	1.15	1400	King	1208
alle, C. E., Salem, Ills.	12/11/99	3 "	1.25	10	1.15	400	du Pont	
patrick Bros. & Collins, Beatrice, Nebr.	9/5/00	2 "	1.40	15	1.25	2000	American	1233
Follette C. I. & Ry. Co., La Follette, Tenn.	12/24/01	1 "	1.35	15	1.20	2950	Hazard	1376
cKinney, F. O., Prest., Zanesville, Ohio	10/11/00	2 "	1.25	15	1.10	2800	Miami	1157

CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
5/9/00	2 Yr.	1.50	20	1.30	du P.& Co.	113
4/16/02	7 mos.	1.50	20	1.30	"	112
12/15/02	1 Yr.			1.30	"	111
12/10/03	2 "	1.60	20	1.40	du Pont Co.	110

Plaintiff's Exhibit 1300

cGuffin, J. A., Sewell, W. Va.	9/1/00	2 "	1.25	15	1.10	5800	Hazard	1267							
ilner C. & Ry. Co., New Castle, Ala.	10/5/01	1 "	1.35	10	1.25	)	Birmingham								
aton, C. L., Nelsonville, Ohio	9/26/00	2 "	1.25	15	1.10	3200	Ohio	1259							
rairie Creek C. Co., Huntingdon, Ark.	9/1/00	2 "		10		5600	du Pont	1249	9/1/00	2 "	1.40	10	1.30	du P.& Co.	114
									9/24/02	3 "	1.40	10	1.30	"	115
ock Run C. Co., Brazil, Ind.	12/9/99	3 "	1.25	15	1.10	1600	King	1227 1319							
awmut Com. Co., Shawmut, Pa.	10/10/01	1 Yr.	1.25	20	1.05	6336	du Pont	1362	10/1/00 10/10/01	1 Yr. 1 "	1.25 1.25	15 20	1.10 1.05	du P.& Co. "	117 116
elby Iron Co., Shelby, Ala.	12/31/01	1 "	1.35	10	1.25	0	Birmingham								
irginia C. & I. Co., Stonega, Va.	11/21/01	1 "	1.30			11850	Chatt.								
irginia I. C. & C. Co., Bristol, Tenn.-Va.	11/21/01	1 "	1.35			23500	"	1358							
atson Bros., Bevier, Mo.	9/10/00	2 "	1.35	20	1.15	0	Austin								
estville Coal Co., Westville, Ills.	11/21/99	3 "		15		4767	"	1228							
hapman, M. D., Caperton, W. Va.	12/14/00	2 "	1.25 (or 1.10)	(or 1.10) 10	1.15	4000	Hazard	1270	12/14/00 2/13/03	2 " 1 "	1.25 1.35	10 15	1.15 1.20	Hazard "	109 108
urham Coal Co., Chicamauga, Tenn.	9/1/00	2 "	1.35	15	1.20	6300	Chatt.	1245 1300							
ebree Coal Co., Sebree, Ky.	3/9/01	1-9 Mo.	1.30	05	1.25	2400	L. & R.	1278							
. W. Brown, P. Gass, Receiver, Pinckneyville, Ills.	12/28/00	2 Yr.	1.20			400	Miami								
						133101									

Plaintiff's Exhibit 1300

CONTRACTS EXPIRING QUARTER JUNE 30th, 1903:

(Exhibit No. 1132. Gov. Ex. No. 19)

Name and Address	Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. 3 Page No.
chibold, John, Evansville, Ind.	6/23/00	3 Yr.	1.25	15	1.10	3350	du Pont	
k-McAllister C. Co., Kansas City, Mo.	6/28/01	2 "		10		0	Austin	1323
strong & Co., Clinton, Iowa	5/10/01	2 "	1.25	05	1.20	0	Oriental	1297
rd, Geo. H., Bridgeville, Pa.	4/27/01	2 "	1.25 (or 1.05)	15	1.10	4000	"	1306
dwin Bros., Clinton, Iowa	6/13/01	2 "	1.25	05	1.20	400	L. & R.	1306
rclay C. & M. Co., Barclay, Ills.	5/1/00	3 "	1.25	10	1.15	2500	du Pont	1247
derbeck-Miller Co., Davenport, Iowa	4/22/01	2 "	1.25	05	1.20	800	Miami	1300
semer Land & Imp. Co., Bessemer, Ala.	1/1/02	1 "	1.35	20	1.15	13600	Chatt.	1397
g Fork C. & C. Co., Bluefield, W. Va.	4/18/01	2 "	1.30	05	1.25	400	King	1292
aney, W. H., Connellsville, O.	4/1/01	2 "	1.25	05	1.20	1200	Oriental	1297
ggs, E. N., Boston, Ohio	6/17/01	2 "	1.25	10	1.15	400	Ohio	1325
omer C. & C. Co., Boomer, W. Va.	6/18/01	2 "	1.25	15	1.10	2400	Miami	1324
one, J. A., West Virginia	6/25/00	3 "	1.25	15	1.10	3500	Hazard	1246
oth & Flynn, Pittsburg, Pa.	5/1/02	1 "	1.25	20	1.05	9333	du Pont	
rders, W. R., Sparta, Ills.	4/19/01	2 "	1.25	05	1.20	0	Oriental	1297
own Mng. Co., Punxsutawney, Pa.	1/1/01	2 "	1.25 (or 1.05)	12½	1.12½	5450	"	1274
ntrall Co-Operative C. Co., Cantrall, Ills.	5/1/00	3 "	1.25	10	1.15	3500	du Pont	1247
pital Coal Co., Springfield, Ills.	5/1/00	3 "	1.25	10	1.15	6600	"	1247

CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
6/23/00	3 Yrs.	1.25	15	1.10	du P.& Co.	118
6/23/03	3 "	1.35	15	1.20	"	119
5/1/00	3 Yrs.	1.25	10	1.15	du P.& Co	120
5/1/03	3 "	1.35	15	1.20	"	121
6/28/00	3 Yrs.	1.25	05	1.20	Hazard	123
6/24/03	3 "	1.35	15	1.15 & 1.10 120	"	122
5/1/02	1 "	1.25	20	1.05	du P.& Co.	124
5/1/00	3 "	1.25	10	1.15	"	126
5/1/03	3 "	1.35	15	1.20 & 1.17½		125
5/1/00	3 "	1.25	10	1.15	"	128
5/1/03	3 "	1.35	17½	1.17½	"	127
5/1/04	3 "			1.17½ & 1.15	"	1143
5/1/06	1 "	.95		.95	"	724
12/24/07	1 " A.R.	1.10		1.10	"	725/8

Plaintiff's Exhibit 1300

rbon Limestone Co., Lowellville, Ohio	5/27/01	2 Yr.	1.25	10	1.15	1600	Ohio	1308							
ntral Coal Co., Hickory, Iowa	6/12/01	2 "	1.35	05	1.30	4000	L. & R.		9/12/03	3 Yr.	1.35	15	1.20	L. & R.	129
ambers B. S. & Co., Pittsburg, Kans.	3/30/01	2 "	1.35	10	1.25	1145	"								
apman C. Co., Jackson, Ohio	5/12/02	1 "	1.25	15	1.10	2800	Miami	1427							
ristian Co., C. C., Taylorville, Ills.	1/26/01	2 "	1.25	15 10	1.10 1.15	3200	"	1279							
urchill D. B. & Co., Galesburg, Ills.	5/20/01	2 "	1.25	7½	1.17½	0	"	1315							
itens C. & M. Co., Lincoln. Ills.	5/1/00	3 "	1.25	10	1.15	3800	du Pont		5/1/00	3 Yr.	1.25	10	1.15	du P. & Co.	130
									5/1/03	3 "	1.35	15	1.20	"	131
ar Lake Co-Oper. C. Co., Springfield, Ills.	5/1/00	3 "	1.25	10	1.15	4000	"	1250	5/1/00	3 "	1.25	10	1.15	"	103
									5/1/03	3 "	1.35	20	1.15	"	102
eveland Stone Co., Cleveland, Ohio	3/1/01	2 "	1.25	05	1.20	1000	Austin	1283							
over Leaf Mfg. Co., Coffin, Ills.	2/1/02	1 "	1.25	05	1.20	900	Equit.	1527							
chran & Pinkerton, McConnellsville, O.	4/1/01	2 "	1.25	05	1.20	0	Oriental	1297							
llins C. Co., Brazil, Ind.		3 "	1.25	15	1.10	4300	Hazard		5/21/00	3 "	1.25	15	1.10	Hazard	132
lumbus & Hocking C. & I. Co., Columbus, Ohio	6/11/02	1 "	1.25	15	1.10	2400	Miami	1427							
abb, J. D., Litchfield, Ills.	5/1/01	2 "	1.25	05	1.20	3300	du Pont		5/1/01	2 "	1.25	05	1.20	du P. & Co.	133
									5/1/03	3 "	1.35	15	1.20	"	134
awford Mer. Co., Jasper, Ala.	5/20/00	3 "	1.35	10	1.25	1250	"		5/20/1	3 "	1.35	10	1.25	"	135
escent Coal Co., What Cheer, Iowa	5/25/01	2 "	1.35	10	1.25	800	L. & R.								
owder, W. H., Sullivan, Ind.	6/28/00	3 "	1.25	15	1.10	900	Hazard		6/28/00	3 "	1.25	15	1.10	Hazard	136
mberland C. & C. Co., Milestone, Tenn.	1/31/02	1 "	1.35	15	1.20	1200	Chatt.	1498 1348							
venport C. Co., Harrisburg, Ills.	5/2/00	3 "	1.25	10	1.15	6900	du Pont	1316 1241	5/2/00	3 "	1.25	10	1.15	du P. & Co.	140
									5/2/03	3 "	1.35	20	1.15	"	139

Plaintiff's Exhibit 1300

CONTRACTS EXPIRING QUARTER JUNE 30th, 1903:

(Exhibit No. 1132, Gov. Ex. No. 19)

Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. 3 Page No.
4/25/01	2 Yr.	1.25 (or 1.10)	10	1.15	400	Oriental	1297
4/13/01	2 "	1.25	05	1.20	0	"	1297
5/26/02	1 "	1.35	05	1.30	400	Chatt.	1434
5/28/01	2 "	1.25	15	1.10	9000	L. & R.	1318
5/28/01	2 "	1.25	15	1.10	11000	"	1318
1/1/01	2 "	1.25	05	1.20	800	"	1295
Y. 5/23/02	1 "	1.25	15	1.10	400	du Pont	1430
ns. 5/14/01	2 "	1.25	15	1.10	2400	Miami	1292
2/15/01	2 "	1.25	15	1.10	3000	L. & R.	
1/1/02	1 "		15		3500	Chatt.	1336
6/1/01	2 "	1.25	15	1.10	800	L. & R.	1312
6/19/02	1 "	1.35	15	1.20	0	Birm.	1625
3/14/01	2 "	1.25	15	1.10	800	Miami	1309
4/1/02	1 "	1.25	05	1.20	1846	Phoenix	1603
6/18/00	3 "	1.25	10	1.15	1200	du Pont	
5/1/00	3 "	1.25	10	1.15	5000	"	
5/17/02	1 "	1.25	10	1.15	0	Schaght	1307
5/23/00	3 "	1.25	15	1.10 (1132—3)	3000	Hazard	

CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
6/11/03	2 Yr.	1.35	20	1.15	L. & R.	137
6/11/03	2 "	1.35	20	1.15	"	138
5/23/02	1 "	1.25	15	1.10	du P. & Co.	142
8/3/03	1 "	1.35	15	1.20	"	141
2/15/03	2 "	1.35	17½	1.17½	L. & R.	985
6/19/02	1 "	1.25		1.25	Birm.	145
8/5/03	1 "	1.45	15	1.30	"	144
8/1/03	3 "			1.25	D	1143
6/18/00	3 "	1.25	10 & 5	1.15 & 1.20	du P. & Co.	146
5/1/00	3 "	1.25	05	1.20	"	147
5/1/03	3 "	1.35	17½	1.17½	"	148
4/2/06	1 "	1.00		1.00	du Pt. Co.	792
5/23/00	3 "	1.25	15	1.10	Hazard	149
12/10/03	3 "	1.35	17½	1.17½	"	150

PAGE CU

	4/20/01	2 Yr.	1.25	05	1.20	737	Miami	1300							
	1/23/01	2-3 mo.	1.25	20	1.05	14700	L. & R.	1367							
	5/22/01	2 Yr.	1.25	15	1.10	400	Ohio	1277							
	4/29/01	2 "	1.25	15	1.10	400	Miami	1308							
Co.,									6/28/00	3 "	1.25	05	1.20	"	154
a.	6/30/00	3 "	1.25	15	1.10	3000	du Pont		6/30/97	3 Yr.	1.25	05	1.20	du P. Co.	155
	6/16/00	3 "	1.30	20	1.10	1200	Hazard	1241	6/16/00	3 "	1.30	10	1.20	Hazard	156
									6/23/03	3 "	1.40	10	1.30	"	157
									6/29/06	1 "	1.00		1.00	du P. Co.	851
									7/10/07	1 "	1.00		1.00	du P.P. Co.	853
									1/18/08 - 12/31/08		1.15		1.15	"	854-8
	6/1/01	2 "	1.35	15	1.20	2600	L. & R.	1449							
	6/16/00	3 "	1.30 (or 1.15)	10	1.20	0	Hazard	1241	6/16/00	2 Yr.	1.30	10	1.20	Hazard	158
	5/17/01	2 "	1.25	15	1.10	3600	Miami								
	4/9/01	2 "	1.25	15	1.10	0	King	1379 1277	5/1/08	1 "	1.10		1.10	du P. Co.	873
Co.,	4/3/01	2 "	1.25	15	1.10	1600	Ohio	1371							
	6/16/00	3 "	1.25	15	1.10	0	du Pont		6/16/00	3 "	1.25	15	1.10	"	159
	5/1/08	3 "	1.25	15	1.10	1650	"		5/1/00	3 "	1.25	5	1.20	"	160
	3/1/00	3 "	1.55	10	1.45	1600	"	1232	3/1/00	3 "	1.55	10	1.45	"	161
	5/13/02	1 "	1.25	10	1.15	0	Schaght								
	6/24/01	2 "	1.25	15	1.10	1600	Miami								
Company,	4/22/01	2 "	1.25	15	1.10	800	"	1384							
	5/20/01	2 "	1.35	10	1.25	1920	"								

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Plaintiff's Exhibit 1300

CONTRACTS EXPIRING QUARTER JUNE 30th, 1903:

(Exhibit No. 1132, Gov. Ex. No. 19)

Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. 3 Page No.
5/27/01	2 Yr.		15		4000	L. & R.	
5/23/00	3 "	1.25	15	1.10	0	Miami	
5/31/01	2 "	1.25	05	1.20	1200	Ohio	1286
4/8/01	2 "	1.35	35	1.00	16345	du Pont	1320
2/27/01	2 "	1.25	15	1.10	9500	Austin	1285
3/20/01	2 "	1.25	10	1.15	1400	Equit.	1267
5/17/01	2 "	1.35	15	1.20	9598	L. & R.	
5/1/00	3 "	1.25	10	1.15	6000	du Pont	1247
5/1/02	1 "	1.25	15	1.10	2000	Phoenix	
5/5/01	2 "	1.25	15	1.10	7800	L. & R.	
5/23/02	1 "	1.35	10	1.25	0	Birming.	
6/20/00	3 "	1.25	15	1.10	3200	du Pont	
5/15/01	2 "	1.35	10	1.25	0	L. & R. or Equit.	
4/17/01	2 "	1.25	10	1.15	1650	L. & R.	1296
2/12/02	1 "	1.35	10	1.25	800	Chatt.	1336
5/12/00	3 "	1.25	15	1.10	4400	L. & R.	
3/18/01	2 "	1.30	10	1.20	400	du Pont	1293
5/29/02	1 "	1.35	10	1.25	0	Birming.	
1/4/02	1 "	1.25	10	1.15	1235	Phoenix	1397

(1132—7)

CONTRACT RENEWALS AS SHOWN
CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
4/8/01	2 Yr.	1.00		1.00	du P. & Co.	170
4/4/05	2 "	1.10		1.10	L. & R.	1088
9/12/03	2 "	1.35	20	1.15	"	171
3/18/01	2 Yr.	1 25	05	1.20	du P.& Co.	172
3/13/03	3 "	1.35	15	1.20	"	173
4/5/01	1 "	1 25		1.25	Birmg.	174
4/5/03	1 "	1.30	02½	1.27½	"	175

4/16/01	2 Yr.	1.25	15	1.10	1600	Miami	1300							
4/16/01	2 "	1.35	10	1.25	2476	" "								
5/13/01	2 "	1.25	05	1.20	1600	Aus. & Du P.	1293							
4/16/01	2 "	1.25	10	1.15	1085	Miami	1300							
3/13/01	2 "	1.25 (or $1.05)	15	1.10	7200	Oriental	1291							
5/17/01	2 "	1.25	15	1.10	800	Miami								
5/16/01	2 "	1.35	10	1.25	9250	L. & R.	1309	5/1/03	2 Yr.	1.35	20	1.15 L. & R.		163
								3/15/05	1 "	1.12½		1.12½ "		162
								3/6/06	1 "	1.05		1.05 du Pont Co.		164
								12/27/07	1 "	1.15		1.15 " " Pdr. Co.		896/9
3/1/01	2 "		15		7600	Du Pont	1282	3/1/01	2 "	1.50	15	1.35 du Pt. & Co.		165
6/5/01	2 "	1.25	10	1.15	2900	Oriental								
1/1/01	2 "	1.35	15	1.20	2979	L. & R.								
2/27/01	2 "	1.25	10	1.15	3100	Austin	1285							
2/27/01	2 "	1.25	15	1.10	12450	"	1284							
5/24/00	3 "	1.25	15	1.10	4000	Du Pont		5/24/00	3 "	1.25	15	1.10 du Pt. & Co.		166
6/12/01	2 "	1.35	05	1.30	3200	L. & R.	1296							
3/1/02	1 "	1.30	20	1.10	400	Du Pont	1353	3/1/2	1 "	1.30	20	1.10 " "		167
								6/10/03	3 "	1.40	10	1.30 " "		168
5/1/00	3 "	1.25	10	1.15	5800	"	1243	5/1/03	3 "			1.20		1143
2/27/01	2 "	1.25	10	1.15	5000	Austin	1283							
3/12/00	3 "	1.25	15	1.10	16375	Du Pont		3/12/00	3 "	1.25	15	1.10 " "		169
3/2/01	2 "	1.25	05	1.20	600	Miami								
5/15/01	2 "	1.25	10	1.15 (1132—6)	400	L. & R.								

Plaintiff's Exhibit 1300

CONTRACTS EXPIRING QUARTER JUNE 30th, 1903:

(Exhibit No. 1132, Gov. Ex. No. 19)

Date	Life	Price	Rebate	Net	Kegs	Company	Referred to Ex's P. & Page No. in Lent
5/17/01	2 Yr.	1.35	15	1.20	8300	L. & R.	
5/31/01	2 "	1.25	10	1.15	400	Ohio	
4/16/01	2 "		10		0	Miami	1300
4/1/01	2 "	1.25	15	1.10	4000	L. & R.	
2/6/01	2 "	1.25	15	1.10	2900	Oriental	
6/21/00	3 "	1.25	15	1.10	7800	Hazard	
5/29/01	2 "	1.35	10	1.25	7000	L. & R	
5/1/00	3 "	1.25	10	1.15	6650	du Pont	1247
5/22/00	3 "	1.25	15	1.10	1600	"	
5/16/01	2 "	1.25	15	1.10	1138	Miami	1324
3/7/01	2 "	1.25	05	1.20	4675	Oriental	1283
4/23/01	2 "	1.25	10	1.15	0	King	
5/17/00	3 "	1.25	15	1.10	1700	Miami	
5/1/03	2 "	1.35	10	1.25	1200	Phoenix	
6/23/00	3 "	1.25	15	1.10	1200	du Pont	
6/19/00	3 "	1.25	15	1.10	2500	"	1243
1/25/01	2 "	1.25	15	1.10	9500	Miami	
4/7/01	2 "	1.25	10	1.15	1600	L. & R.	1278 1304
3/16/01	2 "	1.25 (or 1.05)	10	1.15	400	"	1282 1318
4/16/01	2 "	1.25	15	1.10	2800	Miami	1300

CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Net Price	Rebate	Price	Company	Exhibit No.
6/21/00	3 Yr.	1.25	15	1.10	Hazard	151
5/1/06	1 "	.95		.95	du P. Co.	813
12/5/07	1 " A.R.	1.10		1.10	du P.Pdr.Co.	815-8
6/23/00	3 "	1.25	15	1.10	du P. & Co.	152
8/4/03	3 "	1.35	15	1.20	"	153

Plaintiff's Exhibit 1300

Co.,								1279						
	1/27/01	2 Yr.-1 Mo.	1.25	15	1.10	38650	Miami	1332						
	4/30/01	2 "	1.25	15	1.10	1200	Austin	1332 1299						
									2/3/05	1 Yr.	1.35	30	1.05 Explosive	1024
									1/1/04	1 "	1.35	22	1.13 "	1021
	1/1/02	1 "	1.25	15	1.10	4800	L. & R.	1394	2/26/06					
									during Yr.	1906	.95		.95 du Pont Co.	947
	11/13/01	2 "	1.35	10	1.25	2400	Phoenix							
									8/1/03	3 Yr.			1.20D	1143
	4/1/02	1 "	1.25	05	1.20	2378	"	1286	11/27/07	1 Yr.			1.05D du Pt. Pdr. Co.	N
									11/27/08	1 "			1.10D " "	DD
	5/1/00	3 "	1.25	10	1.15	6785	du Pont							
	5/14/00	3 "	1.35	20	1.15	0	"		5/14/00	3 Yr.	1.35	15	1.20 du Pont & Co.	176
	5/12/00	3 "	1.25	15	1.10	2400	L. & R.							
								1285						
	3/8/01	2 "	1.25	15	1.10	1600	Miami	1346						
	3/1/01	2 "	1.25	15	1.10	2800	Austin	1284						
									7/24/08	1 Yr.	1.15		1.15 du Pt. Pdr. Co.	1081-3
	8/1/01	2-1 Mo.	1.35	25	1.10	29064	L. & R.	1322	3/1/07 to	3/31/08	.95		.95 " "	957
									3/1/04	3 Yr.	1.15		1.15 Clark	1053
									3/1/04		1.15		1.15 "	1054-67
	5/17/01	2 Yr.	1.35	20	1.15	17200	"	1312	5/17/03	2 "	1.15		1.15 L. & R	177
d. Co.,	2/27/01	2 "	1.25	10	1.15	800	Austin	1284						
	6/19/01	2 "	1.25	10	1.15	2581	L. & R.	1321	8/2/03	2 "	1.35	17½	1.17½ "	178
	3/14/01	2 "	1.25	10	1.15	3200	Oriental	1291	3/14/03	2 "	1.35	15	1.20 Oriental	1044
	1/1/01	2 "	1.25	10	1.15	7925	L. & R.	1295						
			(or 1.05)											
	4/1/01	1-8 Mo.	1.25	05	1.20	400	du Pont							
									6/1/03	2 "	1.35	17½	1.17½ L. & R.	180
	5/1/01	2 Yr.	1.35	15	1.20	7000	L. & R.	1309	5/11/05	1 "	1.15		1.15 "	179
					(1132—8)				5/10/06	1 "	1.05		1.05 du Pont Co.	675

Plaintiff's Exhibit 1300

CONTRACTS EXPIRING QUARTER JUNE 30th, 1903:

(Exhibit No. 1132, Gov. Ex. No. 19)

Date	Life	Price	Rebate	Net	Kegs	Company
5/22/03	3 Yr.	1.10			1400	Miami
4/1/02	1 "	1.15			3400	Equit.
					539970	

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CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Referred to in Lent Ex's P. 3 Page No.	Date	Life	Price	Rebate	Net Price	Company	Exhibit No.

Plaintiff's Exhibit 1300

CONTRACTS EXPIRING DECEMBER 31, 1903:

(Exhibit No. 1133, Gov. Ex. No. 20)

Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. 3 Page No.
10/1/00	3 Yr.	1.35	15	1.20	12800	Sycamore	1260
8/2/00	3 "	1.25	15	1.10	3200	Hazard	
10/1/01	2 "	1.35	10	1.25	4000	L. & R.	
9/3/01	2 "	1.35	10	1.25	0	"	1344
8/1/00	2 "	1.25	05	1.20	4400	Phoenix	1269
8/1/01	2 "	1.25	10	1.15	2150	American	1307
9/28/01	2 "		20		13000	Austin	1346
7/1/01	2 "	1.25	10	1.15	2600	Phoenix	
7/3/02	1 "		25		64048	L. & R.	
10/7/01	2 "	1.30	20	1.10	8150	du Pont	1353
11/14/00	3 "	1.25	10	1.15	4854	"	1267
12/11/01	2 "	1.35	10	1.25	2400	L. & R.	1394
12/18/01	2 "	1.25	10	1.15	1200	King	1396
11/23/01	2 "	1.25	15	1.10	5000	Miami	1340
10/14/01	2 "	1.35	20	1.15	11750	Chatt.	1348
8/8/01	2 "	1.25	15	1.10	800	King	
9/21/01	2 "	1.25	15	1.10	800	Miami	
8-1-02	1 "	1.35	10	1.25	800	Chatt.	

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CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. du PONT

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
10/1/00	3 Yr.	1.35	15	1.20	Sycamore	181
9/1/03	1 "	1.45	30	1.15	"	182
9/18/03	3 Yr.	1.35	17½	1.17½	du Pont Co.	184
9/1/04	3 "	1.25		1.25	L. & R.	185

Plaintiff's Exhibit 1300

CONTRACTS EXPIRING DECEMBER 31, 1903:

(Exhibit No. 1133, Gov. Ex. No. 20)

Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. J Page No.
11/10/00	3 Yr.	1.25	10	1.15	6150	du Pont	
10/5/01	2 "	1.25	20	1.05	17400	Miami	1346
9/6/01	2 "	1.25	10	1.15	400	American	1345
7/29/01	2 "	1.25	15	1.10	7000	King	
8/2/00	3 "	1.25	15	1.10	2400	"	
12/16/01	2 "	1.25	20	1.05	6800	Austin	1373
10/2/01	2 "	1.35	15	1.20	0	Oriental	
8/23/00	3 "	1.25	15	1.10	800	du Pont	
8/2/01	2 "	1.35	10	1.25	5125	L. & R.	1290 1331
10/4/01	2 "	1.25	15	1.10	11000	Miami	1223
10/21/01	2 "		15		800	L. & R.	
11/12/00	3 "	1.25	10	1.15	0	du Pont	1259
12/18/01	2 "	1.35	10	1.25	7200	Chatt.	1477
7/26/01	2 "	1.25	10	1.15	1750	Miami	1332
8/2/01	2-2 mo.	1.35	15	1.20	7340	L. & R.	1331
7/1/01	2 Yr.	1.25	20	1.05	17524	Austin	
8/31/00	3 "	1.25	15	1.10	9200	du Pont	
10/1/00	3 "	1.25	15	1.10	2800	Hazard	
8/23/00	3 "	1.25	10	1.15		du Pont	
9/29/00	3 "	1.35	10	1.25	10300	"	1260

(1133—2)

CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
11/10/97	3 Yr.	1.25	10	1.15	du Pont & Co.	187
9/20/00	3 "	1.25	10	1.15	"	186
12/20/03	3 "	1.35	20	1.15	du Pont Co.	188
11/18/05	1 Yr.	1.35	40	.95	King Mer.	1042
9/4/03	3 "	1.35	10	1.25	du Pont Co.	189
11/12/00	3 Yr.	1.25	10	1.15	du Pont & Co.	190
12/28/03	1 "	1.20		1.20	Chatt.	191
10/14/03	2 "	1.27½		1.27½	L. & R.	192
4/1/05	3 "	1.15		1.15	"	193
6/1/06	1 "	1.05		1.05	du Pont Co.	194
8/23/00	3 Yr.	1.25	15	1.10	du Pont & Co.	196

Plaintiff's Exhibit 1300

8/2/00	3 Yr.	1.25	15	1.10		King								
7/20/01	2 "	1.25	15	1.10	5600		1324							
12/31/01	2 "	1.25 (Or $1.05)	10			L. & R.	1377 1389							
12/11/01	2 "	1.35	10	1.25	2050	"	1394							
11/1/0	2 "	1.25	15	1.10	10802	Austin	1283							
8/15/00	3 "		15		1600	Hazard	1257	8/15/00	3 Yr.	1.25	10	1.15	Hazard	197
8/16/00	3 "		10		400	Oriental	1257							
9/25/01	2 "	1.35	10	1.25	4325	L. & R.	1354							
12/6/00	3 "		15		2000	Hazard		12/6/00	3 "	1.25	10	1.15	Hazard	198
10/1/01	2 "		10		2400	L. & R.	1354							
7/5/02	1 "	1.25	15	1.10	1600	Hazard								
8/1/01	2-1 Mo.	1.35	25	1.10	51700	L. & R.								
8/14/00	3 "	1.25	10	1.15	3200	du Pont	1258	8/14/00	3 Yr.	1.25	10	1.15	du Pt. & Co.	200
								8/24/03	3 "	1.35	15	1.20	du Pont Co.	199
7/1/00	3 "	1.25	10	1.15	8700	"								
7/11/00	3 "	1.25	15	1.10	1200	"		7/10/97	3 "	1.25	05	1.20	du Pt. & Co.	202
								7/11/00	3 "	1.25	05	1.20	"	201
								3/1/08	1 "	1.15	..	1.15	du Pont Pdr. Co.	879–80
12/16/01	2 "	1.25	20	1.05		Austin								
12/8/01	2 "	1.25	05	1.20		King								
9/29/00	3 "	1.35	15	1.20	2100	du Pont	1260 1387	7/29/00	3 Yr.	1.35	15	1.20	du Pont & Co.	203
9/1/01	2 "		15			L. & R.								
9/20/00	3 "	1.30	10	1.20	400	King	1241 1425							
7/16/01	2 "	1.25	05	1.20 (1133—3)	1200	Equit.	1302							

Plaintiff's Exhibit 1300

CONTRACTS EXPIRING DECEMBER 31, 1903:

(Exhibit No. 1133, Gov. Ex. No. 20)

Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. 3 Page No.
7/20/01	2 Yr.	1.35	10	1.25	2450	Chatt.	1308
7/1/02	1 "	1.25	10	1.15	2944	Phoenix du Pont	
8/1/01	2 "	1.35	10	1.25	935	L. & R.	1330
10/12/01	2 "	1.35	25	1.10	21460	"	1322
9/1/01	2 "	1.40	05	1.35	800	Phoenix	1301
10/25/00	3 "	1.25	10	1.15	4000	du Pont	1264
8/18/01	2 "	1.25	10	1.15	5250	Phoenix	
7/30/00	3 "	1.25	15	1.10	7400	King	
9/5/01	2 "	1.50	20	1.30	37200	Oriental	
8/31/02	2 "	1.35	10	1.25	1600	American	1307
10/3/00	3 "	1.35 (or $1.25)	20	1.15	6000	Sycamore	1260

CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
11/27/08	1 Yr.			1.10	du P. Pdr. Co.	AA
11/27/07	1 "	1.05		1.05D	" L.	745-7
8/1/03	3 "	1.35	17½	1.17½D	du Pont & Co.	916
6/1/03	3 "	1.35	17½	1.17½	du Pont & Co.	205
7/28/04	2 "	1.35	20	1.15	Explosive S. Co.	1019
6/19/06	1 "	.95		.95	du Pont Co.	931
7/5/07	1 "A.R.	95		.95	du P. Pdr. Co.	932-3

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PAGE CO

Plaintiff's Exhibit 1300

ONTRACTS EXPIRING PERIOD ENDING JUNE 30, 1904

(Exhibit No. 1134, Gov. Ex. No. 21)

Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. J Page No.
2/1/02	2 Yr.	1.25	15	1.10	4400	Miami	1404
2/13/01	3 "	1.35	15	1.20	0	Hazard	1277 1303
5/16/01	3 "	1.35	15	1.20	1750	du Pont	1305
2/5/02	2 "	1.25	05	1.20	1402	Equit.	
5/1/01	3 "	1.25	05	1.20	1350	du Pont	1289
3/29/01	3 "	1.25	10	1.15	400	Hazard	1290 1366
3/18/01	3 "	1.25	10	1.15	5350	du Pont	1288
4/4/01	3 "	1.25	15	1.10	1650	Hazard	1277
3/15/01	3 "	1.25	10	1.15	900	du Pont	1352 1281
6/13/01	3 "	1.25	10	1.15	0	Hazard	1311
4/29/01	3 "	1.30	10	1.20	0	"	1278 1309
3/15/01	3 "	1.35	10	1.25	5800	Chatt.	1335
8/24/01	3 "	1.30	10	1.20	400	du Pont	
5/13/01	3 "	1.25	10	1.15	4800	"	
3/1/01	3 "	1.25	05	1.20	0	"	
4/16/02	2 "	1.35	15	1.20	11200	L. & R.	
4/4/01	3 "	1.25	15	1.10	800	Chatt.	1289 1367
4/23/02	2 "	1.30	10	1.20	400	du Pont	
4/20/01	3 "	1.25	15	1.10	3200	Hazard	1302
4/25/01	3 "	1.25	15	1.10	400	"	1309

(1134—1)

CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
2/13/01	3 Yr.	1.35	05	1.30	Hazard	206
5/16/01	3 "	1.35	15	1.20	du Pont & Co.	207
5/1/01	3 "	1.25	05	1.20	"	208
5/1/03	3 "	1.35	15	1.20	"	209
3/29/01	3 "	1.25	05	1.20	Hazard	210
3/18/01	3 "	1.25	10	1.15	du Pt. & Co.	211
4/4/01	3 "	1.25	05	1.20	Hazard	212
3/15/01	3 "	1.25	05	1.20	du Pont & Co.	213
		Special Price		1.25		1143
6/13/01	3 "	1.35	10	1.25	Hazard	214
4/29/01	3 "	1.30	10	1.20	"	215
4/15/04	3 "	1.27½		1.27½	Chatt.	216
5/13/99	2 "	1.25	10	1.15	du Pont Dn. Co.	218
5/8/01	3 "	1.25	10	1.15	"	217
3/1/01	3 "	1.25	05	1.20	"	219
4/23/02	2 Yr. 4 Mo.	1.30	10	1.20	du Pont & Co.	220
4/20/01	3 Yr.	1.25	15	1.10	Hazard	221
4/25/01	3 "	1.25	10	1.15	"	222

Plaintiff's Exhibit 1300

ONTRACTS EXPIRING PERIOD ENDING JUNE 30, 1904

(Exhibit No. 1134, Gov. Ex. No. 21)

Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. 3 Page No.
2/15/02	2 Yr.	1.35	10	1.25	525	L. & R.	1402
1/7/02	2 "	1.25	15	1.10	13966	"	
3/15/01	3 "	1.30	10	1.20	840	Hazard	1311
1/1/01	3 "	1.35	10	1.25	2600	du Pont	1273
5/15/02	2 "	1.25	20	1.05	26900	Hazard	
3/1/02	2 "	1.35	20	1.15	14140	L. & R.	1413
5/10/01	3 "	1.30 (or $1.20)	05	1.25	450	Hazard	1290
4/4/01	3 "	1.25	05	1.20	1600	"	1289
4/15/01	3 "	1.25	15	1.10	2900	"	1302
4/15/01	3 "	1.30	15	1.15		"	
4/1/01	3 "	1.25	05	1.20	0	"	1290
5/1/02	2 "	1.35	10	1.25	2995	L. & R.	
5/1/01	3 "	1.25	10	1.15	0	Hazard	1307
1/18/01	3 "	1.25	15	1.10	800	"	1275 1366
5/1/02	2 "	1.35	20	1.15	175	L. & R.	1424
5/3/01	3 "	1.35	05	1.30	1350	du Pont	1289
3/27/01	3 "	1.25 (or $1.10)	10	1.15	900	Hazard	1278 1366
5/1/01	3 "	1.25	15	1.10	2100	du Pont	1280 1363
4/1/02	2 "	1.25	05	1.20	2500	Phoenix	1273
3/13/01	3 "	1.25	15	1.10	2000	Hazard	1277

CONTRACT RENEWALS AS SHOWN
BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
3/1/04	1 Yr.			1.12½		1143
5/15/01	3 "	1.30	10	1.20	Hazard	223
1/1/01	3 "	1.35	10	1.25	du Pont & Co.	224
3/1/04	3 "	1.15 & 1.20	1.15 & 1.20		L. & R.	225
5/10/01	3 "	1.30	05	1.25	Hazard	226
4/14/01	3 "	1.25	05	1.20	"	227
No Contract				1.25		1143
4/18/01	3 Yr.	1.25	15	1.10	"	228
4/1/01	3 "	1.25	05	1.20	"	229
Special				1.35		1143
1/18/01	3 Yr.	1.25	05	1.20	"	230
3/27/01	3 "	1.25	05	1.20	"	231
5/1/01	3 "	1.25	05	1.20	du Pont & Co.	232
4/28/04	Special			1.25		1143
3/13/01	3 Yr.	1.25	10	1.15	Hazard	233

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2/26/01	3 "	1.30	10	1.20	1600	du Pont	1277 1363	2/26/01	3 "	1.25	05	1.20	du Pont & Co.	234
								5/23/04	3 "	1.35	15	1.20	du Pont Co.	235
4/24/01	3 Yr.	1.25	15	1.10	1900	du Pont	1288 1318	4/24/01	3 Yr.	1.25	15	1.10	du Pont & Co.	236
5/9/01	3 "	1.25	10	1.15	1550	Hazard	1278 1366	5/9/01	3 "	1.25	05	1.20	Hazard	237
1/24/01	3 "		10		4800	du Pont	1274	1/24/01	3 "	1.35	10	1.25	du Pont & Co .	238
3/15/02	2 "	1.25	15	1.10	400	Oriental	1368							
3/1/01	3 "	1.25	10	1.15	3200	du Pont	1293	3/1/01	3 "	1.25	10	1.15	"	239
										Special		1.20	"	1143
4/1/02	2 "	1.35	05	1.30	1200	Phoenix	1301							
5/1/01	3 "	1.25	10	1.15	5160	du Pont	1320	5/1/01	3 "	1.25	10	1.15	"	240
5/1/01	3 "	1.25	10	1.15	0	Hazard	1307	5/1/01	3 "	1.85	Salptre	1.85	Hazard	241
								5/15/01	3 "	1.35	15	1.20	Sycamore	242
5/15/01	3 "	1.35	15	1.20	2800	Sycamore	1308	5/5/04	3 "	1.45	25	1.20	"	243
4/4/01	3 "	1.25	15	1.10	450	Hazard	1278	4/1/01	3 "	1.25	10	1.15	Hazard	244
		1.25	05	1.20	1800	du Pont	1280							
4/4/01	3 "	(or $1.10)					1363	5/1/03	3 "		1/25 &	1.20		1143
1/2/02	2 "		10		350	L. & R.	1394	1/3/04	3 "	1.30		1.30	L. & R.	245
2/10/02	2 "	1.25	05	1.20	400	du Pont	1383	2/10/02	2 "	1.25	05	1.20	du Pont & Co.	246
								5/1/01	3 "	1.25	05	1.20	"	247
5/1/01	3 "	1.25	05	1.20	950	"	1294	9/1/03	3 "	1.35	10	1.15	"	248
								4/9/01	3 "	1.25	05	1.20	"	249
4/9/01	3 "	1.25	05	1.20	3150	"	1289 1278	5/1/03	3 "	1.35	10	1.25	"	250
2/13/01	3 "	1.25	10	1.15	0	Hazard	1366	2/13/01	3 "	1.25	05	1.20	Hazard	251
4/5/01	3 "	1.25	15	1.10	1600	King	1292							
10/18/01	3 "	1.25	15	1.10	400	Hazard		10/18/01	2 "7mo	1.25	15	1.10	"	252
							1277							
2/20/01	3 "	1.25	10	1.15	400	"	1366							
							191-10							
4/24/02	2 "	1.35	05	1.30 (1134—3)	1600	L. & R.	191-9	2/20/01	3 "	1.25	05	1.20	"	253

Plaintiff's Exhibit 1300

ONTRACTS EXPIRING PERIOD ENDING JUNE 30, 1914

(Exhibit No. 1134, Gov. Ex. No. 21)

Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. 3 Page No.
5/1/01	3 Yr.	1.25 (Or $1.10)	10	1.15	6840	du Pont	1363
3/10/02	2 "	1.35	15	1.20	0	Miami	1404
5/26/02	2 "	1.35	10	1.25	375	L. & R.	1344 1363
4/11/01	3 "	1.25	15	1.10	800	du Pont	1289
9/9/01	3 "	1.25	15	1.10	1200	du Font	1340
5/1/01	3 "	1.25	15	1.10	800	"	1289 1363
1/1/01	3 "	1.35	05	1.30	1600	Sycamore	1270
6/15/02	2 "	1.25	15	1.10	6800	King	
2/19/02	2 "		10		800	Chatt.	
3/26/02	2 "	1.35	10	1.25	0	Miami	1416
3/27/01	3 "	1.25	15	1.10	15000	du Pont	

CONTRACT RENEWALS AS SHOWN
BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
5/1/01	3 Yr.	1.25	10	1.15	du Pont & Co.	254
5/1/03	3 "	1.35	17½	1.17½	"	255
10/15/07	1 "	1.05		1.05	du Pont Pdr. Co.	885-6
5/26/04	3 "	1.25		1.25	L. & R.	256
4/11/01	3 "	1.25	05	1.20	du Pont & Co.	257
5/1/03	3 "	1.25	05	1.20	"	258
5/1/03	3 "	1.35	10	1.25	"	259
8/20/06	3 "	1.00		1.00	du Pont Co.	872
1/1/01	3 "	1.35	05	1.30	Sycamore	260
1/1/04	3 "	1.45	10	1.35	"	261
4/29/04	2 "	1.25		1.25	Chatt.	262
3/27/99	2 "	1.25	15	1.10	du Pont & Co.	264
3/13/01	3 "	1.25	15	1.10	"	263

Plaintiff's Exhibit 1300

1/18/01	3 "	1.30	10	1.20	3000	Hazard	1276
4/24/01	3 "	1.25	15	1.10	900	du Pont	1280
4/16/01	3 "	1.25	15	1.10	1200	Hazard	1295
4/6/01	3 "	1.30	20	1.10	19300	"	1303
4/30/01	3 "	1.25	05	1.20	1075	Oriental	1296
4/10/01	3 "	1.25	05	1.20	1600	du Pont	1289
							1311
Wilcox, 6/20/01	3 "	1.25	10	1.15	1250	Hazard	1366
1/24/01	3 "	1.35	10	1.25	4800	du Pont	1274
4/25/01	3 "	1.35	05	1.30 (1134—4)	800	Hazard	1282
4/17/01	3 Yr.	1.25	15	1.10	800	Hazard	1295
4/2/01	3 "	1.35	05	1.30	1600	du Pont	1288
3/23/01	3 "	1.25	15	1.10	400	"	1364

1/18/01	3 "	1.35	10	1.25	Hazard	265
4/24/01	3 "	1.25	05	1.20	du Pont & Co.	266
4/16/01	3 "	1.25	10	1.15	Hazard	267
4/10/01	3 "	1.25	05	1.20	du Pont & Co.	268
8/1/03	3 "	1.35	10	1.25	Hazard	1003
8/1/04	3 "	1.35	10	1.25	(D) du Pont Co.	900
8/1/06	1 "	1.00		1.00	D "	901
6/20/01	3 "	1.25	05	1.20	Hazard	269
1/24/01	3 "	1.35	10	1.25	du Pont & Co.	270
2/9/04	3 "	1.45	17½	1.27½	"	271
2/9/07 to 4/1/08		1.00		1.00	" Pdr. Co.	906
7/9/08	1 Yr.†	1.15		1.15	" "	907–11
4/25/01	3 "	1.35	05	1.30	Hazard	272
		† A. R.				
4/17/01	3 Yr.	1.25	10	1.15	Hazard	273
4/2/01	3 "	1.35	05	1.30	du Pont & Co.	274

Plaintiff's Exhibit 1300

CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

TS EXPIRING PERIOD ENDING JUNE 30, 1904

—(Exhibit No. 1134, Gov. Ex. No. 21)—

Date	Life	Price	Rebate	Net	Kegs	Company	Referred to In Lent Ex's P. 3 Page No.	Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
	2 "	1.25	05	1.20	1600	Phoenix	1372							
3/1/01														
4/1/02	3 "	1.25	10	1.15	4000	Ohio	1279							
3/13/01	3 "	1.25	10	1.15	1000	Hazard	1279	3/13/01	3 "	1.25	10	1.15	Hazard	275
5/1/01	3 "	1.25	10	1.15	1250	du Pont	1327	5/1/01	3 "	1.25	10	1.15	du Pont & Co.	276
								9/1/03	3 "	1.35	15	1.20	"	277
4/17/02	2 "	1.35	05	1.30	400	Equit.	1301							
4/26/01	3 "	1.35 (or $1.10)	35	1.00	54900	Chatt.	1325 99 9-10c	4/19/04	3 "	1.05		1.05	Chatt.	278
5/6/01	3 "	1.35	05	1.30	0	du Pont	1295	5/6/01	3 "	1.35	05	1.30	du Pont & Co.	279
							1327	5/1/01	3 "	1.25	10	1.15	"	281
5/1/01	3 "	1.25	10	1.15	531	"	1339	9/1/03	3 "	1.35	10	1.25	du Pont Co.	280
							1290							
4/9/01	3 "	1.25	10	1.15	0	Hazard	1392	4/9/01	3 "		05		Hazard	282
4/19/01	3 "	1.25	10	1.15	1898	du Pont		4/19/01	3 "	1.25	10	1.15	du Pont & Co.	283
								4/1/01	3 "	1.25	05	1.20	Hazard	284
4/1/01	3 "	1.35	05	1.30	1650	Hazard	1290	Special				1.35		1143

Plaintiff's Exhibit 1300

2/16/01	3 "	15 (or $1.10)		1250	"	1277	
1/25/02	2 "	1.35	10	1.25	875	L. & R.	1402 1290
5/24/01	3 "	1.25	15	1.10	0	Hazard	1318
5/14/01	3 "	1.35	10	1.25	1550	"	1307
4/1/02	2 "	1.25	15	1.10	11690	Phoenix	1372
				(1134-5)	308187		
4/4/01	3 Yr.	1.25	15	1.10	400	du Pont	1288 1364
4/9/01	3 "	1.25	10	1.15	1300	Hazard	1290 1392
1/1/02	2 "	1.35	20	1.15	12837	Chatt.	1325
5/1/01	3 "	1.25	15	1.10	2800	du Pont	1299 1363
				(1134-6)	325524		

2/16/01	3 "	1.25	05	1.20	"	285
1/25/04	3 "	1.25		1.25	L. & R.	286
5/14/01	3 "	1.35	10	1.25	Hazard	287
5/24/01	3 "	1.25	10	1.15	"	289
7/14/04	2 "	1.35	20	1.15	Explosive	1033
Special				1.25		1143
4/9/01	3 Yr.		05		Hazard	288
8/1/03	3 "	1.35	10	1.25	duPont D.N.Co.	972
6/8/06	1 "	1.00		1.00	du Pont Co.	973
8/1/03	3 "	1.35	10	1.25	Hazard	1004
5/1/01	3 "	1.25	05	1.20	du Pont & Co.	290
5/1/03	3 "	1.35	10	1.25 & 1.20	" "	291

Plaintiff's Exhibit 1300

NTRACTS EXPIRING PERIOD ENDING DEC. 31, 1904:

(Exhibit No. 1135, Gov. Ex. No. 22)

Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. J Page No.
7/7/02	2 Yr.	1.50	20	1.30	5000	du Pont	
9/27/01	3 "	1.25	15	1.10	2100	Hazard	1298 1649
7/11/02	2 "	1.25	15	1.10	4400	Miami	
9/15/01	3 "	1.25	15	1.10	1900	du Pont	1375
7/16/02	2 "	1.25	15	1.10	3000	Hazard	
7/17/02	2 "	1.25	20	1.05	3200	Miami	1416
8/1/01	3 "	1.35	10	1.25	2400	Chatt.	1337
8/1/01	3 "	1.35	15	1.20	2550	du Pont	1327
8/17/01	3 "	1.25	10	1.15	800	Hazard	1392
11/15/01	3 "	1.25	05	1.20	840	du Pont	1375
11/12/01	3 "	1.25	05	1.20	1600	"	1289
8/1/01	3 "	1.35	10	1.25	3000	"	1340
7/9/01	3 "	1.25	10	1.15	2000	"	1363
11/21/01	3 "	1.35	10	1.25	3200	Phoenix	1309
12/1/01	3 "	1.25	10	1.15	800	du Pont	1391
8/6/01	3 "		10		800	Equit.	1316
7/17/02	2 "	1.35	15	1.20	0	L. & R.	1449
7/11/02	2 "	1.25	20	1.05	32000	Miami	1437
					69590		

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CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
9/27/01	3 Yr.	1.25	05	1.20	Hazard	292
9/15/01	3 "	1.25	15	1.10	du Pont & Co.	300
7/16/97	2 "	1.25	15	1.10	Hazard	295
7/19/00	2 "	1.25	15	1.10	"	294
6/16/02	2 "	1.25	15	1.10	"	293
8/1/01	3 "	1.25	05	1.20	Hazard	296
8/1/03	3 "	1.35	10	1.25	du Pont DN Co.	780
11/30/07	1 "	1.05		1.05(D)	duP. Pdr. Co.	759-61 & V
11/12/01	3 "	1.25	05	1.20	du Pont & Co.	297
11/25/07	1 "	1.05		1.05(D)	duP. Pdr. Co.	741-4 & G
11/1/04	3 "	1.35	17½	1.17½	du P. DN Co.	794 to 800
8/1/01	3 "	1.35 & 1.25	10	1.25 & 1.15	du P. & Co.	298
5/1/03	3 "	1.45	15	1.30	"	299
7/9/01	3 "	1.25	05	1.20	"	301
12/1/01	3 "	1.25	10	1.15	"	302

Plaintiff's Exhibit 1300

7/11/01	3 Yr.	1.35	18	1.17	69590		1318
					1600	du Pont	1436
7/7/02	2 "	1.35	20	1.15	37600	"	1338
"	2 "	"	"	"	44353	Equit.	1338
7/10/01	3 "	1.25 (or $1.15)	05	1.20	1200	Austin	
7/1/01	3 "	1.25	10	1.15	1700	du Pont	1340
7/1/01	3 "	1.25	10	1.15	400	Hazard	1366
7/31/02	2 "	1.25	15	1.10	5200	Miami	1451
7/2/01	3 "	1.25 (or $1.10)	05	1.20	800	Hazard	1290
7/1/01	3 "	1.55	25	1.30	9600	du Pont	
8/23/01	3 "	1.25 (or $1.15)	10	1.15	1200	Hazard	1342
					173243		

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7/11/01	3 Yr.	1.35	18	1.17	du Pont & Co.	303
7/1/01	3 "	1.25	10	1.15	Do	304
9/1/03	3 "	1.35	10	1.25	du Pont Co.	305
7/1/01	3 "	1.25	05	1.20	Hazard	306
7/2/01	3 "	1.25	05	1.20	"	307
7/1/01	3 "	1.25	25	1.00	du Pont & Co.	308
7/1/03	3 "			1.00		1143
8/23/01	3 "	1.25	10	1.15	Hazard	309

Plaintiff's Exhibit 1300

NTRACTS EXPIRING PERIOD ENDING JUNE 30, 1905:

(Exhibit No. 1136, Gov. Ex. No. 23)

Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. 3 Page No.
6/14/02	3 Yr.	1.30	20	1.10	2000	du Pont	
5/1/02	3 "	1.25	10	1.15	2800	"	1562
6/18/01	4 "	1.35	15	1.20	9000	Chatt.	1337
6/18/01	4 "	1.35	15	1.20	2000	"	1337
5/1/02	3 "	1.25	10	1.15	7100	du Pont	1562
6/1/02	3 "	1.25	10	1.15	0	Phoenix	1460
6/1/02	3 "	1.25	10	1.15	5750	du Pont	1562
6/1/02	3 "	1.55	25	1.30	40700	"	
5/1/02	3 "	1.25	15	1.10	1600	"	1363
5/1/02	3 "	1.35	10	1.25	10000	"	1489
5/1/02	3 "	1.25	10	1.15	8750	"	1562
6/1/02	3 "	1.25	10	1.15	20000	"	1563

CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
7/14/02	3 Yr.	1.30 20		1.10	du Pont & Co.	4
7/14/05	3 "	1.40 30		1.10	du Pont Co.	4a
5/1/03	3 "			1.20		1143
6/18/01	4 "	1.20		1.20	Chatt.	5
5/1/02	3 "	1.25 10		1.15	du Pont & Co.	6
5/1/03	3 "	1.35 17½		1.17½	"	6a
5/1/06	1 "	.95		.95	du Pont Co.	6b
11/15/07	1 "	1.05		1.05	du Pont Pdr. Co.	6c
6/1/02	3 "	1.15		1.15	Phoenix	1045
8/1/03	3 "	1.35 15		1.20D	du Pont Co.	730
8/1/06	1 "	1.00		1.00	"	732
11/11/07	1 "	1.05		1.05D	du P. Pdr. Co.	740
6/1/02	3 "	1.25 10		1.15	du Pont & Co.	7
5/1/03	3 "	1.35 15		1.20	du P. DN & Co.	8
5/1/06	1 "	1.00		1.00	du Pont Co.	735
11/11/07	1 "	1.05		1.05D	duP. Pdr. Co.	736-9&C
6/1/02	3 "	1.25 25		1.00	du Pont & Co.	9
5/1/02	3 "	1.25 05		1.20	"	10
5/1/02	3 "	1.25 10		1.15	"	11
5/1/03	3 "			1.25		1143
5/1/02	3 "	1.25 15		1.10	"	12
5/1/03	3 "	1.35 20		1.15	du P. DN & Co.	13
6/1/02	3 "	1.25 10		1.15	"	14
5/1/03	3 "	1.35 20		1.15	du Pont & Co.	15

Plaintiff's Exhibit 1300

1/31/02	3 "	1.30	10	1.20	400	Hazard	1402
4/1/02	3 "	1.35	15	1.20	2400	du Pont	1368 1564
1/24/02	3 "	1.25	16	1.10	0	"	1391
5/1/02	3 "	1.25	10	1.15	6200	"	1563
5/1/02	3 "	1.25	10	1.15	4300	"	1564
5/1/02	3 "	1.25	10	1.15	9800	"	1563
5/1/02	3 Yr.	1.25	15	1.10	1600	du Pont	1564
6/1/02	3 "	1.35	10	1.25	10800	"	1563
6/1/02	3 "	1.35	20	1.15	36600	"	
5/1/02	3 "	1.25	10	1.15	4000	"	
					185800		

(1136—1)

(1136-2)

11/9/07	1 "	A.R.1.05		1.05	du P. Pdr. Co.	876-8
1/31/02	3 "	1.30	10	1.20	Hazard	16
1/24/02	3 "	1.25	15	1.10	du Pont & Co.	17
5/1/02	3 "	1.25	10	1.15	"	18
12/31/07	1 "	A.R. 1.10		1.10	du P. Pdr. Co.	913-15
5/1/02	3 "	1.25	10	1.15	du Pont & Co.	19
5/1/03	3 "	1.35	17½	1.17½	"	20
5/1/02	3 "	1.25	15	1.10	"	21
5/1/03	3 "	1.35	20	1.15	"	22
6/29/06	1 "	.95		.95	du Pont Co.	23
12/28/07	1 "	1.10		1.10	du P. Pdr. Co.	24
5/1/03	3 Yr.	1.35	10	1.25	du Pont & Co.	26
5/1/02	3 "	1.25	5	1.20	"	25
6/1/02	3 "	1.35	10	1.25	"	27
5/1/03	3 "	1.35	20	1.15	"	28
4/21/06	1 "	1.05		1.05	du Pont Co.	29
11/26/07	1 "	1.10		1.10	du P. Pdr. Co.	30
6/1/02	3 "	1.25	25	1.00	du Pont & Co.	31
5/1/02	3 "	1.25	10	1.15	du Pt. & Co.	32
5/1/03	3 "	1.35	20	1.15	"	33
5/1/06	1 "	.95		.95	du Pont Co.	34
1/2/08	1 "	A.R. 1.10		1.10	du P. Pdr. Co.	37

Plaintiff's Exhibit 1300

S EXPIRING PERIOD ENDING DEC. 31, 1905.

—(Exhibit No. 1137, Gov. Ex. No. 24)—

CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. 3 Page No.	Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
7/14/02	3 Yr.	1.30	20	1.10		King								
7/14/02	3 "	1.30	20	1.10	2800	Hazard	1080							
7/14/02	3 "	1.30	20	1.10	4000	"	1080	7/14/02	3 Yr.	1.30	20	1.10	Hazard	38
7/14/02	3 "	1.30	20	1.10	2800	King	1080	7/14/05	3 "	1.40	30	1.10	King	39
								7/14/02	3 "	1.30	20	1.10	du PontDN&Co.	40
7/14/02	3 "	1.30	20	1.10	1200	du Pont	1081	9/12/08	1 "			1.12½	du Pont Pdr. Co.	43
								9/23/09	1 "			1.17½	" "	44
7/14/02	3 "	1.30	20	1.10	2000	King	1081	7/14/05	3 "	1.40	30	1.10	du Pont Co.	41
								7/14/05	3 "	1.40	30	1.10	King	45
7/14/02	3 "	1.30	20	1.10	2800	"	1081							
7/14/02	3 "	1.30	20	1.10	4000	Hazard	1080	7/14/02	3 "	1.30	20	1.10	Hazard	46
7/14/02	3 "	1.30	20	1.10	0	"		"	3 "	"	"	"	"	47
7/14/02	3 "	1.30	20	1.10	0	King								
7/14/02	3 "	1.30	20	1.10	2800	Hazard	1080	7/14/02	3 "	1.30	20	1.10	Hazard	48

Plaintiff's Exhibit 1300

7/14/02	3 "	1.30	20	1.10	1600	"	1080	"	3 "	1.30	20	1.10	"		49
7/14/02	3 "	1.30	20	1.10	1200	King	1080	7/14/05	3 "	1.40	30	1.10	King		50
7/14/02	3 "	1.30	20	1.10	1600	du Pont	1080	7/14/02	3 "	1.30	20	1.10	du PontDN&Co.		51
								7/14/05	3 "	1.40	30	1.10	du Pont Co.		52
7/14/02	3 "	1.30	20	1.10	2400	Hazard	1080	7/14/02	3 "	1.30	20	1.10	Hazard		54
7/14/02	3 "	1.30	20	1.10	1800	"	1080	7/14/02	3 "	1.30	20	1.10	"		55
7/14/02	3 "	1.30	20	1.10	5200	King	1080	7/14/05	3 "	1.40	30	1.10	King		56
7/14/02	3 "	1.30	20	1.10	1600	du Pont Hazard King	1081	7/14/05	3 "	1.40	30	1.10	"		57
7/14/02	3 "	1.30	20	1.10	1200	King	1081								
7/14/02	3 "	1.30	20	1.10	3600	Hazard	1080	7/14/02	3 "	1.30	20	1.10	Hazard		58
7/14/02	3 "	1.30	20	1.10 (1137-1)	2200	"	1080	7/14/02	3 "	1.30	20	1.10	"		59
Co., 1/16/02	3 Yr.	1.35	10	1.25	800	du Pont	1391	1/16/02	3 Yr.	1.35	10	1.25	du PontDN&Co.		61
								5/1/03	3 "	1.45	17½	1.27½	"		62
								4/11/06	1 "			1.05	du Pont Co.		64

Plaintiff's Exhibit 1300

'S EXPIRING PERIOD ENDING DEC. 31, 1905.

—(Exhibit No. 1137, Gov. Ex. No. 24)—

CONTRACT RENEWALS AS SHOWN BY CONTRACTS PRODUCED BY KERR, RICE & A. I. DU PONT

Date	Life	Price	Rebate	Net	Kegs	Company	Referred to in Lent Ex's P. 3 Page No.	Date	Life	Price	Rebate	Net Price	Company	Exhibit No.
7/14/02	3 "	1.30	20	1.10	1200	King	1080							
7/28/02	3 "	1.35	15	1.20	3200	du Pont	1448							
7/14/02	3 "	1.30	20	1.10	4800	King	1081							
7/14/02	3 "	1.30	20	1.10	2400	Hazard du Pont	1081	7/14/02	3 "	1.30	20	1.10	Hazard	65
7/14/02	3 "	1.30	20	1.10	0	Hazard King	1080	7/14/02 7/14/02	3 " 3 "	1.30 1.30	20 20	1.10 1.10	du PontDN&Co. Hazard	66 67
7/14/02	3 "	1.30	20	1.10	6000	Hazard								
7/14/02	3 "	1.30	20	1.10	1200	"	1081	7/14/02	3 "	1.30	20	1.10	Hazard	67
8/1/02	3 "	1.30	20	1.10	2000	L. & R.	1081							
9/1/02	3 "	1.25	20	1.05	3400	du Pont	1219	9/1/02 5/1/03	3 " 3 "	1.25 1.35	10 15	1.15 1.20	du Pont N. & Co. " "	68 69
7/14/02	3 "	1.30	20	1.10	1600	King	1081	7/14/05	3 "	1.40	30	1.10	King	70
7/14/02	3 "	1.30	20	1.10	900	"	1080							
7/14/02	3 "	1.30	20	1.10	0	Hazard du Pont		7/14/02	3 "	1.30	20	1.10	Hazard	71

Plaintiff's Exhibit 1500

7/14/02	3 "	1.30	20	1.10	6800	Hazard King	1081	7/14/02	3 "	1.30	20	1.10	du PontDN&Co.	72
								7/14/02	3 "	1.30	20	1.10	" "	73
7/14/02	3 "	1.30	20	1.10	2000	du Pont	1081	7/14/05	3 "	1.40	30	1.10	du Pont Co.	74
7/14/02	3 "	1.25	15	1.10	400	Hazard	1344							
7/14/02	3 "	1.30	20	1.10	0	"								
7/14/02	3 "	1.30	20	1.10	400	"	1081	7/14/02	3 "	1.30	20	1.10	Hazard	76
7/14/02	3 "	1.30	20	1.10	3800	King Hazard du Pont	1081							
		(1137-2)												
7/14/02	3 Yr.	1.30	20	1.10	2800	duPont Hazard King	1081							
7/14/02	3 "	1.30	20	1.10	1600	King	1080							
					90100									
		1906												
8/19/01	5 Yr.	1.25	25	1.00	48597	du Pont Austin	1362	8/19/01	5 Yr.	1.25	25	1.00	du PontDN&Co.	1
				(1137-3)										

8350 *Plaintiff's Exhibit 1301*

Plaintiff's Exhibit No. 1301.

AN AGREEMENT made this eleventh day of October, in the year One Thousand Eight Hundred and Ninety-eight, between The Eastern Dynamite Company, a Corporation of the State of New Jersey, party of the first part (hereinafter called the Selling Agents), and The Hancock Chemical Company, a Corporation organized under the Laws of the State of Michigan (hereinafter called the Company), party of the second part:

8351 WHEREAS, the Company has a factory, located in Houghton County, in the State of Michigan, and is engaged in the manufacture of a class of Powder of which nitro-glycerine is the chief explosive agent; and

WHEREAS, the majority of the stock is owned in the interest of certain mining companies located in the States of Michigan and Montana to which the Company supplies Powder and to which it is intended that it shall continue under this Agreement to furnish such supplies; and

8352 WHEREAS, the Selling Agents are desirous of securing from the Company a contract for the purchase from the Company of such part of its product as is not required by it to supply the mining companies hereinafter named:

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, IT IS AGREED between the parties hereto as follows:

FIRST: The Company will from time to time as requested by the Selling Agents manufacture and supply to the Selling Agents (within the limit of

the present capacity of the Company's works), such an amount of powder of which nitro-glycerine is the chief explosive agent, as the Company may reasonably be able to manufacture, after supplying all the Powder required by the Mining Companies hereinafter mentioned.

SECOND: The Company will at all times during the term of this Agreement keep and maintain its works (except as herein provided with respect to the mining companies with which it is identified) so that such works may at the option of the Selling 8354
Agents be utilized by the latter subject to the control of the Company for the manufacture of Powder by the Company, and the latter will not at any time during such term manufacture, sell, or deal in Powder of the character herein described other than that supplied to mining companies herein named, except upon the order and direction of the Selling Agents or with their written consent.

THIRD: There shall, at all times, during the term of the Agreement, be excluded from the operation of this contract all Powder manufactured by the Company to be supplied to the mines of the follow- 8355
ing-named companies and none other:

The Tamarack Mining Company.

The Osceola Consolidated Mining Company.

The Isle Royale Mining Company,

all located in the State of Michigan,

The Boston and Montana Consolidated Copper and Silver Mining Company, and

The Butts & Boston Consolidated Mining Company, located in the State of Montana.

FOURTH: The term of this contract shall begin on the first day of November, 1898, and the same shall continue for five years thereafter and from year to-

8356 *Plaintiff's Exhibit 1301*

year after the termination of said five years subject to the right of either party to terminate the same at the end of said term of five years or at the end of any year thereafter upon a previous written notice of not less than three months served by the party electing to discontinue the Agreement on the other party or on its successor in interest or its assigns.

FIFTH: If, however, either party to this Agreement shall make default in the performance of any of the conditions hereby required to be performed
8357 by them, the other party shall be at liberty if it so elects immediately after any such default to terminate this Agreement and it shall thereupon be and become relieved from all further obligation thereunder.

SIXTH: There shall be paid to the Company by the Selling Agents, their successors or assigns, as part of the consideration and inducement for the exclusive agency hereby granted, the sum of eighteen thousand dollars per year during each and every year of the continuance hereof, which payment shall be made in equal quarterly amounts on
8358 the fifteenth day of December, March, June and September, and which shall, in each instance, be and constitute a condition precedent to the continuance of this Agreement.

There shall be further paid for all merchandise that may be manufactured by the Company upon the order or direction of the Selling Agents, their successors or assigns, a sum equal to 15 per cent. over and above, the actual cost of manufacturing, the cost of delivering such merchandise to be borne by the Selling Agents. All the items which have heretofore entered into the estimate of the cost of the materials in the conduct of the Company's business as appears from its books of account shall

be regarded as part of the cost for the purposes of this Agreement.

Payments shall be made on the fifteenth day of each month for all merchandise shipped by the Company during the preceding month, without discount.

SEVENTH: Either party may assign this Agreement or any of its rights thereunder, but such assignment shall in no event relieve the parties hereto or any of them from any of the obligations or 8360
liabilities assumed hereunder.

IN WITNESS WHEREOF, the parties hereto have respectively caused their corporate seals to be hereto attached and this Agreement to be signed by their duly authorized officers, the day and year first above written.

EASTERN DYNAMITE CO.,
J. A. HASKELL, Pres.
[SEAL]

Attest:
EDWARD GREENE, 8361
Secretary.
HANCOCK CHEMICAL CO.,
W. E. BARNALL, Prest.,
[SEAL]
J. HALDANE EDWARDS,
Secretary.

Plaintiff's Exhibit No. 1328.

MEMORANDUM OF UNDERSTANDING between J. A. HASKELL, party of the first part, and A. O. FAY, party of the second part:

WHEREAS, it seems desirable that the present relative relation as regards proportions of trade be-

8362 *Plaintiff's Exhibit 1328*

tween the two parties to this understanding for the interests they represent, should be maintained until discontinued in accordance with the following provisions.

IT IS AGREED that during the year ending June 30th, 1896, and thereafter from year to year unless notice of discontinuance is given by either party to the other in writing, three months in advance of June 30th, as between the parties hereto, the said parties shall be entitled to the same proportion
8363 of trade as that enjoyed by each during the year ending June 30th, 1895.

Immediately upon the consummation of this written memorandum, or as soon thereafter as practicable, said C. A. Fay shall submit to the Adjuster a sworn statement giving the total number of pounds sold by him during the year ending June 30th, 1895, in the United States, it being understood that export sales shall not be considered as entering into or forming a part of the understanding covered by this Memorandum.

8364 As soon as practicable after sixty days from the beginning of this understanding shall elapse and at the end of similar periods thereafter as long as it is continued in operation, said A. O. Fay shall submit to the adjuster a sworn statement of his sales during sixty days.

The Adjuster when in possession of sworn statements of each of the parties to this understanding shall thereupon ascertain whether said A.O. Fay has exceeded his proportion of the business as ascertained from a careful computation of the total business done by the parties hereto from the beginning of the contract year to and including the last report, and the Adjuster shall at once notify said A. O. Fay of his status as regards his quota to the time of the latest reports during his contract year.

As soon as reports are received for the whole

year ending June 30th, 1896, and thereafter from year to year during the life of this understanding, said A. O. Fay is to be advised as to whether he has exceeded his proportion of the aggregate business done or fallen below it and by how many pounds.

Upon receipt of such advice, in case the said Fay has oversold his quota he shall pay to said J. A. Haskell a sum equal to two (2) cents per pound for such oversales. On the other hand, in case it shall be found that the said Fay has not sold his proportion of business during the year he shall be 8366
paid two (2) cents per pound by the said Haskell on his deficiency.

A Standing Committee shall be formed, composed of four (4) parties selected by said Haskell and one (1) party selected by said Fay, who shall meet together pursuant to the call of the Secretary, monthly, either the same day or as near to the so-called Board of Trade meetings as may be deemed advisable.

The Standing Committee shall have power to designate prices at which sales shall be made by the parties to this understanding and shall take up, 8367
consider and determine upon any complaints of violation of this understanding or the rules hereafter promulgated, or such instructions as may hereafter originate from said Standing Committee.

In case either party should hereafter purchase any High Explosive Companies and in such purchase the other party does not participate, thereafter during each year a percentage of the aggregate pounds sold by all parties, equal to the total sales of the Company purchased, for the year preceding time of purchase of such Company, shall be deducted from the gross business done by the parties to this understanding before the computation of the said Fay's oversales or undersales shall be made.

8368 *Plaintiff's Exhibit 1328*

The following rules intended to protect the parties to this understanding in their own trade are hereby promulgated and will continue in effect until others are made by the Standing Committee:

1st: Neither party shall interfere with any trade held by the other, either exclusively or jointly with another Associate, by quoting the latter's customer, either direct or through an agent, a lower price for the same or any other grade than that at
8369 **which they are being supplied direct or through an agent; nor shall any rebate, allowance or commission be made to the customer reducing the net amount received from him.**

2nd: When one party shall by mistake or otherwise, take away the trade of the other by a reduction in price, and the facts are demonstrated, the party taking such trade shall pay to the party entitled to the trade on all orders after said demonstration a penalty equal to all the profit between
8370 **an assumed cost of seven cents per pound for 40% at the works and the price at which the former seller was selling when such trade was diverted, so long as the goods are sold below the original price; the party having lost the trade may retain it at the best price possible.**

3rd: No customer or employe of a customer of one party shall be taken as agent by the other.

4th: An "Agent" shall be defined as one who is regularly employed on salary, or one who has a storage magazine and sale of consigned stock. The following is Rule 4 as agreed upon between Eastern and Aetna under date of February 6th and 9th, 1903.

Plaintiff's Exhibit 1328 8371

Rule 4—

An "Agent" shall be defined as one who is regularly employed on a salary, or one who has a storage magazine and sale of consigned stock. The operation of the A. S. & D. Company which relieves agents from the care of consigned stock not to affect the meaning and intent of this rule."

5th: When one or two purchases of dynamite 8372
are made by one party's customer to cover an emergent demand with no intention on the part of the purchaser of continuing the use of such dynamite, such temporary purchase shall not change the status of the trade.

6th: Trade has been diverted from an associate by an outside competitor shall still be considered as belonging to such associate and may not be acquired by another until after the expiration of six months and an additional three months if requested. 8373

7th: The party in deficiency at last statement of status when any open contract work comes up for competition shall be the one to represent and protect the joint interests by bidding as low as he may deem wise for said trade. Upon agreement, however, party in deficiency may waive right to bid for such trade.

8th: A lower price on fuzes, fuse or caps than that at which a party is selling, which shall divert trade in dynamite, shall be considered as a reduction in the price of dynamite.

8374 *Plaintiff's Exhibit 1328*

this understanding shall be considered as joint trade and no reduction in price shall be made by one party without previous consultation with, or notice to, the other.

10th: Consolidation of customers sold by both parties shall constitute joint trade.

11th: The offer of a gift, loan or sale of a powder box or storage magazine shall be made only to
8375 trade held exclusively by the party making the offer.

12th: Whenever an associate can do so without detriment to other interests he may at the request of another associate holding any trade exclusively name higher prices if asked to quote on such trade. No change in prices or rules, especially affecting the said Fay shall be made by the Standing Committee without the consent of his representative.

For the purpose of computation of quotas and the adjustment thereon hereafter the Chicago
8376 Drainage Canal business shall be excluded.

This understanding shall take effect immediately upon the signature of this memorandum.

WHEREAS, on or about August, 1895, a memorandum of understanding between J. A. Haskell, party of the first part, and A. O. Fay, party of the second part, was signed by each of the parties thereto, in which the following clauses appeared:

> "It is agreed that during the year ending June 30th, 1896 and thereafter from year to year unless notice of discontinuance is given by either party to the other in writing, three months in advance of June 30th as between the parties hereto, the said parties

shall be entitled to the same proportion of trade as that enjoyed by each during the year ending June 30th, 1895."

"In case either party should hereafter purchase any High Explosive Companies and in such purchase the other party does not participate, thereafter during each year a percentage of the aggregate pounds sold by all parties, equal to the total sales of the company purchased, for the year preceding time 8378
of purchase of such company, shall be deducted from the gross business done by the parties to this understanding before the computation of the said Fay's oversales or undersales shall be made."

THEREFORE, for a clearer understanding as between the two parties, the following information is furnished and is intended to form a part of said memorandum of understanding.

The sales of the party of the first part (The Pe- 8379
pauno Chemical Company, The Hercules Powder Company, The Atlantic Dynamite Company, The Sterling Dynamite Company and The Lake Superior Powder Company) during the year ending June 30th, 1895, amounted to 12,988,184 pounds, while the sales of the party of the second part amounted to 1,553,933 pounds.

The basis quota therefore of the party of the second part amounted to 10.68% of the total sales.

During the year ending June 30th, 1898, the sales of both parties to this memorandum of understanding were 20,250,465 lbs.
of which Companies purchased by
the party of the first part, viz:

8380 *Plaintiff's Exhibit 1328*

The Hecla Powder Company, New York Powder Company and Clinton Dynamite Company, (in which purchase the party of the second part did not participate) sold 1,858,198 lbs.

the proportion of the party of the second part for the adjustment thereafter became 9.7015%.

During the year ending June 30th, 1887, certain other purchases were made by the party of the
8381 first part of companies (Acme Powder Company, Enterprise High Explosives Company and The Standard Explosives Company, Limited) whose aggregate sales during the year preceding date of purchase had amounted to 1,095,618 lbs.

This further reduced the quota of the party of the second part to 9.2345%

During the year ending January 31st, 1898, purchase was made by the party of the first part of the United States Dynamite Company, whose sales during the year preceding date of purchase amounted to 342,512 lbs.

8382 reducing the quota of the party of the second part to 9.0976%

During the sixty days ending April 30th, 1898, purchase made by the party of the first part of the Mount Wolf Dynamite Company, whose sales during the year preceding the time of purchase amounted to 109,810 lbs.

further reducing the quota of the party of the second part to 9.0567%

During the sixty days preceding July 1st, 1898, purchase was made by the party of the first part of the Columbian Powder Company, whose sales during year preceding time to purchase aggregated 153,225 lbs.

reducing the quota of the party of the second part to 9%

Plaintiff's Exhibit 1328 8383

During the year ending January 1st, 1899, purchase was made by the party of the first part of The American Forcite Powder Manufacturing Company, whose sales during the year preceding time of purchase amounted to 2,972,115 lbs. making the quota of the party of the second part 8.0879%

During the month of January, 1899, purchase was made by the party of the first part of the Blue Ridge Powder Company, whose sales during the preceding year amounted to 171,680 lbs. 8384 reducing the quota of the party of the second part to 8.0399%

During the sixty days preceding August 31st, 1899, purchases was made by the party of the first part of the Dittmar Powder & Chemical Company, whose sales during the preceding year aggregated 561,200 lbs. reducing the quota of the party of the second part to 7.9102% on which basis the sales from September first, 1899 to date, have been computed.

8385

Until further modifications are effected by purchase by the party of the first part in which the party of the second part does not participate, or vice versa, the proportions as agreed upon in accordance with this memorandum and the original memorandum to which reference is above made, are 98.0898% to the party of the first part, 7.9102% to the party of the second part.

Executed by the parties named, this day of , 1899.

J. A. HASKELL,
A. O. FAY.

8386 **Plaintiff's Exhibit No. 1329.**

Memorandum of agreement entered into this the thirty-first day of December, 1897, by and between The Eastern Dynamite Company, a corporation of the State of New Jersey, and the Aetna Powder Company, a corporation of the State of Indiana, hereinafter designated the parties of the first part, and the King Powder Company, a corporation of the State of Ohio, hereinafter designated the party of the second part.

8387 Whereas, the party of the second part desires to enter into the High Explosives business more actively than heretofore, it is agreed as follows:

That in consideration of the party of the second part agreeing to sell, during the life of this agreement, high explosives manufactured by the Companies, owned and controlled by the parties of the first part, and no other, the parties of the first part agree to furnish to the party of the second part such quantities of High Explosives as the party of the second part may require for re-sale up to but

8388 not exceeding three (3%) per cent of the number of pounds of High Explosives sold by the parties hereto, or Companies controlled by them in the United States and under the following terms and conditions:

1st.—The party of the second part is to adopt a brand for the goods it is to sell.

2d.—The parties of the first part are to select some one of the Companies controlled by them, with whom, from time to time the party of the second part is to transact its business, make its returns and receive instructions as to prices, terms, etc., at and under which Powder covered by this agreement is to be sold. Until further notice, however,

Plaintiff's Exhibit 1329 8389

the Aetna Powder Company shall be the concern to which this clause refers.

3d.—From time to time hereafter as the party of the second part shall place orders with the representative of the parties of the first part, they shall cause to be furnished the requisite amount of grades required to be manufactured with due care, and to be equal in quality to similar grades of Atlas powder.

8390

4th. Within thirty days after the end of the month of March, June, September and December the party of the second part shall transmit check and statement covering the transactions of the preceding quarter as follows:

Payment shall be made for all powder delivered during the preceding quarter at the rate of eight (8) cents per pound, delivered at Pittsburgh, Chicago, St. Louis, Cincinnati and Ashburn for forty (40%) per cent. powder, and for other grades 8391
above or below forty (40%) per cent. at the same rate of increase or decrease as shall appear in the schedule of selling prices for delivery at Chicago. The foregoing price of eight (8) cents is based upon the present price of One and Fifty-five hundredth cents per pound for Nitrate of Soda, and nine and one-half (9½) cents per pound for Glycerine, a corresponding advance or decrease to be made hereafter in the advance or decrease in price of either or both after thirty days' notice given by the representative of the parties of the first part to the party of the second part.

Statement shall be rendered, and payment made of and for one-half of the profit resulting from the powder sold during the preceding quarter, to be

8392 *Plaintiff's Exhibit 1329*

ascertained by deducting from the gross recepits the actual freight paid and commission allowed by the party of the second part, together with one-quarter of a cent per pound for magazine expense and haulage on all powder accounted for, it being presumed that the remaining half retained by the party of the second part will be a fair compensation for selling and guaranteeing collections.

4th. In case during any year of the life of this
8393 agreement the sales of the party of the second part shall exceed three (3%) per cent of the total sales of the parties hereto, or the companies they control on the number of pounds exceeding said three (3%) per cent, the party of the second part agrees to return to the parties of the first part the rate of profit they shall have retained under clause 3.

5th. The party of the second part agrees in selling to follow the rules and regulations of the price Committee of the parties of the first part as communicated by their representative. It being under-
8394 stood that they shall be furnished with and sell at the prices fixed for the Companies controlled by the parties of the first part, exception being made when trade is threatened by outside competitors or large contracts where it is deemed advisable for some one company to make a lower price to a former or large customer.

6th. The party of the second part agrees to refrain from selling in the so-called anthracite region and in the Neutral Belt.

7th. As soon as possible after the end of February, and at the end of each sixty (60) days thereafter, the representative of the parties of the first part shall communicate to the party of the second

part information as to the amount the party of the second part is authorized to sell under the terms of this agreement, in order that it may restrict itself to its allotment.

8th. This agreement shall be in force for ten (10) years from the date hereof, and thereafter from year to year unless written notice be given by either party of its desire to terminate it three months prior to December 31st, 1907, or at the end of any year thereafter. 8396

Witness our hands and seals this the day and year aforesaid.

EASTERN DYNAMITE COMPANY,
Attest: J. A. HASKELL,
EDWARD GREENE, Pres.
(Seal) Secretary.

AETNA POWDER CO.,
A. O. FAY, Prest.
RALPH M. FAY, Sec'y.

THE KING POWDER CO., 8397
By G. W. PETERS, Pres.
J. H. MCKIBBON,
Sec'y.
(Seal)

8398 **Plaintiff's Exhibit No. 1330.**

Memorandum of agreement entered into this the first day of May, 1901, by and between The Eastern Dynamite Company, a corporation of the State of New Jersey, and the Aetna Powder Company, a corporation of the State of Indiana, hereinafter designated as the parties of the first part, and The King Powder Company, a corporation of the State of Ohio, hereinafter designated as the party of the second part.

8399 WHEREAS the parties hereto, under date of December 31st, 1897, entered into an agreement whereby the party of the second part acquired the right to sell dynamite manufactured by the parties of the first part under certain conditions, and

WHEREAS, for certain reasons, the party of the second part now desires to retire from the active sale of dynamite.

It is agreed that, commencing with the date of this instrument until the expiration of the contract above referred to, The King Powder Company releases all claims to the dynamite business,

8400 either as manufacturer or seller, for the consideration of Twenty-four hundred dollars ($2,400.00) per annum to be paid quarterly at the end of each quarter until the termination of said contract.

WITNESS our hands and seals the day and year first above written.

THE EASTERN DYNAMITE COMPANY,
J. A. HASKELL, President.
THE AETNA POWDER COMPANY,
A. O. FAY,
THE KING POWDER COMPANY,
G. E. PETERS, President.

Plaintiff's Exhibit No. 1331. 8401

Memoranda of agreement entered into this 7th day of September, A. D. 1904, by and between the King Powder Company, a corporation under the laws of the State of Ohio, party of the first part, and the Eastern Dynamite Company, a corporation under the laws of the State of New Jersey, and the Aetna Powder Company, a corporation under the laws of the State of Indiana, parties of the second part.

WITNESSETH, that WHEREAS, the party of the first 8402
part has heretofore established in various parts of the United States a trade in dynamite, and in such business has acquired the exclusive right to use that certain brand or trade mark "REX," which mark or brand has been affixed to the dynamite sold by it to its customers; and

WHEREAS, the party of the first part has heretofore sold and assigned to the parties of the second part, their agents, successors or assigns, its said dynamite business and the good-will thereof, together with the exclusive right to make and vend the dynamite heretofore sold by it, and to affix 8403
the brand or mark "REX" to said dynamite, subject to the conditions and limitations, and for the consideration hereinafter set forth:

THEREFORE, it is agreed between the parties hereto that, in consideration of the covenants, agreements and conditions hereinafter mentioned, to be fully kept and performed by the parties of the second part, the party of the first part has sold, and by these presents does sell unto the parties of the second part, their successors and assigns, for the period hereinafter designated, its dynamite business and the good-will thereof, and the exclusive right to make and vend the dynamite heretofore sold by it, and the exclusive right to use in the

8404 *Plaintiff's Exhibit 1331*

business hereby conveyed the "REX" brand or trade mark, and to affix said brand or trade mark to dynamite made or sold by the parties of the second part.

In consideration of the sale of said business and the assignment of said "REX" trade mark or brand, the parties of the second part hereby agree to and with the party of the first part, to pay to the party of the first part, its successors or assigns, the sum of Twenty Four Hundred ($2400.00) Dollars per
8405 annum, payable quarterly, at the end of each quarter, as the said sum may become due, commencing at the date hereof and terminating on the 31st day of December, 1907, at which time all of the above rights will be relinquished, and said brand or trade mark "REX" will be reassigned by the parties of the second part to the party of the first part, and without compensation.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their respective Presidents, and their corporate seals to be hereto affixed and attested by their respective Sec-
8406 retaries on this 7th day of Sepjtember, A. D. 1904.

THE KING POWDER COMPANY,

Witnesses: By A. O. FAY,

Witnesses: By G. M. PETERS,

(Seal) A. M. BEEKLEY, President.

E. F. GARRETT. Attest: J. J. MCKIBBON,
Secretary.

THE EASTERN DYNAMITE COMPANY,

Witnesses: By J. A. HASKELL,

(Seal) J. J. MOONMAN, President.

CHARLES COPELAND.

Attest: ALEXIS I. DU PONT,
Secretary.

THE AETNA POWDER COMPANY,

(Seal) F. M. PENFIELD, President.

J. C. ROGERS. Attest: ADDISON G. FAY.

Plaintiff's Exhibit No. 1332. 8407

AGREEMENT made this 20th day of February in the year One Thousand Eight Hundred and Ninety-nine, between the Eastern Dynamite Company, a corporation of the State of New Jersey, and The Lake Superior Powder Company, a corporation of the State of Michigan, hereinafter referred to as the parties of the first part, and The Aetna Powder Company, a corporation of the State of Indiana, hereinafter referred to as the party of the second part.

WHEREAS, on the 11th day of October, 1908, a 8408
contract was entered into between The Eastern Dynamite Company, one of the parties hereto of the first part, and the Hancock Chemical Company, a corporation of the State of Michigan, whereby the said The Eastern Dynamite Company became the Selling Agent for all goods manufactured by said The Hancock Chemical Company, excepting those sold to mines controlled by the stockholders of said The Hancock Chemical Company, and

WHEREAS, said contract was for the benefit and account of the party of the second part as well as the parties of the first part. 8409

IT IS HEREBY AGREED that during the life of said contract any expense pertaining to it shall be borne as follows:

Two-thirds of said expense upon the basis of Ninety-one and one-tenth per cent. (91.1 per cent.) to the parties of the first part and Eight and nine-tenths per cent (8.9 per cent.) to the party of the second part, one-third of said expense to be upon the basis of the sales actually made by the parties of the first and second parts, respectively, in the so-called Lake Superior Region.

IN WITNESS WHEREOF the parties hereto have respectively caused their corporate seals to be hereto

8410 *Plaintiff's Exhibit 1333*

attached and this agreement to be signed by their duly authorized officers the day and year first above written.

EASTERN DYNAMITE CO.,
J. A. HASKELL, Pres.

Witness: OTIS LE ROY.

LAKE SUPERIOR POWDER CO.,
J. A. HASKELL, Vice-Prest.

Witness: OTIS LE ROY.

AETNA POWDER CO.,
8411 A. O. FAY, Prest.

Plaintiff's Exhibit No. 1333.

AN AGREEMENT made this 31st day of Oct. in the year Eighteen Hundred and Ninety-eight between the Lake Superior Powder Company, a corporation organized under the laws of the State of Michigan, and the Aetna Powder Company, a corporation organized under the laws of the State of Indiana, hereinafter called the First Parties, and
8412 the Hancock Chemical Company, a corporation organized under the laws of the State of Michigan, hereinafter called the Company, party of the second part:

WHEREAS, the Company did on the eleventh day of October in the year 1898 enter into an agreement with the Eastern Dynamite Company, a corporation of the State of New Jersey, hereinafter called the Selling Agents, a copy of which contract is annexed hereto and made part of this agreement; and

WHEREAS, the First Parties are interested in having the conditions of the said contract carried out by the Selling Agents,

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration the First Parties hereby covenant and

agree with the Company that they hereby guarantee the performance of all and several the covenants and agreements made by the Selling Agents in said contract, and that upon the failure of the said Selling Agents to carry out any conditions or obligations of said contract the First Parties will assume the obligations of the said Selling Agents in the same manner and with the same force as though the said first parties had entered into the contract with the company themselves.

THE LAKE SUPERIOR POWDER CO., 8414

[SEAL] By C. H. CALL, Pres.

Attest: J. C. REYNOLDS, Sec'y.

THE AETNA POWDER CO.,

[SEAL] W. B. LEWIS, Vice-Prest.

Attest: RALPH M. FAY, Sec'y

Plaintiff's Exhibit No. 1334.

MEMORANDUM OF AGREEMENT entered into this first day of October, A. D., 1898, by and between THE CALIFORNIA POWDER WORKS, party of the first 8415
part; THE GIANT POWDER COMPANY, CONSOLIDATED, party of the second part; THE JUDSON DYNAMITE & POWDER COMPANY, party of the third part (the said parties of the first, second and third parts being all corporations of the State of California, and collectively hereinafter referred to as the Western Companies; THE AETNA POWDER COMPANY, a corporation of the State of Indiana, party of the fourth part; and THE EASTERN DYNAMITE COMPANY, a corporation of the State of New Jersey, party of the fifth part (the said parties of the fourth and fifth parts being collectively hereinafter referred to as the Eastern Companies.)

WHEREAS, the parties hereto are and have been doing business in the Republic of Mexico in ex-

8416 *Plaintiff's Exhibit 1334*

plosives and blasting apparatus and it is necessary, in order to avoid disastrous competition between them that they shall agree upon reasonable prices and credits, and other reasonable rules and regulations for the conduct of their business within the said Republic, so as to produce a margin of profit to them therefrom.

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants, undertakings, and promises hereinafter contained, the several companies, parties hereto, do mutually covenant and agree with each other, jointly and severally, in the manner following, that is to say:

8417

FIRST.

The parties hereto have prepared a schedule which is hereunto annexed, marked Schedule A, setting forth reasonable prices, terms of credit and rules for conducting sales in the Republic of Mexico, exclusive of the territory not now being operated in by the Eastern Companies, and described as follows:

8418

Tepec, Territory of Qepic.
San Blas, Territory of Qepic.
Topia, Territory of Durango.
Hermosillo, Territory of Sonora.
Culiacan, Territory of Sinaloa.
Guaymas, State of Sonora.
Altata, State of Sinaloa.
Mazatlan, State of Sinaloa.
Torres, State of Sonora.
Alamos, State of Sonora.
Agiabampo, State of Sonora.
Santa Anna, State of Sonora.
Magdalena, State of Sonora.
La Paz, State of Lower California.

Plaintiff's Exhibit 1334 8419

Tonala, State of Chiapas.
Salina Cruz, State of Caxaca.
Acapulco, State of Guerrero.
Santa Rosalia, State of Lower California.

And the territory tributary thereto, and also the exclusive territory of the Eastern Companies to be "described as the State of Yucatan, the State of Campeche, the State of Tobasco, and that portion of the State of Vera Cruz south of the line of the Mexican Railway but not including the points 8420
along the line of that road," and the same may be changed from time to time in the manner hereinafter provided, but it shall at all times, in the form in which it shall then exist be deemed to be a part of this agreement, and they agree that they will not, during the continuance of this agreement sell or agree to sell or dispose of, or agree to dispose of any article or articles specified in the said schedule within the said portion of the Republic of Mexico described above for any lower price or prices, or upon any other terms, or in any manner contrary to any rules sets forth in said schedule, 8421
or as it may be changed from time to time, and will not either directly or indirectly make, permit, suffer, take part in, countenance or benefit by an arrangement, practice or device whatever, under color of which any provision of said Schedule or of this Agreement or of the end to be accomplished thereby may be evaded or frustrated.

SECOND.

In case any article or articles mentioned in the schedule of prices and credits shall during the continuance of this agreement be sold or agreed to be sold in the portion of the Republic of Mexico covered by this agreement by any of the parties hereto

8422 *Plaintiff's Exhibit 133½*

in violation of the said schedule of prices and credits, or of any of the rules of the(?) for the conduct of business in Mexico, therein provided for, or any provision of this Agreement, then and in every such case there shall be conclusively presumed to arise thereby from the party making such sale to each of the other parties to this agreement, in equal shares, damages to the total amount of fifteen per cent. of the gross selling price of all said articles so sold. And in case said violation of
8423 this agreement results in the diversion of trade, as long as the aggressor continues to hold it, he shall incur the penalty hereinbefore named on trade so diverted.

NOTE. In case as adjudged such violation results in the acquisition of a larger portion of a joint trade, as indicated by reference to the proportions enjoyed by the respective parties during the preceding six months, the penalty shall apply on the increased portion of business so resulting and enjoyed by the offending party

8424

THIRD

A Board of Representatives for Mexican business to consist of two members is hereby created for the purposes, and with the powers and duties hereinafter prescribed. The said Board is herein described, and may at all times be referred to as the Representatives. One of its members shall be appointed by the Western Companies, and one by the Eastern Companies.

FOURTH.

Should any of the parties hereto have reason to believe that any other party or parties have committed a breach of this agreement, it will at once communicate such information in writing to its

representative, if charge is made against a company other than those he represents) to investigate said complaint and impose penalty if complaint be found to be justified and so acknowledged by the offending party. If, however, the Representative or Representatives are unable to dispose of the matter to the satisfaction of all concerned within sixty days (or ninety days if application for an extension be made by both parties in writing, there shall be appointed as arbitrators by the Representatives, 8426
two disinterested principals, who shall have power to appoint a third, if they find it necessary to arrive at a decision in the premises to act as a Board of Arbitrators, and whose decision shall be final.

The Board of Arbitrators shall have power to call for sworn statements on the part of the principals or their employees if they shall deem it necessary, and to order the examination of all books or records of either side by an auditor.

If the Board of Arbitration shall find the breech to have been committed by a party to this agreement through its officers or employees, the penal- 8427
ties prescribed in Clause 2 shall apply. If, on the other hand, they shall find that the offense is the act of an sub-agent, to whose books, access cannot be had, and the officers and employees of the offending party are nowise to blame, they may prescribe as a penalty such disciplinary measures as they deem wise, such as the withdrawal of the agency, etc., etc., but the party having committed the breach as aforesaid, may, at its option, ask to have the penalty prescribed in Clause 2 apply instead of the disciplinary measures proposed.

FIFTH.

Any expenses attending the investigation and adjudication of a complaint of violation shall be

8428 *Plaintiff's Exhibit 133½*

assessed on the offending party, should the case be deemed by the Board of Representatives or Board of Arbitrators to have been proved. Should, however, the case be decided in favor of the accused, the expenses of investigation and arbitration shall be borne in equal parts by all the parties hereto.

SIXTH.

No action shall be brought, nor shall any defense
8429 be maintained by any of the parties to this agreement, in any Court of Law or Equity, for and in respect of any difference arising under or by reason of this agreement, unless, and until all such matters in difference shall be submitted to the arbitrament of the Reprecentatives or Board of Arbitration hereinbefore provided for and an award made thereon. And every such award shall in all courts and places be taken and deemed to be prima facie proof of the liability or non-liability therein declared, and throw upon the party denying the same the burden of disproving all matters contained in or implied
8430 by such award.

SEVENTH (Cancelled 10-13-'99).

A Board to be known as the Board of Mexican Agents is hereby created, which shall consist of the general agent in Mexico of each company signing this Agreement, and the Representative of A. Phipp & Company, the General Agents of the Standard Explosives Company, and which shall perform the duties hereinafter prescribed.

EIGHTH (Cancelled 10-13,'99).

Each company shall, and will, within thirty days from the date of this agreement, notify the Representatives of the name of its General Agent in Mex-

8431

ico. The meetings of the Board of Agents shall be held in the City of Mexico. The Board of Agents shall elect a Chairman from among their number and he shall have a vote on all resolutions. The said Board of Agents shall also elect a Secretary-Treasurer, who shall see that accurate records are kept of the transactions of the Board, and who shall have charge of the disbursements necessary in defraying the expenses of the Board, and assess upon each member his proper proportion of such expenses.

NINTH (Cancelled).

8432

A Recorder shall be appointed by the Board of Agents, who may be an employee of any General Agent, but who shall not be engaged in any outside business. The Recorder shall have a separate office in the City of Mexico, and will be required to be present at that office during at least a designated portion of each business day, for the purpose of supplying the several General Agents with any information they may require as to rules, schedules, records, etc. The duties of the Recorder shall be to keep complete records of instructions, prices, schedules, rulings and to have custody of all official documents pertaining to the actual working of this agreement, and to attend to all clerical work in connection with the Board of Agents. He shall also keep a record of the sub-agents of each company, entering thereon all changes which may be made from time to time, and shall send to each General Agent and to each party to this Agreement copies of minutes of each meeting immediately after adjournment.

8433

TENTH (Cancelled 10-13-'99).

The office of the Recorder shall be the place of

8434 *Plaintiff's Exhibit 1334*

business for the Board of Agents, at which their meetings will be held. The Board of Agents shall have power to provide for itself, such assistance, stationery and other conveniences, as may, in its opinion, be necessary for the performance of its duties. All the expenses of the said Board of Agents shall be borne and paid in equal parts by the several companies, signing this agreement, and the Standard Explosives Company.

ELEVENTH (Cancelled 10-13-'99).

8435 Immediately upon the execution of this agreement it shall be the duty of the Board of Agents to convene, organize and fix the dates of their regular meetings, such regular meetings to be held at least once each month, and special meetings of the Board shall be called at any time upon the written request of any two General Agents or immediately upon the receipt of instructions from the Representatives, the intention being that such instructions when received shall be immediately promulgated by means of a meeting of the Board and it shall be the special duty of the Board to see that a uniform letter or telegram is written by each
8436 General Agent notifying all of his sub-agents of each and every change in the rules and schedule of prices and credits, such uniform notices to be delivered to the Recorder to be by him immediately forwarded to their several destinations by mail or telegraph, as may be most expedient.

A General Agent absenting himself from the City of Mexico shall designate some person who shall represent him at any meeting of the Board of Agents held for the promulgation of instructions received from the Representatives, and it shall be the duty of the Board of Agents to hold meetings for the promulgation of such instructions on the

8437

day they are received and put them in effect immediately.

TWELFTH (Cancelled 10-19-'99).

It shall be the duty of the Representatives to notify the Board of Agents in the City of Mexico of any and every change in the schedule of prices and credits or rules for conducting Mexican business; and in case at any time, joint instructions are forwarded by the Representatives that seem to conflict with the agreements, rules, etc., the Board of Agents will, nevertheless, proceed at once to carry out such 8438
instructions and adhere strictly to them until they are modified or revoked by further advices received by mail or wire from the Representatives. A telegram signed with the names of both Representatives, shall be deemed as official.

THIRTEENTH (Cancelled 10-13-'99).

At the first meeting of the Board of Agents, it shall be the duty of each General Agent to supply the recorder with a complete list of all sub-agents that they each have in that portion of the Republic of Mexico covered by the agreement, and it shall furthermore be their duty to promptly notify the 8439
Recorder in writing of any change or alteration that may be made in the sub-agents, the intention being that there shall always be on file in the office of the Recorder a correct list of all the sub-agents of the several Companies.

The duties of the Board of Agents shall consist in the supervision and examination of the manner in which the provisions of this agreements are being observed by the General Agents and sub-agents, and other employees of the several Companies, and to report from time to time to the Representatives hereinbefore constituted, the manner in which the

8440 *Plaintiff's Exhibit 1334*

provisions of this agreement are being observed by the general agents, sub-agents and employees of the several companies parties hereto.

FOURTEENTH (Cancelled 10-13-'99).

The Board of Agents shall have no power to alter, add to, or amend in any manner or to allow any deviation of any kind whatsoever from the prices, terms, or rules set forth in Schedule A hereunto annexed, without the concurring consent
8441 in writing, or by wire of each of the Representatives hereinbefore constituted.

FIFTEENTH (Cancelled 10-13-'99).

In case the Board of Agents or a majority thereof, shall deem it advisable, that the schedule of prices and terms, or any of the rules for their government should be changed, they shall by resolution recommend to the Representatives such changes as they deem advisable, and may give their reasons therefor in writing and a copy of same shall be forthwith forwarded by the Secretary of the Board of Agents to each of the Representatives.
8442 Each and every member of the Board of Agents, shall at the foot of every recommendation sign his name and signify how he has voted upon the said recommendation, and may give his reasons for his vote, or propose a substitute for the recommendation adopted, if he shall see fit.

SIXTEENTH (Cancelled 10-13-'99).

Alterations in the schedule of prices, credits and rules for Mexican business may be made in the following manner, and not otherwise, that is to say:

1. If all the Companies signing this agreement

shall agree to any change and so certify in writing to their respective Representatives, the said Representatives shall immediately communicate the change in writing or by telegraph to the Chairman and Secretary of the Board of Agents in Mexico, and upon the receipt of such communication from both Representatives, or concurring communications from each, the change so unanimously agreed upon shall go into effect immediately, or at such other time as may be indicated in the communication or communications from the Representatives. 8443

2. Upon a recommendation from the Board of Agents in Mexico the Representatives may adopt the change recommended, or any other change which they may deem preferable, if they shall be empowered to do so by all the companies they represent. The Representatives of the Eastern Companies shall immediately, on receipt of advices of the change recommended, notify each of his companies by letter or telegram of the proposed change, and the Representatives of the Western Companies shall in like manner notify each of his Companies of the proposed change. If any Company shall within fourteen days after the receipt of the advice of the proposed change by the Representatives, object to the change by letter or telegraph, delivered to either of the Representatives, then on the expiration of the fourteenth day after the receipt of advice, the Representatives shall transmit information of said disapproval to the Board of Agents. 8444 8445

SEVENTEENTH.

In the event of attacks upon the trade of any party to this agreement by any other manufacturer not a party to this agreement, the party whose trade is attacked may, having first obtained permission from MR. H. H. BARKSDALE, and CAPTAIN JOHN

8446 *Plaintiff's Exhibit 133½*

BERMINGHAM, have authority to defend that trade against such outside competition within such limitations as may at the time be fixed by Mr. Barksdale and Captain Bermingham.

In case the party whose trade is attacked should not desire to defend its trade as herein provided, then it shall be permissable for Mr. Barksdale and Captain Bermingham to authorize the Standard Explosives Company to take such steps as they may designate to meet the threatened outside competition, in order that the common interests may
8447 be conserved, the profits from said trade being credited to the parties to this agreement in their proper quota proportions. Notices shall be given to the several companies by the Representatives of any action taken by Captain Bermingham and Mr. Barksdale in accordance with this clause.

EIGHTEENTH.

An examination by auditors shall be made at least semi-annually, and in case a written request shall be made by all of the Western Companies for an audit of the Eastern Companies' books (or vice versa) before the expiration of any semi-annual
8448 period, such request shall at once be complied with.

It is specifically agreed that no matter what other parties to this agreement may do or may be reported to have done, each of the parties hereto agrees that until they shall have been relieved from the provisions of this agreement by the expiration of the time required for retirement from it, under the provisions hereof they will continue to comply with its provisions and have recourse only to the means of redress hereinbefore named.

It is furthermore agreed that the retirement of one or more parties shall not terminate this agreement, and that all remaining shall continue to be

Plaintiff's Exhibit 133½

8449

NINETEENTH.

bound by its provisions unless it is agreed to terminate it by mutual consent of all then party to it.

TWENTIETH.

It is furthermore provided that nothing contained in the foregoing agreement shall in any way abridge or remove from any of the parties hereto any rights, liabilities or obligations incurred by reason of deviations from the agreement of March first, 1898, occurring during the life of 8450
said agreement, namely, between March 1st, 1898, and September 30th, 1898, and that an audit shall be made of the business done during the period, indicated under the agreement of March 1st, 1898, within six weeks from the date of this instrument.

TWENTY-FIRST.

This agreement shall go into effect on the first day of October, A. D., 1898, and shall continue in force until the thirty-first day of December, A. D., 1899, and from year to year thereafter, unless it should be terminated in the manner following, that 8451
is to say: On or before the thirtieth day of September, A. D., 1899, or on or before the same day of any year thereafter, any of the parties hereto may give notice in writing to each of the other parties that at the end of the year in which the notice is given it desires to withdraw from the agreement, and thereupon at the end of such year the party serving such notice shall be relieved of the obligations imposed by the agreement, which shall continue in force as far as the other parties are concerned until dissolved by mutual consent.

8452 *Plaintiff's Exhibit 133½*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their several and respective Presidents or General Managers,, and to be sealed with their common seals the day and year first above written.

THE CALIFORNIA POWDER WORKS,
By J. BERMINGHAM, Prest.
THE GIANT POWDER COMPANY, CON.,
J. SONTAG, Gen'l Manager,
THE JUDSON D. & P. CO.,
8453 Ed. G. LUKENS, P.
AETNA POWDER CO.,
A. O. FAY, Prest.
Attest: RALPH M. FAY, Secretary.
EASTERN DYNAMITE CO.,
J. A. HASKELL, Prest.
Attest: EDWARD GREENE, Secretary.

MEMORANDUM OF AGREEMENT supplementary to the agreement of October first, eighteen hundred and ninety-eight (October 1st, 1898), relating to Mexican business, entered into this Thirteenth day of October, eighteen hundred and ninety-nine (1899), by and between the California Powder
8454 Works, party of the first part, the Giant Powder Company, Consolidated, party of the second part; the Judson Dynamite & Powder Company, party of the third part (the said parties of the first, second and third parts being all corporations of the State of California); the Aetna Powder Company, a corporation of the State of Illinois, party of the fourth part; and the Eastern Dynamite Company, a corporation of the State of New Jersey, party of the fifth part.

WHEREAS, it has been determined that the present Board of Agents in Mexico and the office of Recorder shall be abolished,

Plaintiff's Exhibit 1334

8455

IT IS AGREED that Clauses Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen, Fifteen and Sixteen of the Agreement of October first, 1898, shall be considered as null and void on and after this date, and that from this date Rule H of the schedule attached to said agreement of October first, 1898, is amended to omit the words "and with the Board of Agents," and that all other references to the Board of Agents or Recorder in the said agreement, rules, schedules, etc., are hereby cancelled.

8456

IT IS ALSO AGREED that the following additional clauses shall be considered as part and parcel of the agreement of October first, 1898, and shall be binding upon the parties hereto in the same force and degree as the other rules, etc., governing the relations of the parties hereto to the Mexican trade and to each other.

ADDITIONAL CLAUSE 1.

And it shall be the duty of the representatives to notify the General Agents of each of the Companies in the City of Mexico of any and every change in the schedule of prices and credits or rules for conducting Mexican Business; and in case at any time instructions are forwarded by the Representatives that seem to conflict with the agreements, rules, etc., the General Agents will, nevertheless, proceed at once to carry out such instructions and adhere strictly to them until they are modified or revoked by further advices received by mail or wire from the Representatives.

8457

ADDITIONAL CLAUSE 2.

Alterations in the schedule of prices, credits and

8458 *Plaintiff's Exhibit 1334*

rules for Mexican business may be made in the following manner, and not otherwise, that is to say: If all the parties to this agreement shall agree to any change and so certify in writing to their respective Representatives, the said Representatives shall communicate the change in writing or by telegram to each of the General Agents in Mexico, the notifications being forwarded by either representative after prior agreement with the other to the General Agents of each of the Companies, authority being given to the Representatives by each
8459 Company at the time of expressing its acceptance of the proposed change to attach their signature to the notification so sent to its General Agent.

IN WITNESS WHEREOF, the parties hereto have fixed their hands and seals the day and the year hereinbefore written.

CALIFORNIA POWDER WORKS,
By J. BERMINGHAM, President.
GIANT POWDER COMPANY., CONS.,
By JULIAN SONNTAG, General Manager.
JUDSON DYNAMITE & POWDER COMPANY,
By ED. G. LUKENS, President.
8460 THE AETNA POWDER COMPANY,
By A. O. FAY, President.
EASTERN DYNAMITE COMPANY,
By J. A. HASKELL, President.

Plaintiff's Exhibit 1348

8461

Plaintiff's Exhibit 1348.

(Received July 1, 1903, Miami Powder Co.)
Concerning the Advisory Committee.
Meeting of May 27th, 1903.

On motion duly made and seconded.

That in case a recommendation is made by the Advisory or Special Committee for a contract, that said recommendation shall only be good for sixty (60) days; or in the case of a renewal of a contract for sixty (60) days from the date of the expiration of the previous contract. A new application to be made in case it be desired to extend this time. Carried.

8462

It was Resolved: That when a special price or a price under a contract has been recommended to be made to a Contractor, a customer, based upon deliveries in carloads, and when a smaller quantity shall be desired by such a Contractor for the purpose of finishing the work he has in hand, a shipment may be made from a Distributing Point or a Mill Point at the price at which carloads have been sold to said customer, he to pay the freight thereon to the point of destination. And that the practice, which has prevailed, of taking back, in such cases, unused portions of carloads be discontinued.

8463

On motion duly made and seconded.

That the action taken at the last meeting regarding Peoria, Ill., be reconsidered. Carried.

On motion, after discussion, the following was adopted.

Whereas the Peoria Committee recommended a certain course of action as regards customers at or near Peoria, Ill., which was adopted at the meeting of the Advisory Committee held April 17th, 1903, and which has been rescinded, be is resolved, That Peoria be continued as a Distributing Point, and

8464 *Plaintiff's Exhibit 134-8*

that the sale of Sporting powder through agents there be continued as heretofore. Concerning Blasting powder: That on June 1st, 1903, or as soon thereafter as existing contracts with agents will permit, no allowance for haulage from railroad depot to magazine at Peoria shall be made in excess of three (3) cents per keg, and no allowance for haulage from railroad depot shall be made on any powder that is not actually delivered in magazine. Furthermore, interested parties are advised that they may discontinue the present agency agree-
8465 ments as far as they may pertain to sales to the former customers of their agents at Peoria, using less than 1,200 kegs per annum, and heretofore being sold, presumably, at the schedule price for lots of less than carloads ($1.50); in such cases, and to their former customers only, it shall be permitted to sell at any price in excess of $1.25 per keg. Reports to be made to the principal at not less than $1.25 per keg, net, to him for the goods, as the same had rested in the magazine, at Peoria. Shipments to be made to said magazines in not less than 400 keg lots.

8466 For recommendations as to special prices, contracts, etc., see pages following.

Recommendations which had been made on the dates named below, were confirmed as follows:

E. I. du Pont de Nemours & Company:—.

1903.

April 16th. To make a contract with the American Smokeless Coal Co., Huntington, Ark., successor to the Prairie Creek Coal Co., at $1.50 per keg, allowing rebate of 17½c per keg, with equity of 45% to the Equitable Powder Mfg. Company.

April 20th. To renew its contract with the Sloss-Sheffield Steel & Iron Co., Birmingham, Ala., at

Plaintiff's Exhibit 134

8467

$1.45 per keg, allowing rebate of 30c per keg.

April 21st. To renew its contract with the Cantrall Co-operative Coal Company, Centrall, Ill., at $1.35 per keg, allowing rebate of 15c per keg.

April 22nd. To renew its contract with the Republic Iron & Steel Co., Springfield, Ill., at $1.35 per keg, allowing rebate of 15c per keg.

To renew its contract with the Williamsville Coal Co., Williamsville, Ill., at $1.35 per keg, allowing rebate of 15c per keg.

To renew its contract with the Capital Coal Company, Springfield, Ill., at $1.35 per keg, allowing rebate of 17½c per keg.

8468

To renew its contract with the Virden Coal Company, Virden, Ill., at $1.35 per keg, allowing rebate of 20c per keg, including the West End Coal Company, Springfield, Ill.

April 22nd. To renew its contract with the Citizens' Coal Mining Co., Lincoln, Ill., at $1.35 per keg, allowing rebate of 15c per keg.

To renew its contract with the Greenview Coal & Mining Company, Greenview, Ill., at $1.35 per keg, allowing rebate of 17½c per keg.

To renew its contract with the Barclay Coal & Mining Company, Barclay, Ill., at $1.35 per keg, allowing rebate of 15c per keg.

8469

April 23rd. To make a special price of $1.10 per keg, in carloads, to P. F. Brendlinger for work on the Pennsylvania Railroad cut off between Columbia and Parkersburg, Pa.

To renew its contract with the Spaulding Coal Company, Springfield, Ill., covering the Clear Lake Co-operative Coal Company, Clear Lake, Ill., and the Nillwood-Carbon Coal Co., Nillwood, Ill., at $1.35 per keg, allowing rebate of 20c per keg.

To make a special price of $1.05 per keg, in carloads, and $1.15 per keg in less than carloads, delivered around Pittsburgh, to Booth & Flynn, of Pittsburgh, Pa.

8470 *Plaintiff's Exhibit 1348*

April 24th. To renew its contract with the Jones & Adams Company, Springfield, Ill., at $1.35 per keg, allowing rebate of 20c per keg.

To increase to 15c per keg, the rebate under its contract with the Auburn & Alton Coal Company, Alton, Illinois.

To increase to 17½c per keg the rebate under its contract with the Victor Coal Company, Pawnee, Ill.

To increase to 15c per keg, the rebate under its contract with the Athens Mining Company, Athens,
8471 Ill.

To increase to 15c per keg the rebate under its contract with the Collier Co-operative Coal Company, Peoria, Ill.

To increase to 17½c per keg, the rebate under its contract with the Citizens' Coal Mining Company, Springfield, Ill.

To increase to 10c per keg the rebate under its contract with the Forest Fuel Company, Otley, Iowa.

To increase to 15c per keg the rebate under its contract with the Illinois & Iowa Fuel Company, Ottumwa, Iowa.

8472 To increase to 10c per keg the rebate under its contract with Edward Little, Hilliard's Switch, Ill.

To increase to 17½c per keg the rebate under its contract with the Maplewood Coal Company, Farmington, Ill.

To increase to 17½c per keg the rebate under its contract with the Monmouth Coal Company, Norris, Ill.

To increase to 20c per keg the rebate under its contract with Newsam Brothers, Peoria, Ill.

To increase to 20c per keg, the rebate under its contract with the Des Moines Coal Mining Company, Des Moines, Iowa.

April 25th. To renew its contract with J. D.

8473

Crabb, Receiver of the Litchfield Coal Mining & Power Co., Litchfield, Ill., at $1.35 per keg, allowing rebate of 15c per keg.

To make a contract with the Clifton Coal Company, Harrisburg, Ill., at $1.35 per keg, allowing rebate of 15c per keg.

April 27th. To increase to 10c per keg the rebate under its contract with the Norris Supply Company, Norris, Ill.

To increase to 20c per keg, the rebate under its contract with the Wabash Coal Company, Springfield, Ill.

8474

To increase to 15c per keg the rebate under its contract with the Colfax Coal & Mining Company, Oskaloosa, Iowa.

To increase to 20c per keg the rebate under its contract with the Wapello Coal Company, Hiteman, Iowa.

To increase to 17½c per keg the rebate under its contract with the Sangamon Coal Company, Springfield, Ill.

To increase to 10c per keg the rebate under its contract with Walton Brothers, Fairbury, Ill.

To increase to 17½c per keg the rebate under its contract with the Springfield Co-operative Coal Company, Springfield, Ill.

8475

To increase to 17½c per keg, the rebate under its contract with the Star Coal Company, Streator, Ill.

April 29th. To increase to 20c per keg the rebate under its contract with the O. K. Coal Company, Bussey, Iowa.

May 4th. To increase to 17½c per keg the rebate under its contract with George H. Ramsey, as Manager, covering the Garfield Coal Company, of Beacon and Evans, Iowa.

To renew its contract with the Reincke Coal Mining Co., Madisonville, Ky., at $1.40 per keg, allowing rebate of 10c per keg.

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May 6th. To include the Pooz Coal & Coke Company, Lumberport, W. Va., under its contract with the Fairmont Coal Company, Fairmont, W. Va.

To make the rebat under its contract with J. B. Gardinee, Canton, Ill., 10c per keg from the schedule carload price.

To renew its contract with the Great Elk Company, Carbon Hill, Ala., at $1.45 per keg, allowing rebate of 10c per keg.

May 7th. To include the Davis Creek Coal Company, Rock Castle, Ala., under its contract with the
8477 Sloss-Sheffield Steel & Iron Co.

May 11th. To increase to 15c per keg the rebate under its contract with the Rainbow Coal & Mining Company, Caledonia, Indiana.

To renew its contract with the Franklin Iron Mfg. Co., Franklin Springs, N. Y., at $1.35 per keg, allowing rebate of 15c per keg.

May 18th. To increase to 10c per keg the rebate under its contract with Krapp & Lees, Coal Valley, Ill.

May 18th. To make a contract with C. C. Brown and Edwin Brown, covering supplies of the Woodside Coal Company, Springfield, Ill., and the
8478 Latham Coal Company, Lincoln, Ill., at $1.35 per keg, allowing rebate of 20c per keg, and that the contracts which the du Pont Company now have with the Woodside Coal Company and the Latham Coal Company be cancelled.

Laflin & Rand Powder Company:—

Apr. 20th. To renew its contract with the Sheppard & Company, Oskaloosa, Iowa, to cover the Colfax Consolidated Coal Company and the Norwood Coal Company for deliveries at Colfax, Des Moines, Foster and Berwick, Iowa, at the schedule carload price, either delivered or f.o.b. Mississippi River, allowing rebate of 20c per keg.

To make a special price of $1.30 per keg, in car-

8479

loads, to L. R. Wright & Company for work on the Bon Air extension of the N. C. & St. L. R. R.

Apr. 23rd. To make a special price of $1.05 per keg, in carloads, to the Roaring Run Stone Company, Curwensville, Pa.

To make a special price of $1.25 per keg, in carloads to Howarth & Taylor, Edwards, Ill., May 8th. To make a special price of $1.25 per keg to Gratoon & Jennings, Ridgwood, N. J. (successors to C. H. Strong & Son), in lots as wanted for delivery from its mills at Wayne, N. J.

8480

To make a special price of $1.20 per keg, in carloads, through the Wilmington High Explosives Companies, to Charles A. Sims & Company for work on the Pennsylvania lines west of Pittsburgh, Pa., between Yellow Creek and Summittville, Ohio.

May 13th. To make a special price of $1.05 per keg, in carloads, to E. R. Fleming, Houtzdale, Pa., to date from January 1st, 1903.

May 18th. To make a contract through the Wilmington High Explosives Companies, at $1.10 per keg, with D. F. Keenan for work on the Pennsylvania Railroad between Latrobe and Millwood, Pa., and a special price of $1.05 per keg, in carloads, to him on this work good for sixty days only.

8481

May 23rd. To renew its contract with the Wear Coal Company, Kansas City, Mo., covering its mines at Pittsburgh, Kansas; Vernon and Minden, Mo.; the mines of the Devlin-Wear Coal Company, Howard, Ark.; the mines of the Collinsville Mercantile Co., Collinsville, I. T.; the mines of the Murlin Fuel Company, at Revier, Mo.; the mines of the Southern Mansas Coal Co., at Scammon, Kansas, and the mines of the Wabash Coal Company at Huntsville, Mo., allowing rebate of 22½c per keg from the schedule carload price.

May 26th. To make a special price of $1.50 per keg, in carloads, f.o.b. Marshall, Col., through the

8482 *Plaintiff's Exhibit 13⅛*

Wilmington High Explosives Companies, to Gorge S. Good & Company, for work on the Denver Northwestern & Pacific Railroad, between Denver, Col., and Salt Lake City, Utah.

The Ohio Powder Company:—

May 12th. To make a special price of $1.64 per keg, in carloads, f.o.b. Columbia Falls, Montana, through the Wilmington High Explosives Companies, to Siems & Shields, for work on the Great Northern Railway there.

The Hazard Powder Company:—

8483 May 13th. To make a contract with the Cable Mercantile Company, covering the supplies of Cable & Company, coal operators, at Cable and Sherrard, Ill., at $1.35 per keg, allowing rebate of 17½c per keg.

May 18th. To include the Cherokee Colliery Company, McDowell, W. Va., under its contract with the Louisville Coal & Coke Co., which latter is included under its contract with J. J. Tierney.

May 23rd. To renew its contract with the Cable Mercantile Company, covering the supplies of Cable & Company, at Cable and Sherrard, Ill., at $1.35 per keg, allowing rebate of 20c per keg.

8484 May 25th. To make as pecial price of $1.30 per keg, in carloads, to Smith & Montague (Pyrities Mining & Chemical Company) of Detroit, Mich., with mines at Sebewaing, Mich.

American Powder Mills:—

April 30th. To make a special of $1.30 per keg, in carloads, f.o.b St. Paul, Minn., and $1.64 per keg, in carloads, f.o.b. Kalispell and Columbia Falls, Montana, to Siews & Shields for work on the Great Northern Railway at Columbia Falls.

To make a special price of $1.30 per keg in carloads, to L. R. Wright & Company, for work on the Bon Air extension of the N. C. L. R. R.

May 7th. To make a special price of $1.20 per keg, in carloads, f.o.b. St. Louis, Mo., to Kenefick &

8485

Hammand for work on the Missouri Pacific Railway from Aurora, Mo., to Buffalo, Ark.

To make a special price of $1.10 per keg, in carloads, to the Gardner-Wilmington Coal Company, Clark City, Ill.

March 30th. To make a special price of $1.25 per keg, to W. A. Guenthre & Sons, Owensboro, Ky., for one carload of Blasting powder.

Miami Powder Company:—

May 7th. To renew its contract with the Chapman Coal Company, Jackson, Ohio, with mines at Chapman, Ohio, at $1.35 per keg, allowing rebate of 8486
$15c per keg.

To renew its contract with the Penwill Coal Mining Co., Pana, Ill., at $1.35 per keg, allowing rebate of 10c per keg.

To renew its contract with Morris Brothers, Coal Operators, Duquoin, Ill., at $1.35 per keg, allowing rebate of 10c per keg.

May 11th. To make a special price of $1.25 per keg, in carloads, to the Oskaloosa Powder Company, Oskaloosa, Iowa (Huber & Kablach Company, wholesale hardware).

May 12th. To make a special price of $1.25 per keg, in carloads, to the Churchill-Hemenway Company, Hardware Dealers, Galesburg, Ill. 8487

May 20th. To renew its contract with the Island Coal Company, Indianapolis, Ind., with mines near South Linton and Island City, Ind., at $1.35 per keg, allowing rebate of 20c per keg.

Austin Powder Company:—

April 20th. To make a special price of $1.05 per keg, in carloads, to the Salem Supply Company, Alsworth, Pa.

April 25th. To make a special price of $1.15 per keg, in carloads, to J. W. Ellsworth & Company, of Cleveland, Ohio, covering the Southern Coal & Transportation Company, the Oppenman Coal Com-

8488 *Plaintiff's Exhibit 13⅛*

pany, the Ellsworth Coal Company and the Wills Creek Coal Company.

May 7th. To make a special price of $1.35 per keg, in carloads, to the Fairfax & Roberts Hdw. Company, Bristol, Tenn.

May 15th. To make a special price of $1.17½ per keg, in carloads, to the Economy Coal & Mining Company, Danville, Ill.

Equitable Powder Mfg. Company:—

May 6th. To renew its contract with the Moweaqua, Coal Mining & Mfg. Company, Moweaqua,
8489 Ill., at $1.35 per keg, allowing rebate of 15c per keg.

May 7th. To renew its contract with the Sorento Coal Company, mines at Sorento, Ill., successor to the Sorento Prospecting & Mining Company, at $1.35 per keg, allowing rebate of 20c per keg.

May 12th. To increase to 20c per keg the rebate under its contract previously recommended to be made with the Girard Coal Co., Girard, Ill.

May 15th. To have an equity of 45% in the contract which has been recommended to be made by du Pont & Company with the American Smokeless Coal Company, Huntington, Ark.

The Phoenix Powder Mfg. Company:—

8490 May 25th. To renew its contract with the Kerens-Donnewald Coal Company, Worden, Ill., at $1.35 per keg, allowing rebate of 15c per keg.

Birmingham Powder Company:—

May 4th. To make a special price of $1.27½ per keg, in carloads, to:

Sam Brown, Pratt City, Ala
W. L. Delaney, Adger, Ala.
W. W. Jones, Adger, Ala.
E. M. Parsons, Adger, Ala.
Roberts & Wright, Adger, Ala.

Marcellus Powder Company:—

Plaintiff's Exhibit 1348

8491

April 24th. To make a special price of $1.05 per keg, in carloads, through the Wilmington High Explosives Companies, to Victor Pezzoni, of Monongahela, Pa., covering also one carload already sold at this price.

Northwestern Powder Company:

May 6th. To make a special price of $1.25 per keg, in carloads, to the Wilfred Coal Company, Shelburne, Ind., including under this price one carload sold Jan. 9, 1903, and one carload sold April 28, 1903.

The King Mercantile Company:—

8492

May 6th. To make a special price, either direct, or through the Wilmington High Explosives Companies, to the Shutt Improvements Company of $1.20 per keg, in carloads, f.o.b. St. Louis, Mo., for work on the St. Louis, Kansas City & Colorado Railroad near Mona, Mo., and $1.20 per keg, in carloads, delivered, for work on the C. C. C. & St. L. R. R. (Big Four) between Lawrenceburg and Senaca, Indiana.

May 23rd. To make a special price of $1.20 per keg, in carloads, to the Imperial Colliery Company, Paint Creek, W. Va.

To make a special price of $1.25 per keg, in carloads, to the Cabin Creek Coal Company, Acme, W. Va.

8493

May 25th. To make a special price of $1.20 keg, in carloads, to the Star Coal Company, Red Star, W. Va.

Oriental Powder Mills:—

April 30th. To include the Osage Coal Company, Krebs, I. T., under its contract with the Great Western Coal & Coke Co., Wilburton, I. T.

May 13th. To renew its contract with the Pittsburg Coal Company, Henderson, Ky., allowing rebate of 15c per keg, with equity to The King Mercantile Company and the Hazard Powder Company.

8494 *Plaintiff's Exhibit 1348*

May 18th. To make a special price of $1.10 per keg, in carloads, to the Southern & Middle Creek Coal Company, Casselman, Pa., for the Middle Creek Coal Company.

Chattanooga Powder Company:—

May 7th. To make contracts with the East Tennessee Coal Company, the Jellico Coal Mining Company, the Oliver Coal Company and the Eagle Coal Company at $1.45 per keg, allowing rebate of 10c per keg, or special price of $1.35 per keg, in carloads, to the two last-named concerns.

8495 May 18th. To include the Red Ash Coal Company, Block and Careyville, Tenn., under its contract with the Block Coal & Coke Company.

May 25th. To renew its contract with the Sewanee Coal, Coke & Land Co., Clouse Hill, Tenn., at $1.45 per keg, allowing rebate of 10c per keg.

Laflin & Rand Powder Company, and E. I. du Pont de Nemours & Company:—

April 20th. Laflin & Rand Powder Co. to make a special price of $1.10 per keg, in carloads, to the Springfield Coal Mining Company, covering mines of the Black Diamond Coal Company at Springfield, Ill., and du Pont & Company to make the same

8496 special price to the Springfield Coal Mining Company, covering the mines of the Stearns Coal Company at Springfield, IIll., the Junction Coal Mining Co., at Springfield, Ill., and the Riverton Coal Company, Riverton, Ill.

To make a special price of $1.30 per keg, in carloads, through the Wilmintgon High Explosives Companies, to McCann & Lebling at Welch, W. Va.

April 24th. To make a special price of $1.25 per keg, in carloads, through the Wilmington High Explosives Companies, to Walton & Company, on an additional five miles of work on the N. & W. R. R. due west of Williamson, W. Va.

To make a special price of $1.25 per keg, in car-

8497

loads, through the Wilmington High Explosives Companies, to Walton, Whitten & Graham Company, at Welch, W. Va., for work on the N. & W. R. R. on the Tug River.

To make a special price of $1.05 per keg, in carloads, through the Wilmington High Explosives Companies, to the Smith Construction Company, for work on Section No. 8, known as the Valley Creek Section of the Parkersburg and Columbia cut off of the Pennsylvania Railroad.

To make a special price of $1.05 per keg, in carloads, through the Wilmington High Explosives 8498
Companies, to the Pinkerton Construction Company for work on Section No. 9. known as the Dowington Section of the Parkersburg and Columbia cut off of the Pennsylvania Railroad.

To make a special price of $1.05 per keg, in carloads, through the Wilmington High Explosives Companies, to Reiter, Curtis & Hill, of Philadelphia, Pa., on section No. 4, known as the Glenlock Section of the Parkersburg and Columbia cut off of the Pennsylvania Railroad.

April 25th. To make a special price of $1.05 per keg in carloads, through the Wilmington High Explosives Companies, to the Degnon-McLean Con- 8499
struction Company on about eight miles of work on the Western Maryland Railroad near Baltimore, Md.

April 28th. To make a special price of $1.30 per keg, in carloads, through the Wilmington High Explosives Companies, to the Mason & Hoge Company, for work on the Louisville & Nashville Railroad extension from Altoona to Gadsden, Ala.

May 1st. To make a special price of $1.20 per keg, in carloads, through the Wilmington High Explosives Companies, to Bennett & Talbott on about two miles of work on the main line of Baltimore & Ohio Railroad near Flushing, Ohio.

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8500 May 18th. To make a contract, through the Wilmington High Explosives Companies, at $1.10 per keg, with Reiter, Curtis & Hill for work on the Pennsylvania Railroad between Trimmers Rock and Newport, Pa., and a special price of $1.05 per keg, in carloads, to them on this work, good for 60 days only.

To make a special price of $1.10 per keg, in carloads, through the Wilmington High Explosives Companies, to T. F. Kearns & Sons for work on the Middle Division of the Pennsylvania Railroad from Newport to about Millerstown, Pa.

8501 Miami Powder Company and Laflin & Rand Powder Company:—

May 18th. To make a special price of $1.20 per keg, in carloads, to the Weaver Coal & Coke Company, including one carload sold by the Laflin & Rand Powder Company, April 13th, 1903.

May 2nd. The Laflin & Rand and du Pont Companies to make, through the Wilmington High Explosives Companies, and Austin direct, a special price of $1.05 per keg, in carloads, to the Brodhead Contracting Company, for work on the Alleghany & Western Railroad, a branch of the Beasemer & Lake Erie Railroad between Chicora and Karns

8502 City. Pa.

May 11th. Laflin & Rand and du Pont Companies to make, through the Wilmington High Explosives Companies, and Austin direct, a special price of $1.25 per keg, in carloads, for deliver at Huntington, W. Va., to the Miller Supply Company; and $1.30 per keg, in carloads, for delivery at Bluefield, W. Va., with the understanding that the powder sold at this price is only for trade which the Miller Supply Co. has formerly handled.

The King Mercantile Company, Oriental Powder Mills, Laflin & Rand Powder Company and E. I. du Pont de Nemours & Company:—

Plaintiff's Exhibit 1348

8503

May 15th. To make a special price of $1.10 per keg, in carloads, to Rinehart, Dennis & Company for work on the Wabash Railroad from the Pennsylvania-West Virginia State line to Fairmont, W. Va.

Birmingham Powder Company, Chattanooga Powder Company and E. I. du Pont de Nemours & Company:—

April 20th. To make a special price of $1.30 per keg, in carloads, to Dunn & Lallande for work on the Louisville & Nashville Railroad extension from Altoona to Gadsden, Ala.

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American Powder Mills and The King Mercantile Company:—

May 1st. American Powder Mills to make a special price of $1.25 per keg, in carloads, to W. A. Guenthre & Sons, Owensboro, Ky., for their own trade, and the King Mercantile Company to make the same price to W. A. Guenther & Sons for the:

Field Coal Company, Island, Ky.

Mud River Coal & Mining Co., Mud River, Ky.

J. A. Moores, Bavier, Ky.

Aberdeen Coal Mining Co., Spottsville, Ky.

Guenthre & Koltinsky Coal Co., Deanfield, Ky.

Austin Powder Company, and The King Mercantile Company:—

8505

May 4th. The King Company to make a special price of $1.05 per keg, in carloads, through the Wilmington High Explosives Companies, to J. G. Corcoran for work on the Wabash Railroad about ten miles from Hanlin, Pa., and nine miles from Wellsburg, W. Va., and Austin Company to make this same price to him direct for this work.

The King Mercantile Company, and Laflin & Rand Powder Company:—

May 26th. To make a special price of $1.50 per keg, in carloads, f.o.b. Marshall, Col., through the Wilmington High Explosives Companies, to Orman

8506 *Plaintiff's Exhibit 134*

& Crook, for work on the Denver, Northwestern & Pacific Railroad between Denver, Col., and Salt Lake City, Utah.

American Powder Mills, Laflin & Rand Powder Company and E. I. du Pont de Nemours & Company:—

May 4th. To make a special price, allowing rebate of 15c per keg, in carloads, from the schedule carload price to the McArthur Brothers Company for work on the extension of the Wabash Railroad from Zanesville, Ohio, to Parkersville, W. Va.

8507 To make a special price, allowing rebate of 15c per keg, in carloads, from the schedule carload price, to the McArthur Brothers Company for work on the Frisco Railroad from St. Louis, Mo., to Crystal City, Mo.

May 23rd. American to make a special price of $1.20 per keg, in carloads, f.o.b. St. Louis, Mo., to J. W. Creech, for work on the C. R. I. & P. R. R. near St. Louis, and du Pont and Laflin & Rand to make this same price to him, through the Wilmington High Explosives Companies.

Austin Powder Company, and Oriental Powder Mills:—

8508 May 6th . To make a special price of $1.05 per keg, in carloads, to F. C. Beall, Frostburg, Md.

The King Mercantile Company, Laflin & Rand Powder Company, and E. I. du Pont de Nemours & Company:

May 18th. To make a special price of $1.10 per keg, in carloads, through the Wilmington High Explosives Companies, to C. D. Langhorne & Company for work on the Chesapeake & Ohio Railroad at White House, Ky.; Richmond, Va., and Prince, W. Va.

The Ohio Powder Company, Miami Powder Company and The King Mercantile Company:—

May 20th. To make a special price of $1.25 per

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keg, in carloads, to the Northwest Coal Company, covering the mines near Deavertown, Ohio, absorbed by it, formerly owned by the Bearfield Coal Company.

Laflin & Rand Powder Company:—

May 21st, 1903. To make a special price of $1.05 per keg, in carloads, to the Kearney Supply Store Company, Kearney, Bedford County, Pa., successor to Joseph E. Thropp.

May 18th. That the schedule carload price of "B" Blasting powder at Dawson, New Mexico, be $1.77 per keg. 8510

May 26th. That the schedule carload price of "B" Blasting powder at Red Lodge, Montana, be $1.92 per keg.

Indiana Company:—

April 24th. To make a special price of $1.20 per keg, in carloads, to the Collins Coal Company, Brazil, Ind., and to Harder & Hafer, Star City, Ind., including the Hymera Coal Mining Co., Hymera, Ind,

May 6th. To renew its contract with the Texas & Pacific Mer. & Mfg. Co., Thurber, Texas, at $1.60 per keg, allowing rebate of 17½c per keg.

8511

EDWARD GREENE,
Secretary.

Plaintiff's Exhibit 1349.

The Special Committee reports having made recommendations as follows:—

Received Oct. 3, 1903, Miami Powder Co.

E. I. du Pont de Nemours & Company:—

June 1st, 1903. To renew its contract with the

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Princeton Coal & Mining Company, Princeton, Ind., at $1.35 per keg, allowing a rebate of 15c per keg.

To renew its contract with the Thomas Coal Company, Evansville, Ind., at $1.35 per keg, allowing rebate of 10c per keg.

To renew its contract with the Sunnyside Coal & Coke Company, Evansville, Ind., at $1.35 per keg, allowing rebate of 15c per keg.

To renew its contract with the Ludwig Coal Company, Daleton, Ohio, at $1.35 per keg, allowing rebate of 15c per keg.

8513 June 8th. To make a contract with the John Archbold Coal Company, Evansville, Ind., at $1.35 per keg, allowing rebate of 15c per keg.

June 15th. To cancel its contract with the Alabama Consolidated Coal & Iron Company, Birmingham, Ala., which expires Oct. 1st, 1903, and to make a new contract with this concern for three years at $1.15 per keg.

June 17th. To make a special price of $1.35 per keg, in carloads, to the Knapp & Spencer Co., Sioux City, Iowa.

June 18th. To make a special price of $1.15 per keg, in carloads, to A. F. Kelly, delivered at Peale,
8514 Patton, Rossiter and Barnesboro, Pa., covering the Clearfield Bituminous Coal Corporation, and the Empire Coal & Coke Company.

June 18th. To make a special price of $1.15 per keg, in carloads, to James Mellon, Patton, Pa.

To make a special price of $1.15 per keg, in carloads, to the West Virginia Grocery & Candy Company, Fairmont, W. Va.

June 25th. To make a special price of $1.20 per keg, in the Crescent Coal Company, Evansville, Ind., for one carload of powder sold in March, 1903, and to make a contract with that concern at $1.35 per keg, allowing rebate of 15c per keg.

June 29th. To make a special price of $1.15 per

8515

keg, in carloads, to the Stull-Hill Coulter Company, Leechburg, Pa.

Laflin & Rand Powder Company:—

June 1st. To make a special price of $1.55 per keg, in carloads, f.o.b. Pueblo, Col., and $1.65 per keg in carloads, f.o.b. Florence, Co., to the Colorado-Portland Cement Company, Portland, Colorado.

June 8th. To include the Black Diamond Coal Company, Runnels, Iowa, and the Spring Creek Coal Company, Oskaloosa, Iowa, under its contract with Sheppard & Company.

8516

June 8th, 1903. To renew its contract with the Central Coal & Coke Company at $1.45 per keg, subject to rebate of 30c per keg, delivered as wanted at mines at Pittsburg, Scammon, Litchfield, Nelson and Weir City, Kansas, and at $1.45 per keg, subject to rebate of 25c per keg, in carloads, f.o.b. Panama, Mo., or 5c per keg, less than these prices if necessary.

June 17th. To make a special price of $1.10 per keg, in carloads, through the Wilmington High Explosives Companies to Millard & McGraw for work on the Trenton cut off of the Pennsylvania Railroad, shipping point, Langhorne, Pa.

8517

June 20th. To make a contract for three years with the Union Coal & Coke Company with mines near Trinidad, Colorado, allowing rebate of 15c. per keg from the schedule price.

To renew its contract with the White Walnut Coal Company, Pinckneyville, Ill., at $1.35 per keg, allowing rebate of 15c per keg.

To make a special price of $1.10 per keg, in carloads to the Mahoning Supply Company, Punxsutawney, Pa., covering the Rochester & Pittsburg Coal & Iron Co., at Welston, Adrian, Eleanore, Helvetia and other operations in Pennsylvania, and including also Abbott & Blakeslee at Coal Glen.

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June 22nd. To make a special price of $1.15 per keg in carloads to the Webster Coal & Coke Company, for delivery at:

Ehrenfield, Bens Creek,
Beaverdale, Gallitzen,
Amsbury, Hastings,
Nanty Glo, Moss Creek,
Irvona, Crosson,

and including the Pennsylvania Coal & Coke Com-
8519 pany at Gallitzen, Pa.

June 25th. To make a special price of $1.10 per keg, in carloads, through the Wilmington High Explosives Companies, to George A. Ferguson & Company for three miles of work on the extension of the B. & O. R. R. from Buckhannon to Phillippi, W. Va.

To make a special price of $1.25 per keg, in carloads, to the Central Coal & Coke Company, successor to the Elmwood Coal & Mining Company, with offices at Chicago, Illinois, and operating at Elmwood, Ill.

June 27th. To make a contract for one year with
8520 the Crescent Coal Mining Company at Hopewell, Six Mile Run and Portage, Pa., at $1.25 per keg, allowing rebate of 10c per keg.

June 29th. To make a special price of $1.30 per keg, in carloads, through the Gray & Dudley Hardware Company, to Ethan Philbrick, a general contractor, for work on the Southern Railway at Cornelia, Ga.

Austin Powder Company:—

June 20th. To make a contract with the United States Coal Company, of Sturgis, Ky., successor to the Paducah Coal Company, allowing rebate of 10c per keg from the schedule carload price.

To renew its contract with the Massillon Coal &

Mining Company, Massillon, Ohio, covering the Bloomer Coal Company, Bloomer, W. Va., allowing rebate of 22½c per keg from the schedule carload price.

The Hazard Powder Company:—

June 1st. To renew its contract with J. A. Boone, Manager, covering:

Brown Coal Company, Nuttall, W. Va.

Boone Coal & Coke Company, Boone, W. Va.

Blume Coal & Coke Company, Lookout, W. Va.

Michigan Coal Company, Fayette, W. Va.

Fayette Coal & Coke Company, Fayette, W. Va. 8522

At $1.35 per keg, allowing rebate of 15c per keg.

To renew its contract with the Michigan Coal & Mining Company, Bay City, Mich., at $1.40 per keg, allowing rebate of 10c per keg.

To renew its contract with the Mount Carbon Company, Powellton, W. Va., at $1.35 per keg, allowing rebate of 10c per keg.

To renew its contract with the Island Valley Coal & Mining Company, Linton, Ind., at $1.35 per keg, allowing rebate of 17½c per keg.

Phoenix Powder Mfg. Company:—

May 29th, 1903. To make a special price of $1.20 per keg, in carloads, f.o.b. Chicago, Ill., to J. W. Powell, for work on the extension of the C. R. & P. R. R. from Amarillo, Texas, to Tucumcari, N. M. 8523

To make a special price of $1.10 per keg, in carloads, to J. S. Hull and the McArthur Brothers Company on 90 miles of work on the Charleston, Clendennin & Sutton Railroad from Otter to Sutton, W. Va.

June 8th. To make a special price of $1.35 per keg, in carloads, to Frank McGinnigle for work on the St. Louis & North Arkansas Railroad.

June 11th. To make a special price of $1.25 per keg, in carloads, to the Walnut Hill Coal Company, Belleville, Ill.

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June 12th. To make a special price of $1.20 per keg, in carloads, f.o.b. Sharpsburg, Ohio, to D. J. Griffith for work on the extension of the Wabash Railroad from Zanesville, Ohio, to Sharpsburg, Ohio.

June 24th. To make a special price of $1.20 per keg, in carloads, delivered at Forsythe Junction, St. Louis, Mo., to the Chicago, Rock Island & Pacific Railroad, for construction and betterment work on the St. Louis, Kansas City & Colorado Railroad from Forsythe Junction to the Osage River in Mis-
8525 souri.

June 24th, 1903. To make a special price of $1.20 per keg, in carloads, f.o.b. St. Louis, Mo., and $1.45 per keg, in carloads, f.o.b. Earlsboro, O. T., to Shippey & Outzen for work on the Oklahoma & Texas extension on the Missouri, Kansas & Texas Railroad from Oklahoma City to Coalgate, I. T.

Oriental Powder Mills:—

June 1st, 1903. To make a special price of $1.20 per keg, in carloads, to the McKell Coal & Coke Company, McDonald, W. Va.

June 9th. To make a special price in carloads to Williams & Schmis, Granville, N. Y., of $1.85 per
8526 keg, for "A," and $1.25 per keg for "B" Blasting Powder.

To make a special price of $1.20 per keg, in carloads, to F. H. Blodgett & Company for work on an electric line from Newark to Zanesville, Ohio.

June 12th. To make a special price of $1.25 per keg, in carloads, to the Tirre Coal & Mining Company, Lensburg, Ill.

June 17th. To make a special price of $1.20 per keg, in carloads, to T. F. Ryan for work on the Pittsburg, Fort Wayne & Chicago Railroad at Smithville, Ohio.

To make a special price of $1.15 per keg, in carloads, to the Brown Mining Company, Punxetawney, Pa., for delivery there only.

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June 24th. To make a special price of $1.10 per keg, in carloads, and $1.25 per keg in less than carloads, to the Union Supply Company, Scottdate and other points in Pennsylvania.

To make a special price of $1.15 per keg, in carloads, to W. P. Lee, Sutton, West Virginia, for delivery there only.

June 27th. To make a special price of $1.15 per keg, in carloads, to the West Virginia Coal Company, Morgantown, W. Va.

The King Mercantile Company:—

8528

May 27th. To make a special price of $1.20 per keg, in carloads, to the Winifrede Coal Company, Winifrede, W. Va.

June 4th. To make a special price of $1.20 per keg, in carloads, to the Allegheny Ore & Iron Company and the Victoria Coal & Coke Company, with headquarters at Clifton Forge, Va., ore mines at Oriskany nad Goshen, Va., and coal mines at Caperton, W. Va., also deliveries at McDowell, Allegheny County, Va.

June 8th. To make a special price of $1.25 per keg, in carloads, to the Crane Cheek Coal & Coke Company and the Pinncale Coal & Coke Company, McComas, W. Va.

8529

June 17th. To make a special price of $1.15 per keg, in carloads, to the Shipley Hardware Company, Meyersdale, Pa., for delivery there only.

June 17th, 1903. To make a special price of $1.15 per keg, in carloads, to the Kenneweg Company, Cumberland, Md., for delivery there only.

To make a special price of $1.15 per keg, in carloads, to the Carnegie Oil & Powder Company, Carnegie, Pa., for delivery there only.

To make a special price of $1.15 per keg, in carloads, to the Potomac Hardware Company, Cumberland, Md., for delivery there only.

To make a special price of $1.15 per keg, in car-

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loads, to the Kane & Keyser Hardware Company, Belington, W. Va.

June 18th. To make a special price of $1.15 per keg, in carloads, to Armstrong, Crislip, Day & Company, Clarksburg, W. Va.

To make a special price of $1.15 per keg, in carloads, to the Hibner & Hoover Hdw. Company, Du Bois, Pa.

Chattanooga Powder Company:—

June 9th. To renew its contract with the Jennifer Furnace Company, Connelsville, Ala., at $1.45
8531 per keg, allowing rebate of 10c. per keg, with privilege of increasing same to 15c. per keg, if the purchases amount during a year to more than 2,400 kegs; additional rebate to be allowed only on purchases thereafter.

June 20th. To put a clause in its contract recently recommended to be made with the Sewance Coal, Coke & Land Company, Clouse Hill, Tenn., to the effect that if the consumption during the year amounts to more than 2,400 kegs, the rebate may be increased to 15c. per keg on purchases after that quantity has been reached, but such additional rebate is not to apply on earlier purchases.

8532 June 25th. To renew its contract with the Pineville Coal Company or the Pineville Investment Company, Pineville, Ky., at $1.45 per keg, allowing rebate of 15c. per keg.

American Powder Mills:—

June 8th. To make a special price in carloads of 15c. per keg less than schedule carload price, to the Utah Construction Company, on 14 miles of work on the Denver & Rio Grande Railroad, from Howard towards Salida, Colorado.

June 22d. To make a special price in carloads, allowing rebate of 15c. per keg from the schedule price, to the Missouri Construction Company for one mile of work on the White River Extension of

8533

the Missouri Pacific Railroad north of Buffalo City, Ark.

June 25th. To renew its contract with the Central Coal & Coke Company, covering its mines in Wyoming at $1.45 per keg, in carloads, f.o.b. Missouri River, allowing rebate of 30c. per keg.

Mimai Powder Company:—

June 4th, 1903. To include the Twentieth Century Coal Company, with mines at Redfield and Cannelville, Ohio, under its contract with the Hamilton-Wallace Coal Company, Saltillo, Perry County, Ohio.

8534

June 9th. To include the Orris Coal Company, Zanesville, Ohio, with mines at Crooksville, Ohio, under its contract with the Zanesville Coal Company, Zanesville, O.

To renew its contract with the Columbus & Hocking Coal & Iron Company, office at Columbus, Ohio, mines at Longstreth, Murray City, Straitsville, Buchtel and Doanville, Ohio, at $1.35 per keg, allowing rebate of 10c. per keg.

June 13th. To make a special price of $1.15 per keg, in carloads, to C. C. Martin & Company, wholesale grocers, Parkersburg, W. Va.

8535

June 22d. To renew its contract with the Imperial Coal Mining Company, Columbus, Ohio, with mines at Nelsonville, Doanville and New Lexington, Ohio, at $1.35 per keg, allowing rebate of 10c. per keg, or 15c. per keg, provided its consumption shall amount to 2,400 kegs during the year; the rebate of 15c. per keg, however, to be allowed only on purchases subsequent to the time when 2,400 kegs have been bought.

June 24th. To rene wits contract with the Odin Coal Company, Odin, Ill., at $1.35 per keg, allowing rebate of 15c. per keg.

June 25th. To renew its contract with William Goddard, covering the Tilden Coal Company and

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the Crystal Coal Company, Tilden, Ill., at 1.35 per keg, allowing rebate of 10c. per keg.

June 26th. To make a special price of $1.20 per keg in carloads, to the Chicago, Cincinnati & Louisville Railroad on work between Cincinnati, Ohio, and Richmond, Ind.

Sycamore Powder Mills:—

June 25th. To make a contract with the St. Bernard Mining Company, for delivery at Earlington, Mortons Gap and Providence, Ky., at $1.10 per keg, in carloads.

8537 Birmingham Powder Company:—

June 26th. To renew its contract with the Gilreath Coal & Iron Company, Pocahontas, Ala., at $1.45 per keg, allowing rebate of 15c. per keg.

Indiana Powder Company:—

May 29. To make a special price of $1.20 per keg, in carloads, f.o.b. Mississippi River, through the Wilmington High Explosives Companies, to O'Hearn Brothers and Jerry Connelly, for thirty miles of work on the C. O. & G. R. R. extension between Amarillo, Texas, and Tucumcari, New Mexico.

June 4th, 1903. To make a special price of $1.30
8538 per keg, in carloads, f.o.b. Missouri River, through the Wilmington High Explosives Companies, to O'Hearn Brothers and Jerry Connelly, for thirty miles of work on the C. O. & G. R. R. extension between Amarillo, Texas, and Tucumcari, New Mexico.

June 8th. To make a special price of 1.25 per keg, in carloads, to the Knox Coal Company, Bicknell, Indiana.

June 25th. To make a special price of $1.25 per keg, in carloads, to Powers & Williams, Streator, Ill.

June 27th. To make a special price of $1.17½

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per keg, in carloads, to the Antiock Coal Company, Linton, Ind.

Oriental Powder Mills and Austin Powder Company:—

June 18th. To make a special price of $1.15 per keg, in carloads, to F. C. Beall, Frostburg, Md.

The King Mercantile Company and Laflin & Rand Powder Company:—

June 20th. To make a special price of $1.15 per keg, in carloads, to W. M. Scott & Company, Carnegie, Pa.

8540

Oriental Powder Mills, The King Mercantile Company, American Powder Mills, Laflin & Rand Powder Company, and E. I. du Pont de Nemours & Company:—

June 20th. To make a special price of $1.10 per keg, in carloads, through the Wilmington High Explosives Companies and American direct, to McArthur Brothers Company, for work on the extension of the Charleston, Clendennin & Sutton Railroad in West Virginia, from Otter & Sutton.

The Hazard Powder Company, and Phoenix Powder Mfg. Company:—

8541

June 26th. To make a special price of $1.20 per keg, in carloads, f.o.b. St. Louis, Mo., and $1.45 per keg, in carloads f.o.b. Choctaw City, O. T. to Mayey Brothers on the Oklahoma & Texas extension of the M. K. & T. R. R. from Oklahoma City to Coalgate, I. T.

To make a special price of $1.20 per keg, in carloads, f.o.b. St. Louis, Mo., and $1.35 per keg, in carloads, f.o.b. points in Arkansas, to J. W. Maney on the construction of the Midland Valley Railroad from Greenwood to Hartford, Ark., and from Greenwood, Ark., to Bokosha, I. T.

June 26th. To make a special price of $1.20 per keg, in carloads, f.o.b., St. Louis, Mo., and $1.35 per keg, in carloads, f.o.b. points in Arkansas, to

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Maney Brothers on the construction of the Midland Valley Railroad, from Greenwood, Ark., to Hartford, Ark., and from Greenwood, Ark., to Bokosha, I. T.

The Ohio Powder Company, Laflin & Rand Powder Company, and E. I. du Pont de Nemours & Company:—

June 8th, 1903. Ohio to make a special price of $1.20 per keg, in carloads, to the McCabe Construction Company for work on the Baltimore & Ohio Railroad, between Bridgeport and Fairpont, Ohio,
8543 and the L. & R. and du Pont Companies to make the same price, through the Wilmington High Explosives Companies to this concern.

American Powder Mills and Phoenix Powder Mfg. Company:—

June 8th. To make a special price of $1.20 per keg, in carloads, f.o.b. St. Louis, Mo., and $1.30 per keg, in carloads, delivered at railroad points in Missouri, to Stubbs, Flick & Johnson on the extension of the C. B. & Q. R. R. from old Monroe, Mo., to Mexico, Mo.

Miami Powder Company, Chattanooga Powder Company, The Hazard Powder Company, Laflin &
8544 Rand Powder Company, and E. I. du Pont de Nemours & Company:—

June 8th. To make a special price of $1.35 per keg, in carloads, to the Brushy Mountain Coal Mines, Petros, Tenn.

Oriental Powder Mills, Laflin & Rand Powder Company, and E. I. du Pont de Nemours & Company:

June 5th. Oriental to make a special price of $1.10 per keg, in carloads, to Bennett & Bennett on railroad work near Uniontown, Pa., and the E. & R. and du Pont Companies to make the same price to this concern on this work, through the Wilmington High Explosives Companies.

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June 24th. Oriental to make a special price of $1.10 per keg in carloads, to Douglass Brothers, on three miles of work on a branch of the B. & O. R. R. between Phillippi and Buchhannon, W. Va., and L. & R. and du Pont Companies to make the same price to them onthis work, through the Wilmington High Explosives Companies. 8545

Laflin & Rand Powder Company and E. I. du Pont de Nemours & Company:

June 8th. To make a special price of $1.20 per keg in carloads, through the Wilmington High Explosives Companies, to Allen & Kefauver on about forty miles of work on the C. L. & W. Division of the B. & O. R. R., between Fairpont and Lafferty, Ohio. 8546

June 20th. To make a special price of $1.20 per keg, in carloads, delivered at Katonah, N. Y., through the Wilmington High Explosives Companies, to William Flanagan, contractor.

To make a special price of $1.10 per keg, in carloads, through the Wilmington High Explosives Companies, to the McArthur Brothers Company, for delivery at Curwensville and Mahaffey, Pa., on sixteen miles of work on the N. Y. C. & H. R. R., between Curwensville and Bower, Clearfield County, Pa. 8547

June 29, 1903. To make a special price of $1.10 per keg, in carloads, through the Wilmington High Explosives Companies, to the Smith Construction Company, on work on the Middle Division of the Pennsylvania Railroad at Granville and Newtwo-Hamilton, Pa.

To make a special price of $1.10 per keg, in carloads, through the Wilmington High Explosives Companies, to T. A. Gillespie & Company, delivered at Sheridan, Pa., for work on the P. C. C. & St. L. R. R. at Carnegie, Pa.

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Austin Powder Company and E. I. du Pont de Nemours & Company:—

June 24th. To make a joint contract with the United States Gypsum Company (, Illinois, for three years, allowing rebate of 10c. per keg, from the schedule carload price, with equity to the Laflin & R. Hazard and Oriental Companies.

Austin Powder Company, Laflin & Rand Powder Company and E. I. du Pont de Nemours & Company:—

June 29th. To make a special price of $1.10 per
8549 keg, in carloads, to the Dull Mercantile Company, Meyersdale, Pa., operating the company stores of the Sommerset Coal Co., for delivery at Meyersdale, Wilson Creek, Landstreet, Athouse, Boynton, Elk Lick, Pine Hill, Pa., and Blaine, W. Va.

Chatanooga Powder Company, The Hazard Powder Company, American Powder Mills, and Laflin & Rand Powder Company:

June 26th. To make a special price of $1.45 per keg, in carloads, to John P. Hughes on ballast work with the Texas & Pittsburg Railroad at Brazos, Texas.

Austin Powder Company, Indiana Powder Com-
8550 pany and Phoenix Powder Mfg. Company:—

June 25th. To make a special price of $1.20 per keg, in carloads, f.o.b. St. Louis, Mo., and $1.35 per keg, delivered in Arkansas, in carloads, to Eby & Stocker for work on the construction of the Midland Valley Railroad, from Greenwood, Ark., to Hartford, Ark., and from Greenwood, Ark., to Bokosha, I. T.

General:—

June 6th, 1903. Taking effect June 8, 1903, the price of "B" blasting powder in carloads of 400 kegs, in Pennsylvania and in the Counties of Garrett, Allegheny and Washington, Md., be $1.25 per keg; that the price of "B" blasting powder in less

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than carloads in that territory be $1.40 per keg, f.o.b. Distributing or Mill Points; that the price in less than carloads to jobbers at Pittsburgh, Pa., be $1.30 per keg; that all special prices in Pennsylvania and West Virginia, north of and including the lines of the B. & O. R. R. from Parkersburg to Harpers Ferry, be withdrawn, and that special prices in Pennsylvania, West Virginia, north of and including the lines of the B. & O. R. R. from Parkersburg to Harpers Ferry, and in the Counties of Garrett, Allegheny and Washington, Md., may be recommended by the Special Committee or the Advisory Committee upon application, as follows:

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To Dealers: 10c. per keg less than schedule; not to be used for the extension of business, but only to cover trade which they have formerly held.

To Mining Companies: Consuming 2,500 to 5,000 kegs, 5c. per keg less than schedule.

To Mining Companies: Consuming 5,000 to 10,000 kegs, 10c. less than schedul.

To Mining Companies: Consuming over 10,000, 15c. per keg less than schedule.

To Railroad Contractors: 10c. per keg less than schedule.

8553

June 11th. The withdrawal of the previous schedule carload prices for "B" blasting powder in the "Neutral Belt" and the substitution of those as follows:

Colorado: Alamosa, $1.91; Aspen, $2.03; Boulder, $1.61; Baldwin, $2.00; Castle Rock, $1.67; Colorado Springs, $1.61; Cuchara Junction, $1.67; Coal Creek, $1.71; Colorado City, $1.68; Canon City, $1.72; Crested Butte, $2.00; Como, $1.85; Cardiff, $2.02; Central ity, $1.74; Denver, $1.61; Del Norte, $1.95; Dutango, $2.05; Erie, $1.65; Fort ollins, $1.67; Florence, $1.71; Grand Junction, $1.61; Gunnisonfi $1.93; Glenwood Springs, $2.02; Golden,

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$1.64; Hastings, $1.66; Lafayette, $1.67; Longmont, $1.67; Louisville, $1.67; Leadville, $1.89; Meeker, $2.03; Pueblo, $1.61; Rouse, $1.67; Rockdale, $1.71; Rifle, $2.03; Sopris, $1.63; Salida, $1.78; Trinidad, $1.61; Villa Grive, $1.86; Walsenburg, $1.61.

Montana: Boulder, $1.89; Butte City, $1.89; Benton, $1.95; Billings, $1.95; Belt, $1.96; Bozeman, $1.91; Cinnabar, $1.98; Columbia Falls, $1.85; Deer Lodge, $1.89; Great Falls, $1.89; Havre, $1.95; Horr, $1.98; Helena, $1.89; Harlowton, $1.89; Kalispell, $1.85; Livingston, $1.94; Missoula, $1.89;
8555 Neihart, $2.00; Red Lodge, $2.00; Sand Coulee, $1.93; Stockett, $1.94.

New Mexico: Albuquerque, $1.79; Blossburg, $1.64; Belen, $1.79; Cerillos, $1.87; Deming, $1.78; Dawsonfi $1.81; French, $1.69; Gallup, $1.79; Lamy Junction, $1.87; Las Vegas, $1.87; Monero, $1.99; Nutt Station, $1.77; North Capitan, $1.80; Raton, $1.63; Socorro, $1.79; Silver City, $1.79; Torrance, $1.86.

South Dakota: Rapid City, $1.87.

June 11th, 1903—Utah: Coalville, $1.67; Grass Creek, $1.67; Ogden, $1.67; Park City, $1.67; Salt Lake City, $1.67.

8556 Wyoming: Almy, $1.77; Cambria, $1.79; Cheyenne, $1.67; Carbon, $1.87; Cokeville, $1.01; Douglas, $1.83; Evanston, $1.78; Fossil, $1.91; Fort Steele, $1.90; Laramie, $1.80; New Castle, $1.79; Rawlins, $1.92; Rock Springs, $1.94; Sheridan, $1.92.

E. I. du Pont de Nemours & Company:—

July 3d. To make a contract with the New Ohio Washed Coal Company, Carterville and Lander, Ill., at $1.35 per keg, allowing rebate of 17½c. per keg, with equity to the Laflin & Rand, Equitable and Phoenix Companies.

To make a contract with the New Virginia Coal

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Company, Johnson City, Ill., at $1.35 per keg, allowing rebate of 15c. per keg.

To make a contract at $1.35 per keg with S. H. Wulfman Coal Company, delivered at Hartwell and Cabel, Ind., allowing rebate of 15c. per keg

To make a contract with the Wheatcroft Coal & Mining Company, Wheatcroft, Ky., at $1.40 per keg, allowing rebate of 10c. per keg.

July 7th. To make a contract with the Missouri & Illinois Coal Company at $1.35 per keg, in carloads, allowing rebate of 17½c. per keg, delivered at Freeburg, Rentchler and Wilderman, Ill., with 8558
equity to the Laflin & Rand, Equitable and Phoenix Company.

To make a contract with the Ohio Valley Coal & Mining Company, DeKoven, Ky., at $1.30 per keg, allowing rebate of 10c. per keg.

To make a special price of $1.20 per keg, in carloads, to P. Conner, Receiver of W. H. Blight, Bernice, Pa.

To make a special price of $1.20 per keg, in carloads, delivered at Ralston, Pa., to the Red Run Coal Company.

July 10, 1903. To make a special price of $1.10 per keg, in carloads, to Booth & Flynn, for delivery 8559
at Baker Station and Blairsville, Pa., and $1.25 per keg, in less than carloads, delivered in the vicinity of Pittsburgh, Pa.

July 16th, 1903. To make a special price of $1.20 per keg, in carloads, to J. H. Steell & Company, Crenshaw, Pa., covering operations at Dagus Mines, Pa., and also Steel & Company, Crenshaw, Pa.; R. W. Beadle & Company, Brockwayville, Pa.; Penfield Store Company, Penfield, Pa.

July 14th. To renew its contract with the Ottomarmet Coal Mining Company, Raymond City, W. Va., successor to the Marmet-Smith Coal & Mining Company, at $1.35 per keg, allowing a rebate of 10c. per keg.

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July 17th. To make a special price of $1.35 per keg, in carloads, to J. E. Watson, Rich Hill, Mo.

To cancel its present contract and make a new one with the Manufacturers' Coal & Coke Company at $1.45 per keg, allowing rebate of 17½c. per keg, delivered at Novinger, Connellsville and Ninevah, Mo.

Laflin & Rand Powder Company:

July 1st. To make a contract with the Huntington Coal Company, Six Mile Run, Pa., at $1.25 per keg, allowing rebate of 5c. per keg, with the under-
8561 standing that if purchases during the year amount to 5,000 kegs the rebate may be 10c. per keg on all purchases.

July 2d. To make a special price of $1.15 per keg, in carloads, to McConnell & Luker, Kittanning, Pa., for delivery there, and also to the Mosgrove Coal Works, Mosgrove, Pa., and the Logansport Coal Company, Logansport, Pa.

To make a special price of $1.15 per keg, in carloads, to Graham, Herd & Company for delivery at Philipsburg, Pa.

To make a special price of $1.15 per keg, in carloads, to the Central Supply Company, for delivery
8562 at Patton, Hastings and Spangler, Pa.

To make a special price of $1.15 per keg, in carloads, to the J. H. Turnbach Hardware Company, Philipsburg, Pa., for delivery there only.

July 3d. To make a contract with J. King McLanahan, covering the Juniata Limestone Company, Blair Limestone Company, American Lime & Stone Company, St. Clair Limestone Company, at Carlim, Blair Four, Franklin Forge, Flowing Springs, Frankstown, Bellefonte, Union Furnace and Tyrone, Pa., and the Cambria Steel Company, at Naginey, Pa., at $1.25 per keg, allowing rebate of 15c. per keg.

July 10, 1903. To make a special price of $1.20

per keg, in carloads, to Barnes & Tucker, Barnesboro, Pa.

July 17th. To make a special price of $1.20 per keg, in carloads, to the Buffalo & Susquehanna Coal & Coke Company, delivered at Tyler, Du Bois and Sykesville, Pa.

To make a special price of $1.20 per keg, in carloads, to the Morrisdale Supply Company for the Morrisdale Coal Company, Philipsburg, Pa.

Sycamore Powder Mills:—

July 20th. To include the Victoria Coal Company, near Madisonville, Ky., under its contract 8564
with the St. Bernard Mining Company, Earlington, Ky.

The Ohio Powder Company:—

July 1st. To make a special price of $1.10 per keg in carloads, to the Federal Supply Company and the Pittsburg Coal Company in the Pittsburg District.

July 10th. To make a special price of $1.15 per keg in carloads, to the Vesta Coal Company, delivered at Allenport, Bells Vernon, Coal Centre and California, Pa.

The Hazard Powder Company:

July 14th. To make a contract with the West 8565
Jellico Coal Company, Strunks, Ky., at $1.45 per keg, allowing rebate of 10c. per keg.

July 21st. To include under its contract with the Central Coal Company, Fire Creek, W. Va., the Gordon Coal & Coke Company, covering its properties at Morris Creek, Fire Creek and Eagle, W. Va.

The King Mercantile Company:—

July 1st. To renew its contract with the Jones Coal Company, Jackson, Ohio, at $1.35 per keg, allowing rebate of 15c. per keg.

To renew its contract with the Wellston Coal

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Company, Wellston, Ohio, at $1.35 per keg, allowing rebate of 17½c per keg.

July 8th. To make a special price of $1.20 per keg, in carloads, to the Gordon Coal & Coke Company, Montgomery, W. Va., covering the St. Clair Coal Company and the Divis-Gordon Company.

July 17th. To include the McGhee Coal Company, Wellston, Ohio, under its contract with the Comet Coal Company, Dayton, Ohio.

July 20th. To renew its contract with the Emma Coal Company, Edwin Jones, President, Jackson,
8567 Ohio, covering: Emma Mines Nos. 1, 2 and 3, Glenroy, Ohio; Buckeye Coal Company, Coalton, Ohio; Globe Iron Company, Jackson, Ohio; Cornelia Mining Company, Jackson, Ohio; at $1.35 per keg, allowing rebate of 17½c per keg.

Oriental Powder Mills:—

July 1st, 1903. To renew its contract with William Ratican, Furmans, Ill., at $1.35 per keg, allowing rebate of 10c per keg.

To renew its contract with D. Zihlsdorf, Marissa, Ill., at $1.35 per keg, allowing rebate of 15c. per keg.

To renew its contract with the Kolb Coal Com-
8568 pany, Mascoutah, Ill., at $1.35 per keg, allowing rebate of 15c per keg.

To renew its contract with the Greenwood-Davis Coal Company, Duquoin, Ill., at $1.35 per keg, allowing rebate of 15c per keg.

July 7th. To extend to the Morgantown & Kingwood Railroad Company at Morgantown, W. Va., the special price of $1.15 per keg, in carloads, heretofore recommended to be made by this company to the West Virginia Coal Co.

July 3rd. To make a contract with J. King McLanahan, covering the Cambria Steel Company, at Naginey, Pa., at $1.25 per keg, allowing rebate of 15c per keg.

8569

July 14th. To include the Duncan Run Coal Mining Company, office at Detroit, Mich., mines at Sealover, Ohio, under its contract with W. H. Blaney.

Indiana Powder Company:—

July 1st. To make a special price of $1.10 per keg, in carloads, including one carload shipped January 27th, 1903, to the Midland Coal Company, Dugger, Ind.

July 17th. To make a contract with the Collins Coal Company, Brazil, Ind., at $1.35 per keg, allowing rebate of 15c per keg.

8570

The Phoenix Powder Mfg. Company.—

July 10th. To make a special price of $1.20 per keg, in carloads, to the St. Louis & O'Fallon Coal Company, Belleville, Ill.

July 14th. To make a special price of $1.20 per keg, in carloads, f.o.b St. Louis, Mo., to the Sligo Furnace Company, on the construction of a line at Sligo, Mo.

To renew its contract with Sholl Brothers, Peoria, Ill., at $1.35 per keg, allowing rebate of 15c per keg, with equity to du Pont and Laflin & Rand Companies.

July 17th. To renew its contract with the Pittsburgh & Midway Coal Mining Company, Midway, Kansas, covering its mines in Kansas at $1.45 per keg, allowing rebate of 20c per keg.

8571

To renew its contract with Applegate & Lewis, Cuba, Ill., at $1.35 per keg, allowing rebate of 15c per keg.

July 21st. To make a special price of $1.20 per keg, in carloads, f.o.b. St. Louis, Mo., to Bates & Schweitzer on the St. Louis, Memphis & Southeastern Railroad.

Austin Powder Company:—

July 3rd, 1903. To make a special price of $1.30 per keg, in carloads, to the Black Diamond Coal & Mining Company, Drakesboro, Ky.

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July 10th. To make a special price of $1.15 per keg, in carloads, to the South Fork Supply Company, South Fork, Pa.

July 17th. To make a special price of $1.20 per keg, in carloads, to the Century Coal & Coke Company, Baltimore, Md.

Austin Powder Company, E. I. du Pont de Nemours & Company and Laflin & Rand Powder Company:—

July 1st. The withdrawal of the special price heretofore recommended to be made by the Laflin
8573 & Rand and du Pont Companies, and Austin direct, to the Miller Supply Company, for delivery at Huntington, W. Va., and Bluefield, W. Va.

July 2nd. Add to the list of points at which delieveries may be made under a special prices of $1.10 per keg, previously recommended for these companies, to the Dull Mercantile Company, the following: Listie, Garrett, Tub Mill Mines, all in Somerset County, Pa.

July 11th. To make a special price of $1.15 per keg, in carloads, to the Vulcan Trading Company for the Harbison-Walker Refractories Company, in Pennsylvania.

8574 Austin Powder Company, Oriental Powder Mills, Laflin & Rand Powder Company, and E. I. du Pont de Nemours & Company:—

July 17th. To make a special price of $1.20 per keg, in carloads, to the Victoria Supply Company, Victoria Mines, Pa.

American Powder Mills, Laflin & Rand Powder Company, and E. I. du Pont de Nemours & Company:—

July 2nd. The withdrawal of the special price of $1.20 per keg, in carloads, f.o.b. St. Louis, Mo., heretofore recommended to be made by American direct, and du Pont and Laflin & Rand through the Wilmington High Explosives Companies, to J. W.

8575

Creech for work on the C. R. I. & P. R. R. near St. Louis.

Chattanooga Powder Company, and E. I. du Pont de Nemours & Company:—

July 7th. To make a special price of $1.35 per keg, in carloads, to the Douglas Coal & Coke Company, Dunlay, Tenn.

Laflin & Rand Powder Company, and E. I. du Pont de Nemours & Company:—

July 1st. To make, through the Wilmington High Explosives Companies, a special price of $1.10 per keg, in carloads, to McMenamin & Sims, for 8576
work on the Pennsylvania Railroad, between Lilly and Portage, Pa.

July 2d, 1903. To make a special price of $1.15 per keg, in carloads, to the Shawmut Commercial Company, Company Store for coal mines on the Pittsburg, Shawmut & Northern Railroad at Shawmut, Weedville and Byrnedale, Pa.

To make a special price of $1.15 per keg, in carloads, to M. Tucker, agent, Morris Run, and Lawrenceville, Pa.

July 10th. The withdrawal of the special price of $1.05 per keg, in carloads, heretofore recommended to be made through the Wilmington High Explo- 8577
sives Companies, to the Pinkerton Construction Company for work on Section 9, known as the Downington Section of the Parkersburg and Columbia cut off of the Pennsylvania Railroad.

July 11, 1903. To make a special price of $1.20 per keg, in carloads, to E. H. Motter & Company for work on the Deepwater Railway in West Virginia, through the Wilmington High Explosives Companies.

July 17th. To make a special price of $1.10 per keg in carloads, through the Wilmington High Explosives Companies, to Willauer & Company at Rock

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Point, Va., for work on the Pennsylvania Lines west.

July 20th. To make a special price of $1.10 per keg, in carloads, through the Wilmington High Explosives Companies, to the Ferguson Contracting Company, on the Pennsylvania Lines west of Pittsburg, Pa., delivery Beaver Falls and New Brighton, Pa.

Oriental Powder Mills, Laflin & Rand Powder Company, E. I. du Pont de Nemours & Company:—

July 21st. The withdrawal of the special price
8579 of $1.10 per keg, in carloads, previously recommended to be made by Oriental direct, and Laflin & Rand and du Pont Companies through the Wilmington High Explosives Companies, to Douglass Brothers, for three miles of work on a branch of the B. & O. R. R. between Phillippi and Buchannon, W. Va., and that the same companies make a special price of $1.20 per keg, in carloads, to Douglass Brothers on this work.

Oriental Powder Mills and E. I. du Pont de Nemours & Company:—

July 10th. Oriental to make a contract, through its agents, the Arthur Kirk & Son Company, with
8580 the United States Steel Corporation for its supplies of powder in Ohio, W. Va., and Pennsylvania, at $1.10 per keg, in carloads, and $1.25 per keg, in less than carloads, for delivery at points in the State of Pennsylvania; $1.20 per keg in carloads for its mines in West Virginia, and $1.15 per keg, in carloads, for its mines in Ohio, and du Pont to make direct a contract with the United States Steel Corporation at the same prices.

July 20th. To make a special price of $1.20 per keg, in carloads, to the Lafayette Supply Company for delivery at Uniontown and Waltersburg, Pa.

The Hazard Powder Company and The King Mercantile Company:—

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July 11th, 1903. To make a special price of $1.20 per keg, in carloads, to the Echo Coal & Coke Company, Beury, W. Va., each to supply the trade of this Company heretofore held by it.

Austin Powder Company and Oriental Powder Mills:—

July 11th. To make a special price of $1.20 per keg, in carloads, to M. J. McQuade, Freeport, Pa.

Austin Powder Company and Ohio Powder Company:—

July 2d. To make a special price of $1.10 per keg, in carloads, to the Star Supply Company, Star Junction, Pa. 8582

Austin Powder Company and E. I. du Pont de Nemours & Company:—

July 8th, 1903. To make a joint contract with the United States Gypsum Company, Illinois, for three years, allowing rebate of 17½c. per keg from the schedule carload price, with equities to Laflin & Rand and Hazard and Oriental Companies.

The King Mercantile Company, Laflin & Rand Powder Company and E. I. du Pont de Nemours & Company:—

July 17th. King to make a special price of $1.20 per keg, in carloads, to Bondurant & Cooper for work on the Deepwater Railway in West Virginia, and Laflin & Rand and du Pont Companies to make, through the Wilmington High Explosives Companies, the same price to them. 8583

The King Mercantile Company and Laflin & Rand Powder Company:

July 2d. To make a special price of $1.15 per keg, in carloads, to the Swank Hardware Company, Johnstown, Pa., for delivery there only.

Austin Powder Company and Laflin & Rand Powder Company:

July 2d. To make a special price in carloads of 20c. per keg less than the schedule price, to the

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Bolen-Darnell Coal Company of Kansas City, Mo., delivered at Yale, Kansas; Rich Hill, Mo.; Bevier, Mo.; Hartford, Ark.; McAlester, I. T., and Craig, I. T.

The Hazard Powder Company and Austin Powder Company:—

July 6th. To make a special price of $1.35 per keg, in carloads, to the New Diamond Coal Company, Altamont, Ky.

General:—

July 1st. That the schedule carload price for
8585 "B" blasting powder at the points named below be as follows:

July 1st, Pryor, Colo., $1.67 per keg.

July 11th, Cler Creek, Utah, $1.55 per keg.

July 14th, Aguilar, Colo., $1.66 per keg.

July 14th, Rugby, Colo., $1.66 per keg.

July 17th, Terry, South Dakota, $1.78 per keg.

July 17th, Deadwood, South Dakota, $1.75 per keg.

E. I. du Pont Company:—

July 22d, 1903. To make a special price of $1.10 per keg, in carloads, to the Jefferson & Clearfield Coal & Iron Co., for delivery at Reynoldsville, Rochester, Soldiers Run and Indiana, Pa.

8586 July 28th. To make a special price of $1.15 per keg, in carloads, to T. B. Budinger, Snow Shoe, Pa.

To make a contract with the Central Coal & Mining Company, offices at Kewannee, Ill., and mines at Bryant, Fulton County, Ill., at $1.35 per keg, in carloads, allowing rebate of 10c. per keg.

To make a contract with the Farmington Coal Company, Farmington, Ill., at $1.35 per keg, in carloads, allowing rebate of 10c. per keg.

To make a special price of $1.20 per keg, in carloads, to J. H. Steel & Company, delivered at Toby Mines, Pa., and Belington, W. Va.

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To make a special price of $1.35 per keg, in carloads, to Watson & Pearson, Rich Hill, Mo., successors to J. B. Watson.

To make a contract with the Oskaloosa Coal & Mining Company, of Oskaloosa and Beacon, Iowa, at $1.45 per keg, in carloads, delivered in Iowa, or $1.35 per keg, in carloads, f.o.b. Mississippi River, allowing rebate of 15c. per keg.

July 30th. To renew its contract with the Evansville Coal Mining Company, Evansville, Ind., at $1.35 per keg, allowing rebate of 10c. per keg.

8588

To make a special price of $1.20 per keg, in carloads, to the Chicago, Cincinnati & Louisville Railroad, on work between Cincinnati, Ohio, and Richmond, Ind.

To make a special price of $1.15 per keg, in carloads, to James Mellon for delivery at Glen Campbell and Arcadia, Pa.

To make a special price of $1.15 per keg, in carloads, to the Iroquois Coal Company, Brockwayville, Pa., including the Panther Run Coal Company, Sherwood, Pa.

July 31st. To make a special price of $1.15 per keg in carloads, to A. F. Kelly for delivery at Gazzam, Clearfield County, Pa.

8589

August 6th. To make a special price of $1.32½ in carloads, to the American Smokeless Coal Company, Huntington, Ark., instead of making a contract as heretofore recommended.

To renew its contract with the Muren Coal & Ice Company, New Baden and Belleville, Ill., at $1.35 per keg, allowing rebate of 15c. per keg.

August 8th. To make a contract with Henry Holverscheid & Co., Chicago, Ill., covering the Colfax Company, with mines at Colfax, Ill., at $1.35 per keg, in carloads, allowing rebate of 10c. per keg.

August 10th, 1903. To make a contract with the

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Sunnyside Coal Company, of Chicago, Ill., for delivery at Carterville and Herrin, Ill., at $1.35 per keg, in carloads, allowing rebate of 17½c. per keg, or 20c. per keg provided the purchases of that concern during any one year of the life of the contract amount to 10,000 kegs or more.

August 14th. To make a contract with the Saline Coal Company, Harrisburg, Ill., at $1.35 per keg, allowing rebate of 10c. per keg.

To make a contract with the Union Pacific Coal Company, Omaha, Neb., for one year from May
8591 1st, 1903, at $1.45 per keg, f.o.b. Missouri River, allowing rebate of 15c. per keg.

August 19th. To make a contract with the Glendale Coal & Mining Company, Belleville, Ill., at $1.35 per keg, in carloads, allowing rebate of 10c. per keg.

August 21st. To make a special price of $1.20 per keg for one carload of 800 kegs to the St. Louis & O'Fallon Coal Company, Belleville, Ill.

The Hazard Powder Company:

July 30th. To increase to 15c. per keg the rebate under its contract with the Bicknell Coal Company, Bicknell, Ind.

8592 July 31st. To include the Kanawha Gas Coal Company, Cannelton, W. Va., under its contract with W. R. Johnson, Crescent, W. Va.

To make a special price of $1.30 per keg, in carloads, to the Crane Creek Coal & Coke Company, McComas, W. Va., including one carload of 400 kegs already shipped.

August 6th. To make a special price of $1.25 per keg, in carloads, to the Rutledge & Taylor Company, Trenton, Ill., including the Valley Coal & Mining Company, Birchner, Ill., and the Interstate Coal & Mining Company, Worden, Ill.

August 8th. To make a special price of $1.20 per keg, in carloads, through the Wilmington High Ex-

plosives Companies, to Joseph Fuccy, on work on the B. & O. R. R. between Phillippi and Buckhannon, W. Va.

August 15th: To include delivery at Jasonville, Indiana, under its contract previously recommended to be made with the Island Valley Coal & Mining Company, Linton, Ind.

August 21st . To include the General Merchandise Company of New Cumberland, W. Va., under its contract with the West Virginia Fire Clay Mfg. Company, the former being the Company store for the latter concern. 8594

Birmingham Powder Company:—

August 12th. To renew its contract with the Underwood Coal Company, Altoona, Ala., at $1.45 per keg, allowing rebate of 15c per keg.

Laflin & Rand Powder Company:—

July 23rd, 1903. The withdrawal of the special price of $1.10 per keg, in carloads, heretofore recommended to be made to Kenney Brothers, Long Eddy, N. Y.

The withdrawal of the special price of $1.10 per keg, in carloads, heretofore recommended to be made to Kilpatrick Brothers, Hancock, N. Y.

The withdrawal of the special price of $1.10 per keg, in carloads, heretofore recommended, to be made to Randall Brothers, Hancock, N. Y. 8595

July 28th. To continue until Dec. 16th, 1903, the special price of $1.05 per keg, in carloads, heretofore recommended to be made to the Eureka Supply Company, Penna.

To make a special price of $1.15 per keg, in carloads, to the Wrigley Hardware Company, Mahaffey, Pa.

To make a special price of $1.15 per keg, in carloads, to Kelly & Company, Snow Shoe, Pa.

The withdrawal of the special price of $1.05 per keg, in carloads, heretofore recommended to be

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made to C. W. Maxwell & Company, Pond Eddy, N. Y.

July 30th. To make a special price of $1.25 per keg, in carloads, to the Gilbert Grocery Company, Portsmouth, O.

To make a special price of $1.20 per keg in carloads, to the Central Coal Company, Hickory, Ia.

The withdrawal of the special price of $1.10 per keg, in carloads, heretofore recommended to be made to Swinton & Company, Port Jervis, N. Y., and to make a special price of $1.25 per keg, in car-
8597 loads, to them.

To make a special price of $1.15 per keg, in carloads, to Mrs. Victor Pezzoni, Monongahela City, Pa.

July 31st. To make a special price of $1.35 per keg, in carloads, f.o.b. St. Paul, Minn., to the Consolidated Coal Company, of Lehigh and New Salem, N. D.

August 1st. To make a special price of $1.15 per keg, in carloads, to Graham, Herd — Company, Philipsburg, Pa., for the trade at schedule price of $1.25 per keg, in carloads, of the following named concerns: Betz Coal Mining Co., Madera, Pa.; W.
8598 A. Gould & Bros., Brisben, Pa.; Joseph Wharton, Graceton, Pa.; Bellefonte Lime Co., Colona, Pa.; Bennett Branch Supply Co., Dents Run, Pa.; W. B. Hughes, Clearfield, Pa.

August 6th. That a special price of $1.15 per keg, in carloads, heretofore recommended to be made to the Swank Hdw. Company for delivery at several points in Pennsylvania, be also for the trade of the Swank Hdw. Co. with the several concerns named below; such trade, however, to be sold at not less than the schedule carload price: Enterprise Supply Company, Garrett, Pa.; Middle Creek Supply Co., Casselman, Pa. (the latter being the same as the Southern Coal Company and the Middle Creek Coal Co.), Lilly, Pa.

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Bear Rock Coal Co., Lilly, Pa.

Nanty-Glo Coal Mining Co., Nanty-Glo, Pa.

August 6th, 1903. To make a contract with the Miller Brothers & Company, Mulberry, Kansas, at $1.45 per keg in carloads, allowing rebate of 15c. per keg.

To increase to 20c. per keg the rebate under its contract with the Smith-Lowe Coal Company, Des Moines, Iowa, provided the purchases of that concern during a year amount to 10,000 kegs, the increased rebate to apply on all purchases during that year.

8600

To make a special price of $1.35 per keg in carloads to the Prussia Hdw. Company, Fort Dodge, Iowa.

August 7th. To make a contract with the White Walnut Coal Company, Pickneyville, Ill., at $1.35 per keg in carloads, allowing rebate of 17½c. per keg.

August 14th. To make a contract with W. A. Wells & Company, Buxton and Muchakinock, Iowa, at $1.15 per keg, f.o.b. Mississippi River.

August 19th. To make a contract with the Eureka Deep Vein Coal Company, at $1.35 per keg, in carloads, delivered at Cherokee, Kansas, with an allowance of 5c. per keg for each empty keg returned in good serviceable condition.

8601

To make a contract with the Smoky Hollow Coal Company, Avery, Iowa, at $1.35 per keg, in carloads, delivered, or $1.25 per keg in carloads f.o.b. Mississippi River, allowing rebate of 15c. per keg until Oct. 2d, 1903, and from that date at $1.45 per keg in carloads delivered or $1.35 per keg in carloads f.o.b. Mississippi River, allowing rebate of 22½c. per keg.

Marcellus Powder Company:

July 29th. The withdrawal of the special price of $1.05 per keg, in carloads, heretofore recom-

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mended to be made through the Wilmington High Explosives Companies, to the Ferguson Construction Company on the West Side Belt Line near Pittsburg, Pa.

Miami Powder Company:—

July 31st. To make a special price of $1.25 per keg in carloads to W. J. Boone, Grape Creek, Ill.

August 5th. To make a special price of $1.25 per keg in carloads, to the McCrea & Brown Company, Brazil, Ind.

8603 To make a contract with the Tom Corwin Coal Company covering its mines at Coalton, Ohio, at $1.35 per keg, in carloads, and including the Weyanoke Coal & Coke Company, at Giatto, Mercer County, W. Va., at $1.40 per keg, allowing rebate of 15c. per keg, or 17½c. per keg in case the consumption during the year of these concerns, together with that of the Machine Coal Company, at Wellston, Ohio, amounts to 5,000 kegs; The King Mer. Company to have an equity of 25% in the trade at Giatto.

American Powder Mills:—

8604 July 27th, 1903. To make a contract with the Sheridan Coal Company covering its mines in Wyoming, and also near Fuller, Kansas, and Danford, Mo., allowing rebate of 17½c. per keg from the schedule carload price at the respective points of delivery, with the understanding that if the consumption of this concern amounts during a year to a sufficient quantity to take an increased rebate, as provided by the schedule, such increased rebate to be applied on all sales made during the year.

Oriental Powder Mills:—

July 27. To make a special price of $1.20 per keg in carloads to Taylor, McCoy & Company, Gallitzen, Pa., covering the Glenwhite Coal & Lumber Company.

To make a special price of $1.20 per keg in car-

loads to Joseph Smith, Hickman, Pa.

To make a special price of $1.20 per keg, in carloads, to the Punxsutawney Hardware Company, Punxsutawney, Pa.

To make a special price of $1.20 per keg, in carloads, to the Industrial Supply Company, Buena Vista, Pa.

July 27th. To continue during the year 1903 the special price of $1.05 per keg in carloads, heretofore recommended to be made to Patton & Gibson, Stewart Station, Pa.

8605

To make a special price of $1.15 per keg in carloads to the Jamison Supply Company, Hannistown, Pa.

8606

To make a special price of $1.10 per keg, in carloads, to the Penn Traffic Company, of Johnstown, Pa., covering the Cambria Steel Company.

July 30th. To make a special price of $1.10 per keg in carloads to E. C. Lauer for work on the Buffalo, Rochester & Pittsburg Railroad between Stanley and Punxsutawney, Pa.

To make a special price of $1.20 per keg in carloads to F. O. Keister & Company, Waltersburg, Pa., the Company Store of the Keister Coal Company.

July 31st. To make a special price of $1.15 per keg, in carloads, to F. W. Prothero, Du Bois, Pa.

8607

August 3d. To make a special price of $1.15 per keg, in carloads, to George H. Baird, Bridgeville, Pa.

August 7th. To make a special price of $1.15 per keg in carloads, to Hall & Kaul Company, St. Marys, Pa.

August 8th. To make a special price of $1.20 per keg, in carloads, to the Glenwood Coal Company, Glen Campbell, Pa., and the Cymbria Coal Company, Cymbria Mines, Pa.

To make a special price of $1.20 per keg in carloads to the Reynoldsville Hdw. Company, Reynoldsville, Pa.

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To make a special price of $1.20 per keg, in carloads, to John Lloyd, Kittanning Point, Pa., covering the Henrietta Supply Company and the Dunlo Supply Co.

August 10th, 1903. To make a special price of $1.20 per keg, in carloads, to the Fairmont Store Company, Fairmont City, and New Bethlehem, Pa., including the Madison Supply Company, Madison, Pa., and the Headstrom Coal Mining Company, Monterey, Pa.

To make a special price of $1.15 per keg, in car-
8609 loads, to W. J. Elliott, Cannonsburg, Pa.

To make a special price of $1.20 per keg in carloads to the Clyde Supply Company, Fredericktown, Pa., the company store for the Clyde Coal Company.

To make a special price of $1.20 per keg, in carloads, to the Claridge Supply Company, Claridge, Pa.

August 11th. To make a special price of $1.20 per keg, in carloads, to the Edna Supply Company, Edna, Pa., the Company Store for the Pittsburg & Baltimore Coal Company, with offices at Pittsburg, Pa.

8610 The King Mercantile Company:—

July 24th. To renew its contract with the Ashland Iron & Mining Company, Ashland, Ky., at $1.35 per keg, allowing rebate of 15c. per keg.

July 30th. To make a special price of $1.10 per keg, in carloads, through the Wilmington High Explosives Companies, to Boxley & Gibson, successors to J. J. Boxley & Son, for work on the Norfolk & Western Railroad near Radford, Va.

August 8th. To make a special price of $1.20 per keg, in carloads, to the Carbon Coal Company, Leewood, W. Va., including the United Coal Company, Leewood, W. Va., and the Republic Coal Company, Coalburg, W. Va.

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August 11th. To make a contract with the Armstrong Coal Company, Jackson, Ohio, including the Gallia Mining Company, of Jackson, Ohio, with mines at Hawk Station, Ohio, at $1.35 per keg, allowing rebate of 10c. per keg.

August 5th. To make a contract with the Machine Coal Company, Wellston, Ohio, at $1.35 per keg, in carloads, allowing rebate of 15c. per keg, or 17½c. per keg in case the consumption during the year of this concern, together with that of the Tom Corwin Coal Company, at Coalton, Ohio, and including the Weyanoke Coal & Coke Company, at Giatto, W. Va., amounts to 5,000 kegs.

8612

Austin Powder Company:

July 27th. To make a special price of $1.20 per keg, in carloads, to the Merchants Coal Company, Merchants Mines, Pa., including the Elk Lick Supply Company, Merchants Mines, Pa., Tunnelton Supply Company, W. Va., and Quemahoning Supply Company, Boswell, Pa.

To make a special price of $1.20 per keg, in carloads, to the Maryland Smokeless Coal Company, Belington, W. Va.

July 27th, 1903. To make a special price of 5c. per keg less than the schedule carload price at the respective points of delivery to the Douglas Company, Douglas, W. Va., the Company Store for the Cumberland Coal Company, including the West End Supply Company, West End, W. Va.

8613

August 17th. To make a special price of $1.20 per keg in carloads, to the Mack Manufacturing Company, New Cumberland, W. Va.

The Ohio Powder Company:

July 31st. To make a special price of $1.30 per keg in carloads, to the Grand Rapids Plaster Company, Grand Rapids, Mich.

August 17th. To make a special price of $1.25

per keg, in carloads, to the Nelsonville Sewer Pipe Company, Nelsonville, Ohio.

To make a special price of $1.17½ per keg, in carloads, to the Miners' Supply Company, covering the Chicago-Vermillion Coal Company, with mines at Streator and Springfield, Ill.

August 20th. To renew its contract with the Kanawha & Coal River Coal Company, Charleston, W. Va., at $1.35 per keg, allowing rebate of 10c. per keg.

The Phoenix Powder Mfg. Company:—

8615 July 24th. To renew its contract with the Western Anthracite Coal & Coke Company, St. Louis, Mo., mines at Belleville and Sparta, Ill., at $1.35 per keg, allowing rebate of 17½c. per keg.

July 27th. To renew its contract with the Carterville Coal Company, Carterville, Ill., at $1.35 per keg, allowing rebate of 15c. per keg, with the understanding that should the purchases amount to a sufficient quantity to warrant an increased rebate under the schedule, such rebate may be applied on purchases made during the year.

August 6th. To make a special price of $1.20 per keg, in carloads, f.o.b. St. Louis, Mo., and $1.45

8616 per keg, in carloads, f.o.b. Earlsboro, O. T., through the Wilmington High Explosives Companies, to Shipley & Outzen, for work on the Oklahoma & Texas Railroad, from Oklahoma City to Coalgate, I. T.

To make a special price of $1.40 per keg in carloads to A. J. Lopp & Company, Harrison, Ark.

August 6th. To renew its contract with the Germantown Coal & Mining Company, Germantown, Ill., at $1.35 per keg, allowing rebate of 15c. per keg, with equity to the L. & R. Company; such to be considered as quid pro quo for a part of the Peoria business.

August 21st. To allow to the Madison Coal Com-

8617

pany, St. Louis, Mo., a rebate of 15c. per keg from the schedule carload price of $1.25 per keg on powder sold to that concern between July and December, 1902, and 25c. per keg from December, 1902, until the expiration of the contract which the Equitable Powder Mfg. Company has with the Madison Coal Company, Illinois.

Indiana Powder Company:—

July 28th, 1903. To include O'Gara, King & Company for delivery at Janesville and Lyford, Indiana, under its contract with the Summit Coal & Mining Company, Bloomfield, Ind.

8618

August 11th. To make a special price of $1.10 per keg, in carloads, to the Jackson Hill Coal & Coke Company, at Seelyville, Ind., formerly operated as the Lost Creek Coal Company, and for delivery near Sullivan, Ind.

August 14th. To make a special price of $1.10 per keg, in carloads, to the Letsinger Coal Company, Bloomfield, Ind.

August 17th. To make a special price of $1.20 per keg, in carloads, to the North Jackson Coal & Mining Company, at Chicago, Ill., with mines at Hymera, Ind.

E. I. du Pont Company and Laflin & Rand Powder Company:—

8619

July 23d. To make a special price of $1.20 per keg, in carloads, through the Wilmington High Explosives Companies, to the Victoria Supply Company, Victoria Mines, Pa.

July 28th. To make a special price of $1.10 per keg, in carloads, through the Wilmington High Expplosives Companies, to the Pittsburg Construction Company, delivered at Leasdale, Pa., for work on the Pennsylvania Railroad west of Pittsburgh.

July 29th. To make a contract with the Smoky Hollow Coal Co., Avery, Iowa, at $1.35 per keg, in carloads, allowing rebate of 15c. per keg until Octo-

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ber 2d, 1903, and from that date at $1.45 per keg, in carloads, allowing rebate of 22½c. per keg.

To make a special price of $1.10 per keg in carloads, through the Wilmington High Explosives Companies, to the Ferguson Contracting Company, for work on the Wabash Railroad near Pittsburgh, Pa.

To make a special price of $1.10 per keg, in carloads, through the Wilmington High Explosives Companies, to Frank Greco, for work on the Buffalo & Susquehanna Railroad, near Benezett and Drift-
8621 wood, Pa.

July 30th. To make a special price of $1.25 per keg, in carloads, through the Wilmington High Explosives Companies, to Eliason & Rhodes, for work on the Norfolk & Western Railroad at Naugatuck, W. Va.

July 31st. To make a special price of $1.30 per keg, in carloads, through the Wilmington High Explosives Companies, to W. J. Oliver & Company, on work on the Southern Railway, between Maryville, Tenn., and Walhalla, S. C.

August 3d. To make a contract through the Wilmington High Explosives Companies, with the Big
8622 Hill Coal Company, Richmond, Ky., covering its operations at Orlando, Ky., at $1.45 per keg, allowing rebate of 10c. per keg, if its purchases during the year amount of 1,200 kegs; 15c. per keg if the purchases amount to 2,400 kegs during the year, or a greater rebate according to schedule, if its purchases during the year amount to a sufficient quantity to warrant it.

August 6th, 1903. To make a special price of $1.20 per keg, in carloads, through the Wilmington High Explosives Companies, to D. A. Langhorne, on work on the Deepwater Railway in West Virginia.

August 11th. To make a special price of $1.25

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per keg, in carloads, to Garland & Rossi, for work on the Norfolk & Western Railroad, near Gary, W. Va.

August 12th. To make a special price of $1.10 per keg, in carloads, through the Wilmington High Explosives Companies, to Mr. Bart McDonald, for work on the connecting line of the Wabash Railroad between Western Maryland Railroad and West Virginia Central Railroad, from Cherry Run to Cumberland, Md.

August 14th. To make a special price of $1.10 per keg, in carloads, through the Wilmington High 8624
Explosives Companies, to Frank Greco on work on the Susquehanna & Southern Railroad, between Sinnemahoning, Pa., and Wellsville, N. Y., and from Wellsville to Buffalo, N. Y.

August 19th. To make a special price of $1.30 per keg, in carloads, through the Wilmington High Explosives Companies, to W. J. Oliver & Company, on work on the Southern Railway, from Jellico, Tenn., towards Middlesboro, Ky.

August 21st. To make a special price of $1.30 per keg, in carloads, through the Wilmington High Explosives Companies, to W. J. Oliver & Company on work on the Southern Railway, from Oliver 8625
Springs, Tenn.

E. I. du Pont Company, Laflin & Rand Powder Company and The King Mercantile Company:—

August 3d. To make a special price of $1.10 per keg, in carloads, through the Wilmington High Explosives Companies to the Degnon-McLean Construction Company, for work on the connecting line of the Wabash Railroad, between the West Maryland Railroad and the West Virginia Central Railroad, from Cherry Run to Cumberland, Md.

The Hazard Powder Company and The Ohio Powder Company:

August 3d. To make a special price of $1.25

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per keg, in carloads, to Spencer & Hazeltine, New Straitsville, Ohio.

Oriental Powder Mills and Austin Powder Company:—

July 27th. To make a special price of $1.20 per keg, in carloads, to Hammond, Berkey & Company, Bolivar, Pa., the Company Store for the Reese-Hammand Fire Brick Company, and including the Curwensville Fire Brick Company.

E. I. du Pont Company, Laflin & Rand Powder Company, Chattanooga Powder Company and
8627 Miami Powder Company:—

July 28th, 1903. To make a special price of $1.25 per keg, in carloads, to the Callahan Construction Company, for work on the Cumberland Valley Division of the Louisville & Nashville Railroad at Pennington, Va.

E. I. du Pont Company, The King Mercantile Company, Laflin & Rand Powder Company, and Oriental Powder Mills:—

July 31st. To make a special price of $1.25 per keg in less than carloads, through the Wilmington High Explosives Companies, to Rinehart, Dennis & Company, for work on the Baltimore & Ohio Rail-
8628 road at Pittsburgh, Pa.

American Powder Mills, E. I. du Pont Company, The King Mercantile Company and Laflin & Rand Powder Company:—

August 6th. American to make direct, and du Pont L. & R. and King, through the Wilmington High Explosives Companies, a special price of $1.10 per keg, in carloads, to McArthur Brothers, for work on the connecting line of the Wabash Railroad between the Western Maryland Railroad and the West Virginia Central Railroad, from Cherry Run to Cumberland, Md.

E. I. du Pont Company, American Powder Mills, and Laflin & Rand Powder Company:—

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August 8th. Du Pont and L. & R. Companies to make a special price of $1.10 per keg in carloads, through the Wilmington High Explosives Companies, and American to make the same price direct to Kilpatrick Brothers & Collins on work on the connecting line of the Wabash Railroad, between the Western Maryland Railroad and the West Virginia Central Railroad, from Cherry Run to Cumberland, Md.

August 10th. To make American direct, and L. & R. and du Pont through the Wilmington High Explosives Companies, a special price of $1.20 per 8630
keg, in carloads, f.o.b. Mississippi River, to Streeter & Lusk, for work on their contract on the Denver, Northwestern & Pacific Railroad.

E. I. du Pont Company, Austin Powder Company and Laflin & Rand Powder Company:

August 8th. To make Austin direct and L. & R. and du Pont Companies, through the Wilmington High Explosives Companies, a special price of $1.10 per keg in carloads, to the Pittsburgh & Buffalo Coal Company, and the White Rock Supply Company, for delivery at Anderson, Bruce, White Rock, Canonsburg, Burgettstown and Wilson, Pa.

E. I. du Pont Company and Austin Powder Com- 8631
pany:

August 10th, 1903. To make a special price of $1.20 per keg in carloads, to D. Ross & Company, Woodland, Pa.

Oriental Powder Mills and Laflin & Rand Powder Company:—

August 6th. To make a special price of $1.15 per keg, in carloads, to the Central Supply Company, Patton, Pa., for delivery at Patton, Hastings and Spangler, Pa., and for the trade of the Central Supply Company with the several concerns named below; such trade, however, to be sold at not less than the schedule carload price: Cresson & Clearfield

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Coal & Coke Co., Frugality, Pa.; Lackawanna Coal & Coke Co., Wehrum, Pa.; Lackawanna Coal & Coke Co., Vintondale, Pa.; John McNulty & Sons, Coalport, Pa.; Indiana Coal Company, Glen Campbell, Pa.; Indiana Coal Company, Arcadia, Pa.; D. F. Edelblute & Company, Irvona, Pa.; Oakridge Coal & Coke Co., Hastings, Pa.; Bellwood Coal Company, Figart, Pa.; Walnut Coal Company, Spangler, Pa.; S. Hagerty & Sons, Coalport, Pa.; Ake & McAtee, Cush Creek Junction, Pa.; Bakerton Coal Company, Elmora, Pa.; Logan Coal Company, Bun-

8633 lo, Pa.

To make a special price of $1.15 per keg, in carloads, to the Central Trading Company, Clearfield, Pa., for the trade of the Central Trading Company, with the several concerns named below; such trade, however, to be sold at not less than the schedule carload price: Central Trading Company, Mitchells, Pa.; Central Trading Company, Patton, Pa.; Central Trading Company, Rossiter, Pa.; Benedictine Store (R. Peale), Patton, Pa.; Glen Richey Trading Company, Glen Richey, Pa.; Rathmel Supply Company, Rathmel, Pa.; Decatur Store Company, Philipsburg, Pa.; Windburne Trading Company,

8634 Windburne, Pa.; Sonnerville & Company, Windburne, Pa.; Beech Creek Coal & Coke Company, Patton, Pa.; Potts Run Land Company, Boardman, Pa.; Clearfield & Southern Railway, Boardman, Pa.

Oriental Powder Mills and Laflin & Rand Powder Company:

July 27th. To make a special price of $1.20 per keg, in carloads, to Johnson, Beyer & Company, Rural Valley, Pa.

Oriental Powder Mills and The Hazard Powder Company:—

August 1st. To renew their contract with the Low Moor Iron Company of Virginia at $1.35 per keg, allowing rebate of 15c. per keg.

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The Hazard Powder Company and The King Mercantile Company:—

July 30th. To make a special price of $1.25 per keg, in carloads, to the Kentucky Block Cannel Coal Company, Cannel City, Ky.

Oriental Powder Mills and E. I. du Pont Company:—

July 23d, 1903. To make special prices to the United States Steel Corporation of $1.10 per keg in carloads, and $1.25 per keg in less than carloads, for delivery at points in Pennsylvania; $1.20 per keg in carloads for its mines in West Virginia, and $1.15 per keg in carloads for its mines in Ohio.

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E. I. du Pont Company, Miami Powder Company, Ohio Powder Company, The King Mercantile Company, Oriental Powder Mills, and Laflin & Rand Powder Company:

August 14th. To make a special price of $1.20 per keg, in carloads, to the Pittsburg Terminal Railroad & Coal Co., Pittsburgh, Pa., with the understanding that the price may be $1.15 per keg in carloads, if the purchases of this concern during the year amounts to as much as 5,000 kegs.

Laflin & Rand Powder Company, Oriental Powder Mills, E. I. du Pont Company:—

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August 19th. To make a special price of $1.10 per keg, in carloads, through the Wilmington High Explosives Companies, to H. S. Kerbaugh on work on the Pennsylvania Railroad at Latrobe, Pa.

Austin Powder Company, E. I. du Pont Company, The King Mercantile Company, and Laflin & Rand Powder Company:—

August 21st. The Laflin & Rand, du Pont and Austin Companies to make a special price of $1.15 per keg in carloads, to the Vulcan Trading Company, covering the operations of the Harbison-Walker Refractories Company in Pennsylvania, and the King Co., to make a special price of $1.17½c. per

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keg in carloads to the Portsmouth, Harbison-Walker Company at Portsmouth, Ohio, and Ashland, Ky.

E. I. du Pont Company and Laflin & Rand Powder Company:—

August 17th. To make a special price of $1.25 per keg, in carloads, through the Wilmington High Explosives Companies, to McCann & Lebling, at Gary, W. Va.

The E. I. du Pont Company:—

August 25th. To renew its contract with the Chicago & Carterville Coal Company, of Herrin and
8639 Carterville, Ill., at $1.35 per keg, in carloads, allowing rebate of 17½c. per keg.

August 24th. To make a contract with James Walker, Mapleton, Ill., at $1.35 per keg, allowing rebate of 10c. per keg.

August 29th. To make a special price of $1.15 per keg, in carloads, to L. McCormick, delivered at Venetia, Monongahela and Anderson Station, Pa.

August 31st, 1903. That a discount of 2% for cash may be permitted to be made without penalty, on bills for sales within any one month, to the Sloss-Sheffield Steel & Iron Company, of Birmingham, Ala., provided remittance for the same be made by the 15th of the following month.

8640 Sept. 1st. To make a contract with P. Grant, Jr., Peoria, Ill., for three years, at $1.35 per keg, in carloads, allowing rebate of 10c. per keg.

To make a special price of $1.15 per keg, in carloads, to J. H. Steell & Company, provided that the purchases off that concern during the year amount to 5,000 kegs.

Sept. 1st. To include the Shelby Iron Company, Shelby, Ala., under its contract with the Alabama Consolidated Coal & Iron Company, Birmingham, Ala.

To make a contract with Vicary Brothers, Peoria, Ill., for three years, at $1.35 per keg, in carloads, allowing rebate of 15c. per keg.

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To make a contract for three years from August 1st, 1903, with the Clark Coal & Coke Company, Peoria, Ill., at $1.35 per keg, in carloads, allowing rebate of 15c. per keg.

To make a contract for three years with S. Wolschlag & Brother, Peoria, Ill., at $1.35 per keg, in carloads, allowing rebate of 17½c. per keg.

To increase to 17½c. per keg, from May 1st, 1903, the rebate under its contract with the Horse Creek Coal Company, Pawnee, Ill.

Sept. 4th. To make a contract with Sholl Brothers, Peoria, Ill., at $1.35 per keg, in carloads, allowing rebate of 17½c. per keg.

8642

To include delivery at Willisville, Ill., under its contract with the Missouri & Illinois Coal Company.

Sept. 4th. To include the Pittsburg & Fairmont Fuel Company, Adamston, W. Va., under its contract with the Fairmont Coal Company.

Laflin & Rand Powder Company:

August 25th. To make a contract with the Central Coal Company, Hickory, Iowa, at $1.20 per keg, in carloads.

August 31st. That a discount of 2% for cash may be permitted to be made by this Company without penalty on bills for sales made by it, within any one month, to the J. B. Crowe Coal & Mining Company, of Kansas City, Mo., provided remittance for the same be made by the 10th of the following month.

8643

Sept. 1st. To make a contract with the Rocky Mountain Fuel Company for delivery at Cardiff or Glenwood Springs, Colo., and Florence and Trinidad, Colo., at the schedule carload price delivered there, allowing rebate of 10c. per keg, or 15c. per keg, provided the purchases of this concern amount to 5,000 kegs per year.

Sept. 2d. To make a special price of $1.15 per keg, in carloads, to the Federal Supply Company,

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delivered at Willock, Pa., for the Willock Supply Company.

The Hazard Powder Company:—

August 24th, 1903. To make a contract with C. T. Defenbauch, Peoria, Ill., at $1.35 per keg, allowing rebate of 10c. per keg.

To make a contract with C. B. Kramm & Brothers, Edwards Station, Ill., at $1.35 per keg, allowing rebate of 10c. per keg.

August 26th. To renew its contract with the Washington Fuel Company (W. H. Crowder), of
8645 Farnsworth, Ind., at $1.35 per keg, allowing rebate of 10c. per keg.

August 29th. To make a special price of $1.35 per keg, in carloads, to the Star Coal Company, East Bernstadt, Ky.

Sept. 4th. To make a special price of $1.15 per keg, in carloads, to the Cable Mercantile Company, covering the supplies of Cable & Company at Cable and Sherrard, Ill.

Schaghticoke Powder Company:—

August 26th. To make a special price of $1.10 per keg, in carloads, through the Wilmington High Explosives Companies, to the Pinkerton Construction Company, on work on section 9, known as the
8646 Downington Section of the Parkersburg & Columbia cutoff of the Pennsylvania Railroad.

Miami Powder Company:—

August 24th. To make a special price of $1.25 per keg, in carloads, to the Northwest Coal Company, delivered at Jasonville, Ind.

Oriental Powder Mills:—

July 27th. To continue during the year 1903 the special price of $1.05 per keg, in carloads, heretofore recommended to be made to Patton & Gibson, Stewart Station, Pa.

Sept. 4th. To renew its contract with the Great Western Coal & Coke Company, successor to the

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Wilberton Coal & Mining Company, for delivery at Wilburton, McAlester, Krebs, I. T., and including the Haileyola Coal Company and the Osage Coal & Mining Company in the same vicinity, at $1.60 per keg, in carloads, allowing rebate of 20c. per keg, and to make a contract with James Degnan & Company for the McAlester Coal & Mineral Company, Eastern Coal & Mining Company, and the Missouri, Kansas & Texas Coal Company, at the same location and at the same price.

The King Mercantile Company:

8648

August 26th. To make a special price of $1.20 per keg, in carloads, through the Wilmington High Explosives Companies, to Mr. Allen Langhorne on work on the Deepwater Railway in West Virginia.

Sept. 1st. To make a special price of $1.20 per keg, in carloads, to the Webster Grocer Company, Danville, Ill., to date from April 1st, 1903.

Sept. 4th. To make a special price of $1.25 per keg, in carloads, to the Leewood Colleries Company and the West Virginia Collieries Company at Leewood, W. Va.

The Phoenix Powder Mfg. Company:—

8649

Sept. 1st. To make a special price of $1.20 per keg, in carloads, f.o.b. East St. Louis, Ill., to W. T. Montgomery on work on the Big Four Railroad in Ohio.

To make a contract with Joseph Taylor, O'Fallon, Ill., at $1.35 per keg, in carloads, allowing rebate of 17½c. per keg.

Chattanooga Powder Company:—

Sept. 1st. That a discount of 2% for cash may be permitted to be made by this Company without penalty on bills for sale made by it, within any one month, to the Stearns Coal Company, near Whitley, Ky., provided remittance for the same be mailed by the 30th of the following month.

Sept. 4th. To make a contract with the Alabama

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& Georgia Iron Company, at Spring Garden, Ala., at $1.45 per keg, allowing rebate of 10c. per keg.

The E. I. du Pont Company and Laflin & Rand Powder Company:—

August 25th. To make a special price of $1.25 per keg, in carloads, through the Wilmington High Explosives Companies, to J. T. McKinney & Company, on work on the N. & W. R. R., from Cephas, W. Va., to near the mouth of Widemouth, on the Blue River.

Sept. 4th. Cancels recommendation of August
8651 3d, 1903, and recommends a contract to be made, through the Wilmington High Explosives Companies, with the Big Hill Coal Co., Richmond, Ky., covering its operations at Orlando, Ky., at $1.45 per keg, allowing rebate of 10c. per keg if its purchases during the year amount to 1,200 kegs; 15c. per keg if the purchases amount to 2,400 kegs during the year, or a greater rebate according to schedule if its purchases during the year amount to a sufficient quantity to warrant it.

The Hazard Powder Company and The E. I. du Pont Company:—

August 26th. To make a special price of $2.00
8652 per keg in less than carloads for "A" blasting powder to the Knickerbocker Lime Company, Norristown, Pa.

The E. I. du Pont Company, The King Mercantile Company, and Laflin & Rand Powder Company:—

August 24th. To make a special price of $1.20 per keg, in carloads, L. & R. and du Pont Companies, through the Wilmington High Explosives Companies, and King direct, to J. A. Caldwell on work on the Deepwater Railway, between Scarboro and Raleigh, W. Va.

Sept. 1st. To make a special price of $1.20 per keg, in carloads, through the Wilmington High Explosives Companies, to Jennings & Ellis, on work

on the Deepwater Railway in West Virginia, between Scarboro and Raleigh, W. Va.

The E. I. du Pont Company, Austin Powder Company, and Laflin & Rand Powder Company:—

Sept. 5th. To make a special price of $1.20 per keg, in carloads, L. & R. and du Pont Companies, through the Wilmington High Explosives Companies, and Austin direct, to the Coal & Coke Railway Company, on work on the Charleston, Clendennin & Sutton Railway, between Elkins and Sutton, W. Va.

Oriental Powder Mills, The E. I. du Pont Company, The King Mercantile Company, Miami Powder Company, The Ohio Powder Company, and Laflin & Rand Powder Company:— 8654

August 25th. To make a special price of $1.10 per keg, in carloads, to the Pittsburg Terminal Railroad & Coal Co., provided the purchases of that concern amount during the year to 10,000 kegs or over.

The E. I. du Pont Company, Indiana Powder Company, American Powder Mills, Phoenix Powder Mfg. Company, and Laflin & Rand Powder Company:—

Sept. 1st. That a special price of $1.20 per keg, in carloads, be made by L. & R. du Pont and Indiana through the Wilmington High Explosives Companies, and American and Phoenix Companes direct, to Kennefick & Company on work on the Indiana Southern Railroad, between Indianapolis and Sullivan, Ind. 8655

The E. I. du Pont Company:—

Sept. 11th. To make a contract with the Victor Coal Company, Pawnee, Ill., at $1.35 per keg, allowing rebate of 20c. per keg.

Sept. 14th. To make a contract with the Bevier Coal Company, Bevier, Ky., at $1.40 per keg, in carloads, allowing rebate of 10c. per keg.

Plaintiff's Exhibit 1349

8656 To name a contract with the Princess Land & Mining Company, Princess, Ky., with general offices at Ashland, Ky., at $1.40 per keg, in carloads, allowing rebate of 10c. per keg.

Sept. 14th. To make a contract with the Winslow Gas Coal Company, Winslow, Ind., at $1.35 per keg, in carloads, allowing rebate of 10c. per keg.

The Hazard Powder Company:—

Sept. 14th. To include the Wolverine Coal Company, West Bay City, Mich., under its contract with R. M. Dandall, General Manager.

8657 Sept. 15th. To include the Handy Brothers Mining Company, of West Bay City, Mich., under its contract with R. M. Randall, General Manager.

Laflin & Rand Powder Company:

Sept. 14th. To make a contract with the Wear Coal Company for delivery at its mines at Pittsburg, Kansas, Vernon, Mo., and Minden, Mo., including the Godman Coal & Coke Co., Godman, Ark., and the Collinsville Mercantile Company, Collinsville, I. T., the Murlin Fuel Company, Bevier, Mo., and the Wabash Coal Company, Huntsville, Mo., allowing rebate of 27½c. per keg from the schedule carload price at the point of delivery.

8658 That a discount of 2% for cash may be permitted to be made by this Company without penalty, on bills for sales made by it, within any one month, to the Wear Coal Company, provided remittance for the same be mailed by the 10th of the following month.

The Miami Powder Company:—

Sept. 14th. To make a special price of $1.20 per keg, in carloads, to the Pwyton-Palmer Company, Danville, Ill.

Oriental Powder Mills:—

Sept. 14th. To make a special price of $1.15 per keg, in carloads, to A. F. Kelly, Barnesboro, Pa.

The King Mercantile Company:—

Plaintiff's Exhibit 1349

8659

Sept. 11th. To make a special price of $1.20 per keg, in carloads, to the Stevens Coal Company, Acme, W. Va.

Sept. 14th. To extend to the New York Mining Company, Mt. Savage, Md., through the Potomac Hardware Company, of Cumberland, Md., the special price of $1.15 per keg in carloads, heretofore recommended to be made by this Company to the Potomac Hardware Company, and also to include the Union Mining Company, Frotsburg, Md., and the Consolidation Coal Company, Lord, Md., in the trade of the Potomac Hdw. Company; no sales, however, to be made to the last named concerns by the Potomac Hdw. Company in carloads at less than the schedule carload price.

8660

To make a special price of $1.30 per keg, in carloads, to the Big Four Coal & Coke Company, Bluefield, W. Va.

Austin Powder Company:—

Sept. 12th. To make a special price of $1.20 per keg, in carloads, to the Youghiogheney & Ohio Coal Company, including the Lisbon Coal Company, Lisbon, Ohio, the Big Vein Coal Company, Salineville, Ohio, and the Beaver Dam Coal Company, New Philadelphia, Ohio.

8661

Sept. 14th. To make a special price of $1.20 per keg in carloads to the Phillippi Coal Mining Company, Phillippi, W. Va.

Sept. 14th. To make a special price of $1.20 per keg, in carloads, to the Pittsburg & Eastern Coal Company, with headquarters at Pittsburg, and mines at Monongahela City, Budgettstown, Bulgar, McDonald, Hazel Kirk and Van Boorhis, Pa., successor to McCracken & Company.

To make a special price to Buston & Landstreet Company of $1.15 per keg, in carloads, delivered in West Virginia, south of the main line of the B. & O. R. R., from Parkersburg to Harpers Ferry, and

8662 *Plaintiff's Exhibit 1349*

$1.10 per keg in carloads delivered in West Virginia on and north of that line.

E. I. du Pont Company:—

Sept. 14th. To make a special price of $0.25 per keg, in lots of 200 kegs, for "A" powder delivered at Port Deposit, Md., to the McClenahan Granite Company:—

The Phoenix Powder Mfg. Company:—

Sept. 14th. To make a special price of $1.20 per keg, in carloads, f.o.b. Chicago, Ill., to Phelan & Shirley, on work on the Chicago, Rock Island &
8663 Pacific Railroad, between Wintersel and Greenfield, Iowa.

Recommends the withdrawal of its previous recommendation of July 27th, 1903, for Phoenix to renew its contract with the Germantown Coal & Mining Company, with equity to the L. & R. P. Company, such to be quid pro quo for a part of the Peoria business, and recommends Phoenix to renew its contract with the Germantown Coal & Mining Company, Germantown, Ill., at $1.35 per keg, in carloads, allowing rebate of 15c. per keg.

Chattanooga Powder Company:—

Sept. 9th. To make a contract with the Stone
8664 Gap Colliery Company, Glamorgan, Va., at $1.40 per keg, in carloads, allowing rebate of 10c. per keg.

Laflin & Rand Powder Company and E. I. du Pont Company:—

Sept. 8th. To make a special price of $1.20 per keg, in carloads, delivered at Polk, Ohio, through the Wilmington High Explosives Companies to Walton & Company for work on section 59 of the Wabash Railroad.

Sept. 11th. To make a special price of $1.05 per keg, in carloads, through the Wilmington High Explosives Companies, to Mason, Rosser & Company on work on the Buffalo & Susquehanna Railroad, between du Bois and Sabula, Pa.

Plaintiff's Exhibit 1349

8665

Sept. 14th. To make a special price of $1.15 per keg, in carloads, through the Wilmington High Explosives Companies, to the Keneweg Company, Cumberland, Md., with the understanding that the powder is for delivery at Cumberland only, and not for reshipment in carload lots from that point.

Sept. 14th. To make a special price of $1.20 per keg, in carloads, through the Wilmington High Explosives Companies, delivered at Kent, Ohio, to Cendelia Brothers on work on the B. & O. R. R. at Ravenna, Ohio.

Laflin & Rand Powder Company and Sycamore Powder Mills:— 8666

Sept. 12th, 1903. To make a special price of $1.35 per keg, in carloads, through the Wilmington High Explosives Companies, to the Howell Mining Company, Blocton, Ala.

E. I. du Pont & Company, The King Mercantile Company, and Laflin & Rand Powder Company:—

Sept. 12th. To make a special price of $1.20 per keg, in carloads, through the Wilmington High Explosives Companies, delivered at Hopedale, Ohio, to P. Moran on work on the Wabash Railroad.

E. I. du Pont & Company, Austin Powder Company, and Laflin & Rand Powder Company:— 8667

Sept. 9th. To make a special price of $1.25 per keg in carloads, delivered at Huntington, W. Va., and $1.30 per keg in carloads delivered at Bluefield, W. Va., du Pont and L. & R. through the Wilmington High Explosives Companies, and Austin direct, to the Miller Supply Company.

E. G.

New York, N. Y., Oct. 1st, 1903.

8668 **Plaintiff's Exhibit 1359.**

No

TRADE THAT 95 PER CENT AUTHORIZATION DID NOT BRING TO US.

St. Louis Portland Cement Co., Rotaca River C. & C. Co,, Southern Indiana Coal Co., David Ingle, Clover Leaf Coal Co., Sunflower Coal Co., White Rose Coal Co., West Indiana Coal Co., Coal Bluff Mng. Co., Keystone Coal Co., Consolidated Ind. C. Co., Bessimer Wash Coal Co., Tilden Coal Co., J. A. Green Co., Union Coal Co., Glendora Mine Co., Jasonville Coal Co., Lewis C. & M. Co.,
8669 McClellan Sons & Co., Maple Valley Coal Co., Miami Coal Co., Rock Run Coal Co., Linton Mitum. Coal Co., Seeleyville C. & M. Co., Linchall Vien C. & M. Co., Raccoon Valley Mng. Co., Greenfield C. & M. Co., Asherville Mng. Co., Park County Coal Co., Edwardsville Coal Co., Domestic Coal Co., Freeman Coal Co., Big Vein Mng. Co., Kansas City So. Ry., Crawford Coal Co., Columbus B. K. and T. C. Co., Prebles Paving Brick Co., The Lum Coal Co., McRoy Clay Wks., Davis Coal Co., Cochran Coal Co., Hart and Parsons, Halley Coal Co., Sunday Creek Coal Co., Mohoney Ore and S.
8670 Co., The Black Fork C. Co., Ada Coal Co., Tropic Mng. Co., Tom Corwin Coal Co., H. L. Metzer, Alma Coal Co., Chapman Coal Co., Letsinger Coal Co., Elk Horn Coal Co., E. O. Roberts, The Johnson C. M. Co., Clark Bros., Western Lime Works, Zeller, McClellan and Co., Eureka Block Coal Co., G. W. Bigger, The Indiana Run Mng. Co., Hisylvania Stone Co., McGee Coal Co., Gallia Mng. Co., Mohr and Hinton, Morgan and Horton, Minshall C. M. Co., Alma Cement Co., Lumaghi Coal Co., Essex Coal Co., Diamond Brick Co., A. Juniper & Son, Comet Coal Co., Chris Holl, Jones and Morgan, J. C. Garland & Co., Silverweed Coal Co., Louisville Cement Co., Williams Coal Co., Chicago

Plaintiff's Exhibit 1359 8671

Linton C. Co., Lake Creek C. Co., The Buckeye Salt Co., Souther Fire Brick & Clay Co., Straitsville Imp. B. Co., Wells Creek Supply Co., John Evans L. & S. Co., Patrick Kehore & Co., Hillsbore Stone Co., Avonelle Coal Co., Carter Construction Co., Odin Coal Co., Boyd Coal and Coke Co., Honking Bovie Co., Merissa C. & M. Co., Hemlock Coal Co., Martin and Sines, Bell and Zoller C. Co., W. A. Gosline & Co., Suberban Coal Co., Superior C. & M. Co., Murphey Mine, Brilliant C. & C. Co., Little Muddy C. & M. Co., Luhrig Coal Co., Queen Coal Mng. Co., Crystal Coal Mng. Co., The Williams Bros. & M. Co., Harrison C. & M. Co., P. F. Sullivan, Buckeye Coal Co., Greenwood Davis D. Co., Sligo Furnace Co., The Coldfired Co., Columbus Quarry Co., Breakwater Const. Co., Paradice Coal Co., Lincoln C. & M. Co., 9/11/05; Lincoln C. &. M. Co., 1/22/06; Lincoln C. & M. Co., 5/16/05; Tirre C. & M. Co., 5/31/05; Tierre C. & M. Co., 7/16/06; Tierre C. & M. Co., 2/5/07; Sullivan Co. C. Co., 5/10/05; Buckeye F. B. & C. Co., 10/9/05; Buckeye F. B. & C. Co., 4/18/06; Peabody Coal Co., 8/31/06; Peabody Coal Co., 10/17/05; Spencer Stone Co., 6/22/06; Spencer Stone Co., 5/4/06; Chicago & Hocking, 1/29/07; Chicago & Hocking, 2/26/07; Chicago and Big Muddy, 8/1/07; Chicago & Big Muddy, 6/27/06; Breese Trenton Mng. Co., 6/4/06; Coal Bluff Mng. Co., 5/18/05; Grant Coal Co., 8/23/05; Soutern Coal Co., 9/5/05; Southern Coal Co., 9/5/05; India So. Coal Co., 5/18/05; Peabody, At. & Wart. C. M. Co., 5/28/05; Sullivan Coal Co., 8/7/05; Pitts Mining Co., Imperial Mining Co., F. H. Blodgett & Co., Indiana Bituminous, T. M. Meek Coal Co., D. Zihlsdorf, Mt. Olive and Staunton, C. F. Keeler Coal Co., New York Coal Co., Illinois Collieries Co., Jones and Adams Coal Co., Clark Coal and Coke, Western C. M. Co., Wear Coal Co.

8672

8673

8674 *Plaintiff's Exhibit 1360*

Plaintiff's Exhibit 1360.

B & A.

OUR TRADE RETAINED BY 95c AUTHORIZATION.

Robert Dick Coal Co., Clubey Miller Coal Co., Jackson Hill C. & C. Co., Oak Hill C. & M. Co., Hippard Coal Co., Johnson Coal Co., Coulterville Mng. Co., North Jackson Hill C. & M. Co., North Linton Coal Co., Sugar Creek Coal Co., Albert
8675 Hucke, C. A. Simms, Emma Coal Co., Latham Coal Co., Moore and Co., Hocking Mng. Co., Kelly Coal Co., Citizens Coal Mng. Co., Pettinger Davis M. & M. Co., Sandoval Coal & M. Co., The Black Diamond C. Co., Utica Cement Mfg. Co., Chicago and Carterville Coal Co., Taylor Coal Co., Mike Riley, Moores Lime Co., Muddy Valley M. & M. Co., Carterville and Big Muddy C. Co., C. A. Sims & Co., C. Ehrlich Coal Co., Athens Bar Co., Refrior Bar Co., Springfield Coal M. Co., Johnson Coal Co., Pittsburg Coal Co., Auburn and Alton C. Co., Chicago Colliery Co., Keller Coal Co., Superior Coal Co., Vigo County Coal Co., Central Co-op Coal Co., Silver Creek
8676 C. & M. Co., Superior Block C. Co., J. Taylor Coal Co., Co-op Coal Co., Fidelity C. M. Co., Centralia Coal Co., Lower Vein Block Coal Co., Collins Coal Co., Middletown Coal Co., Standard Washed Coal Co., Jasonville Coal Co., Springfield Co-op. Coal Co., Ayrshire Coal Co., New Pittsburg Coal Co., Electric Coal Co., Johnson City and Big Muddy C. & M. Co., Rush Coal Co., Majestic Coal and C. Co., West End Coal Co., Southern Coal Mng. Co., Rutledge & Taylor C. Co., Ziegler Dist Colliery Co., Sesser Construction Co., Star Coal Co., Woodside Coal Co., Park County Coal Co., Clinton Coal Co., Monmouth Coal Co.,

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Superior Coal Co., Donk Bros. C. & C. Co., Peabody, Atwart C. M. Co., 11-1-06; Krapp and Less, Hafer Washed C. Co., Vulcan Coal Co., Decatur Coal Co., Carlisle Coal and Clay Co., Jones Bros. C. & M. Co., Norris Coal Mng. Co., Miller Horn C. M. Co., Kentucky C. M. Co., O'Reilly, Callahan and Given, Smith Lowe C. M. Co., Sabine Co. C. Co., Mo. and Ill. Coal Co., Boehmer Coal Co., T. J. O'Garra, Paradice C. & M. Co., Jupiter C. & M. Co., The J. R. Crow C. M. Co., The Cherokee and Pittsburg C. M. Co., The M. & K. & T. Ry. Co., Brazil Blk C. Co., 5-17-05; Brazil Blk C. Co., 6-28-

8678

06; Avery C. & M. Co., 5-31-05; Avery C. & M. Co., 5-16-07; Avery C. & M. Co., 5-23-07; St. Louis and O. Fallen, 5-9-05; St. Louis and O. Fallen, 5-28-06; Chgo. & Big Muddy C. & C. Co., 7-28-05; Chgo. & Big Muddy C. & Co. Co., 8-1-07; Chgo. & Big Muddy C. & C. Co., 6-27-06; Kob Coal Co., 6-29-06; Kob Coal Co., 8-28-05; O'Garra Coal Co., 8-9-06; O'Garra Coal Co., 8-30-05; O'Garra Coal Co., 7-11-06; Vandalin Coal Co., 6-28-06; Vandalin Coal Co., 1-29-07; Vandalin Coal Co., 9-14-05; New Pitts Coal Co., 3-21-07; New Pitts Coal Co., 3-28-07; Forester C. & C. Co., 6-4-06; Forester C. & C. Co., 9-26-06; Carthville Coal Co., 6-20-07; Carthville

8679

Coal Co., 6-4-06; Breese Trenton M. Co., 6-4-06; Breese Trenton M. Co., 10-1-06; New England Coal Co., 6-12-06; New England Coal Co., 9-3-06; Wabash Coal Co., 6-22-06; Wabash Coal Co., 7-16-06; Fullerton Coal Co., 6-25-06; Fullerton Coal Co., 8-15-07; Ind. Southern Coal Co., 6-29-06; Ind. Southern Coal Co., 7-25-07; Coal Bluff Mng. Co., 6-29-06; Coal Bluff Mng. Co., 2-5-07; Williamsville Coal Co., 7-26-06; Williamsville Coal Co., 1-29-07; Barclay C. & M. Co., 1-29-07; Barclay C. & M. Co., 8-9-06; Cora Coal Co., 8-9-06; Cora Coal Co., 8-24-06; Imperial C. & M. Co., 9-3-06; Imperial C. & M.

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Co., 4-30-07; Grant C. & M. Co., 1-22-07; Grant C. & M. Co., 11-1-06; United C. M. Co., 10-26-06; United C. M. Co., 4-18-07; So. C. Mng. Co., 11-106; So. C. & Mng. Co., 10-8-07; So. C & Mng Co., 1-3-07; So. C. & Mng. Co., 12-14-06; Willis Coal & Mng. Co., 12-8-05; Hart and Page, Sunnyside Coal Co., South Mountain Coal Co., Tuxhorn Coal Co., Springfield Colliery Co., Sangamon Coal Co., Capital Coal Co., Globe Iron Co., Newsam Bros., Big Creek Coal Co., Spring Creek Coal Co., Roanoke C. & M. Co., Canton Coal Co.

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Plaintiff's Exhibit 1361.

B.

TRADE WE LOST AFTER 95c AUTHORIZATION.

Brazil Clay Co., Richardson Newdorfer & Silcox, Logan Brick Co., New Ohio Washed Coal Co., Manufacturers Fuel Co., Bicknell Coal Co., Diamond Coal and Mining Co., Princeton C. M. Co., Carterville Mng. Co., S. B. Eaton & Co., Prairie State Coal & Co. Co., Summit C. & M. Co., Empire
8682 Coal Co., United C. & M. Co., 7-11-06; Hocking Mng. Co., Ohio Portland Cement Co., J. H. Sellers, Bailey Bros. Coal Co., C. L. Poston, Penna. and Ind. C. Co., Sunflower Coal Co., Cochran & Pinkerton, S. Walshdag & Bro., Dayton Coal and Iron Co., New England Coal Co., 1-3-07; Silver Run Coal Co., Hafer Washed Coal Co., Brenton Coal Co., Vivian Coal and M. Co., Smith Lhor C. M. Co., Bradfield and Dixon, Superior Portland C. Co., Knot Coal Co., Moore and Co., Tallula Coal Co., John McVey, B. R. Billingsley, Iron Clay Brick Co., Johnson Coal Co., Hocking Fuel Co., Gem Coal Co., George Gibbs, White Walnut Coal Co.,

Plaintiff's Exhibit 1396 8683

4-1-05; Diamond Coal & Mng. Co., 6-22-06; Portsmouth Harbinson Walker Co., Willis Coal & Mng. Co., Gallia Mng. Co., 9-13-06; Barders Coal Co., 1-15-07; Buckhorn Coal Co., 1-15-07; Horney and Winterbottom, Marrison C. & M. Co., Deering Coal Co., Cloverland Coal Co., Utica Hydra Cement Co., Petersburg Coal Co.

Plaintiff's Exhibit 1396.

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908

RECAPITULATION

8684

	BILLED				RETURNED	
Page	Kegs	Amount	Allowances	Freight	Kegs	Amount
1	6,065	$ 5,870.73		$ 155.08	249	$ 236.50
2	2,216	2,276.90		7.50	11	11.55
3	10,156	10,450.87	$ 29.88	1,130.37	17	16.90
4	3,247	3,272.96		88.78	50	50.60
5	7,860	8,010.00		449.85	60	62.39
6	14,453	13,311.60	163.10	314.73	51	51.10
7	6,343	6,557.24	67.50	456.49	426	417.48
8	3,525	3,551.40	40.00	252.12	301	276.92
9	5,906	6,208.90	24.00	60.56	1	1.00
10	12,776	14,028.70		1,901.34		
11	3,568	3,632.88		145.87		
12	13,680	13,154.85		484.23	155	155.00
13	32,620	31,946.00		2,891.58	401	390.98
14	19,973	18,604.24	3.50	684.95	3	2.88
15	20,089	19,776.20		1,417.09	103	108.02
16	2,546	2,680.14		250.17	47	48.10
17	8,565	9,317.01		1,160.16	114	106.00
18	12,413	12,237.00		1,255.59	64	63.17
19	8,150	8,058.88	25.75	671.85	477	471.58
20	28,451	29,291.15	30.00	2,856.80	248	228.37
21	4,386	4,249.66		317.40		
22	384	416.20		4.65		
23	89	103.75				
Totals	227,461	$227,007.26	$383.73	$16,957.16	2,778	$2,698.54

8685

GRAND SUMMARY

	Kegs	Amount	Average peg Keg
Sales Billed	227,461	$227,007.26	99.8
Less: Allowances		383.73	.2
	227,461	$226,623.53	99.6
Less Returns, etc.	2,778	2,698.54	97.1
	224,683	$223,924.99	99.7
Less Freights		16,957.16	7.6
Net Sales, after deducting Freight, etc.	224,683	$206,967.83	92.1

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908

Date	Customer	BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
Aug. 29, '06	Applegate & Lewis Coal Co., Peoria, Ill...	50	.95	47.50					
Sept. 4	" " "	20	.95	19.00					
" 14	" " "	50	.95	47.50					
" 26	" " "	50	.95	47.50			44	.95	$ 41.80
Oct. 9	" " "	50	.95	47.50			1	.95	.95
" 17	" " "	50	.95	47.50			1	.95	.95
Feb. 28, '07	" " "	50	.95	47.50					
June 3	" " "	50	.95	47.50					
" 5	" " "	150	.95	142.50					
July 11	" " "	170	.95	161.50			150	.95	142.50
Sept. 7	" " "	100	.95	95.00					
" 23	" " "	100	.95	95.00			52	.95	49.40
Oct. 15, '07	Assumption C. & M. Co., Assumption, Ill...	50	.95	47.50		6.40			
" 28	" " "	50	.95	47.50					
Nov. 5	" " "	600	.95	570.00		30.00			
Oct. 1, '06	Astoria & Woodland Coal Co., Astoria, Ill.	10	.95	9.50					
" 26	" " "	50	.95	47.50		3.63			
Dec. 3	" " "	50	.95	47.50					
Jan. 29, '07	" " "	50	.95	47.50					
June 20	" " "	50	.95	47.50					
July 11	" " "	50	.95	47.50					
Sept. 3	" " "	50	.95	47.50					
" 25	" " "	50	.95	47.50					
Oct. 26, '05	Atkins, Reuben	10	1.28	12.80		1.45			
Dec. 1	"	15	1.28	19.20		2.17			

Plaintiff's Exhibit 1936

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Jan.	8, '06	"			12	1.28	15.36		1.35		
"	22, '08	Babcock & Co., Mankato, Minn.			25	1.13½	28.37				
Oct.	1, '06	W. B. Ballentine, Wyoming, Ill.			50	1.10	55.00				
Dec.	8	"	"	"	50	1.10	55.00				
Mar.	14, '07	"	"	"	25	.95	23.75				
Aug.	6	"	"	"	25	.95	23.75				
Oct.	4	"	"	"	50	.95	47.50				
Jan.	21, '08	"	"	"	50	1.10	55.00				
June	11	"	"	"	25	1.10	27.50				
July	23, '06	Frank Bateman, Wyoming, Ill.			50	1.00	50.00				
Aug.	14	"	"	"	8	1.00	8.00				
Sept.	4	"	"	"	10	1.00	10.00				
Dec.	17	"	"	"	10	1.00	10.00				
Nov.	6, '05	Bevier Coal & M. Co., Bevier, Mo.			800	1.04	832.00		70.08		
June	16, '06	Big Creek Coal Co., St. David, Ill.			1,000	.90	900.00			1	.90	.90
July	18	"	"	"	1,000	.90	900.00					
Nov.	6, '07	"	"	"	100	1.05	105.00		10.00			
"	14, '07	"	"	"	800	1.05	840.00		30.00			
					6,065		$5,870.73		$155.08	249		$236.50
Jan.	18, '08	Briggs & Davis, Tallula, Ill.			50	1.15	57.50		7.50			
Jan.	29, '07	Bontjes & Bontjes, Kramms Sta., Ill.			50	.95	47.50			11	1.05	11.55
Feb.	6	"	"	"	50	.95	47.50					
"	18	"	"	"	50	.95	47.50					
"	28	"	"	"	50	.95	47.50					
"	9	"	"	"	50	.95	47.50					
Mch.	12	"	"	"	70	.95	66.50					
"	29	"	"	"	50	.95	47.50					
Apr.	4	"	"	"	50	.95	47.50					
"	18	"	"	"	50	.95	47.50					

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Plaintiff's Exhibit 1936

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Plaintiff's Exhibit 1936

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BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Date	Customer	BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
" 26	"	50	.95	47.50					
May 10	"	50	.95	47.50					
" 24	"	50	.95	47.50					
June 3	"	50	.95	47.50					
" 13	"	50	.95	47.50					
" 26	"	50	.95	47.50					
July 11	"	54	.95	51.30					
" 22	"	50	.95	47.50					
Sept. 7	"	50	.95	47.50					
" 23	"	50	.95	47.50					
Oct. 18	"	50	1.05	52.50					
" 26	"	50	1.05	52.50					
Nov. 5	"	50	1.05	52.50					
" 14	"	50	1.05	52.50					
" 20	"	50	1.05	52.50					
" 22	"	7	1.05	7.35					
" 27	"	35	1.05	36.75					
Dec. 3	"	50	1.05	52.50					
" 11	"	50	1.10	55.00					
" 19	"	50	1.10	55.00					
" 30	"	50	1.10	55.00					
Jan. 7, '08	"	50	1.10	55.00					
" 14	"	50	1.10	55.00					
" 21	"	60	1.10	66.00					
" 31	"	60	1.10	66.00					
Feb. 7	"	60	1.10	66.00					
" 22	"	55	1.10	60.50					
" 28	"	55	1.10	60.50					
Mar. 4	"	60	1.10	66.00					
" 9	"	30	1.10	33.00					

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

"	10		"	"	"	60	1.10	66.00				
"	23		"	"	"	60	1.10	66.00				
Apr.	2		"	"	"	50	1.10	55.00				
"	14		"	"	"	50	1.10	55.00				
						2,216		$2,276.90		$7.50	11	$11.55

Date	Customer	BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
Apr. 23, '08	Bontjes & Bontjes, Kramms Sta., Ill	60	1.10	66.00			5	1.10	5.50
Aug. 21	" " "	38	1.05	39.90					
" 28	" " "	50	1.05	52.50					
Oct. 4, '05	C. G. Brechnitz, Belleville, Ill.	800	.92	736.00					
Oct. 10, '05	John Buckley, Coal Valley, Ill.	400	1.10	440.00		73.68			
Jan. 18, '06	" " "	400	1.10	440.00		73.68			
May 23	" " "	400	1.03	412.00		52.00			
Oct. 1	" " "	800	.95	760.00		58.71			
Dec. 28	" " "	800	.95	760.00		54.41	12	.95	11.40
June 28, '07	" " "	400	1.00	400.00		60.00			
Sept. 27	" " "	50	.95	47.50		11.00			
Oct. 5	" " "	800	.95	760.00		62.99			
Dec. 17	" " "	800	1.00	800.00		59.70			
May 13, '08	" " "	400	1.07	428.00		57.00			
Sept. 30, '05	Bunting Bros., Grape Creek, Ill.	100	1.08	108.00					
Nov. 3	" " "	100	1.08	108.00		48.52			
Dec. 13	" " "	100	1.08	108.00					
Oct. 22, '07	W. Burdette, Pottstown, Ill.	3	1.05	3.15					
Dec. 17	" " "	12	1.05	12.60					
Feb. 3, '08	" " "	10	1.05	10.50					
July 2, '06	Butler Bros., Hilbrig, Minn. 1,000		1.13	1,130.00		230.00			
July 1, '07	" " "	1,000	1.10	1,100.00		177.38			

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Plaintiff's Exhibit 1936

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Plaintiff's Exhibit 1936

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BUCKEYE POWDER COMPANY

SUMMARY FROM THE BOOKS FOR THE PERIOD FROM SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Date	Customer	Kegs	Price	Amount	Allowances	Freight	Returned Kegs	Returned Price	Returned Amount
Oct. 9, '05	Canton Coal Co., Canton, Ill.	50	1.06	53.00					
Jan. 17, '06	" " "	100	1.05	105.00		5.38			
Mar. 22	" " "	100	1.05	105.00		5.38			
Dec. 18	" " "	100	1.05	105.00					
" 27	" " "	100	1.05	105.00	29.88				
Jan. 20, '07	" " "	100	1.05	105.00		38.28			
" 22	" " "	125	1.10	137.50					
Aug. 31, '08	" " "	50	1.12½	56.25		6.38			
Nov. 9, '05	T. W. Carrico, Rockford, Ill.	50	1.12½	56.25		6.38			
Dec. 18	" " "	50	1.10	55.00					
July 14, '08	F. R. Carter, East Peoria, Ill.	8	1.15	9.20		1.85			
Aug. 10, '06	James Catton, West Jersey, Ill.	10	1.15	11.50		2.54			
Jan. 29, '07	" " "	10	1.15	11.50		2.55			
Feb. 11	" " "	10	1.15	11.50		2.56			
Sept. 5	" " "	460	1.07½	494.00		40.00			
Jan. 1, '08	Century Coal Co., Tower Hill, Ill.	100	1.00	100.00					
Feb. 16, '06	Chicago & N. W. Ry. Co., Chicago	36	.95	34.20					
Aug. 14	" " "	24	.93	22.32					
Sept. 4	" " "	50	.93	46.50					
Nov. 2	" " "								
		10,156		$10,450.87	$29.88	$1,130.37	17		$16.90

Date	Customer	Kegs	Price	Amount
Nov. 29, '06	Chicago & N. W. R. R. Co., Chicago	25	.90	22.50
Jan. 5, '07	" " "	25	.90	22.50
Jan. 10	" " "	50	.90	45.00
Mar. 7	" " "	25	.90	22.50
Apr. 25	" " "	50	.90	45.00
Sept. 20, '07	Chicago, Burlington & Quincy R. R. Co.	13	1.08½	14.11

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BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Oct.	26		"	"	"	2	1.05	2.10				
Jan.	20,	'08	"	"	"	2	1.10	2.20				
Mar.	5,	'08	James Christensen, Bradford, Ill.			20	1.10	22.00				
July	14,	'06	Christy & Co., Viola, Ill.			400	1.03	412.00	28.40			
Oct.	2		"	"	"	400	1.00	400.00	28.93			
Nov.	16		"	"	"	400	1.00	400.00	28.40			
Sept.	23,	'05	Clark, Quien & Morse, Peoria, Ill.			2	1.00	2.00				
"	30		"	"	"	8	1.00	8.00				
Oct.	31		"	"	"	67	1.00	67.00		2½	1.00	2.50
Nov.	30		"	"	"	90	1.00	90.00	1.01	25	1.00	25.00
Dec.	31		"	"	"	61	1.00	61.00	.46	6	1.00	6.00
									.74	13	1.00	13.00
Jan.	31,	'06	"	"	"	132	1.00	132.00				
Feb.	28		"	"	"	57	1.00	57.00				
Mar.	31		"	"	"	35	1.00	35.00				
May	31		"	"	"	56	1.00	56.00	.84			
June	30		"	"	"	42	1.00	42.00				
July	31		"	"	"	16	1.00	16.00				
Aug.	1		"	"	"	18	1.00	18.00				
Sept.	30		"	"	"	29	1.00	29.00				
Oct.	31		"	"	"	51	1.00	51.00				
Nov.	30		"	"	"	60	1.00	60.00				
Dec.	31		"	"	"	24	1.00	24.00				
Jan.	31,	'07	"	"	"	66	1.00	66.00				
Feb.	28		"	"	"	57	1.00	57.00				
Mch.	20		"	"	"	8	1.00	8.00				
Apr.	30		"	"	"	51	1.00	51.00				
May	23		"	"	"	29	1.00	29.00				
June	30		"	"	"	25	1.00	25.00				
July	31		"	"	"	67	1.00	67.00				
Aug.	31		"	"	"	64	1.00	64.00				
Sept.	30		"	"	"	64	1.00	64.00				

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Oct.	31		"	"	"	95	1.00	95.00			2	1.00	2.00
"	31		"	"	"	36	1.05	37.80					
Nov.	30		"	"	"	168	1.05	176.40					
Dec.	31		"	"	"	102	1.05	107.10					
Jan.	31,	'08	"	"	"	122	1.05	128.10			2	1.05	2.10
Feb.	28		"	"	"	83	1.05	87.15					
Mar.	31		"	"	"	42	1.05	44.10					
Apr.	27		"	"	"	8	1.05	8.40					
						3,247		$3,272.96		$88.78	50½		$50.60

Date			Customer	BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
May	31,	'07	Clark, Quien & Morse, Peoria, Ill.	27	1.05	28.35		.60			
June	30		" " "	45	1.05	47.25					
July	31		" " "	18	1.05	18.90					
"	"		" " "	18	1.15	20.70					
Aug.	1		" " "	15	1.10	16.50					
"	"		" " "	17	1.15	19.55					
May	24,	'07	Cober & Co., Wyoming, Ill.	5	1.10	5.50					
Dec.	13,	'06	Collier Co-op. C. Co., Peoria, Ill.	100	.95	95.00					
Mch.	3,	'08	" " "	100	1.10	110.00					
Sept.	26,	'06	Concrete Construction Co., R. I., Ill.	800	.95	760.00		44.00			
Jan.	22,	'08	T. R. Coughlan, Mankato, Minn.	250	1.13½	283.75					
Oct.	10,	'06	Consolidated C. & I. Co., Clark City, Ill....	402	1.00	402.00		32.00			
Jan.	20,	'07	" " "	400	1.00	400.00		44.00			
Feb.		'08	Crescent Coal Co., Breeds, Ill.	50	1.10	55.00					
Mar.	3		" " "	50	1.10	55.00					
June	2		" " "	50	1.10	55.00					
Oct.			Cusack & Edwards, Youngs, Ill. (Edwards Mining Co.)	50	1.05	52.50					

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Nov.	8		"	"	"	25	1.05	26.25				
Dec.	19		"	"	"	20	1.05	21.00				
Jan.		'06	"	"	"	60	1.05	63.00				
Feb.			"	"	"	65	1.05	68.25				
Mar.			"	"	"	57	1.05	59.85		16	1.05	16.80
May	4		"	"	"	20	1.05	21.00				
July	17		"	"	"	10	1.05	10.50				
Aug.	30		"	"	"	10	1.05	10.50				
Sept.	11		"	"	"	10	1.05	10.50				
Oct.			"	"	"	40	1.05	42.00				
Nov.			"	"	"	45	1.05	47.25				
Dec.			"	"	"	40	1.05	42.00		15	1.10	16.59
Jan.		'07	"	"	"	60	1.05	63.00				
Feb.	20		"	"	"	20	1.05	21.00				
Mar.	29		"	"	"	10	1.05	10.50				
May	to	Dec.	"	"	"	40	1.05	42.00				
"	"		"	"	"	94	1.10	103.40				
June	17,	'08	James Dalton,	Elmwood,	Ill.	10	1.10	11.00				
July	21		"	"	"	10	1.25	12.50				
Aug.	28		"	"	"	10	1.25	12.50				
Oct.	19,	'05	De Camp C. & M. Co.,	Stanton,	Ill.	800	1.05	840.00	58.75			
Mar.	8,	'06	"	"	"	800	1.05	840.00	55.00			
Oct.	10,	'06	"	"	"	7	1.00	7.00				
"	23		"	"	"	800	1.00	800.00	57.50	29	1.00	29.00
Apr.	8,	'07	"	"	"	800	1.00	800.00	62.70			
Oct.	21,	'07	"	"	"	800	1.00	800.00	32.80			
June	12,	'08	"	"	"	800	1.00	800.00	62.50			
						7,860		$8,010.00	$449.85	60		$62.39

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BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

		Customer	BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
Oct.	10, '05	Dering Coal Co., Chicago	1,000	1.00	1,000.00		50.50			
Jan.	18, '06	" " "	1,000	1.00	1,000.00		49.50	49	1.00	49.00
Jan.	18, '06	" " "	50	1.00	50.00					
Mar.	5, '06	" " "	1,100	1.10	1,210.00	110.00	54.45			
Oct.	16, '05	Dieleman Coal Co., Pella, Ia.	100	1.25	125.00		30.08			
Jan.	16, '06	" " "	100	1.40	140.00		30.80			
Sept.	24, '07	Drake Hdw. Co., Davenport, Iowa	10	.90	9.00					
Feb.	14, '06	Drake Hdw. Co., Burlington, Iowa	5	1.10	5.50					
Mch.	24, '06	" " "	2	1.10	2.20					
Sept.	11, '06	East Cuba Coal Co., Cuba, Ill.	10	.95	9.50		2.40			
"	22	" " "	100	.95	95.00					
Oct.	11, '07	" " "	200	.95	190.00					
Nov.	15, '05	Edwards Coal & Coke Co., Edwards, Ill.	7	1.25	8.75					
Dec.	16	" " "	2	1.25	2.50					
"	19	" " "	4	1.25	5.00					
Jan.	18, '06	" " "	5	1.25	6.25					
Feb.	12	" " " (2-½)	1	1.40	1.40					
			1	1.25	1.25					
"	16	" " "	9	1.25	11.25					
Apr.	28	" " "	4	1.25	5.00					
Oct.	10	" " "	2	1.25	2.50	1.35				
Nov.	16	" " "	1	1.25	1.25					
Dec.	21	" " "	5	1.25	6.25					
Oct.	22, '07	Paul Edwards, Edwards, Ill.	10	1.05	10.50					
Nov.	18	" " "	15	1.05	15.75					
Jan.	18, '08	" " "	20	1.05	21.00					
Feb.	11	" " "	25	1.05	26.25			2	1.05	2.10
May	11	" " "	10	1.10	11.00					
June	7, '06	Egyptian Powder Co., Chicago, Ill.	800	.90	720.00					

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

"	26		"	"	"	1,200	.90	1,080.00					
July	23,	'07	"	"	"	800	.76½	612.00					
"	26		"	"	"	400	.76½	306.00					
Aug.	6		"	"	"	800	.76½	612.00					
Sept.	7		"	"	"	800	.76½	612.00					
"	23		"	"	"	800	.76½	612.00					
Mar.	2,	'08	Emmons-Hawkins Hdw. Co., Huntington, W. Va.			800	1.10	880.00		97.00			
Dec.	24,	'06	Farwell, Ozmun Kirk & Co., St. Paul, W. Va.			1,000	.90	900.00	18.00				
Jan.	9,	'07	"	"	"	875	.90	787.50	15.75				
Apr.	6		"	"	"	1,000	.90	900.00	18.00				
Aug.	26		"	"	"	1,000	.90	900.00					
Aug.	9,	'07	Fleming & McDaniel Co., Wyoming, Ill.			10	1.10	11.00					
Sept.			"	"	"	35	1.10	38.50					
Oct.	28		"	"	"	30	1.10	33.00					
Nov.	21		"	"	"	50	1.10	55.00					
Dec.	18		"	"	"	54	1.10	59.40					
Feb.		'08	"	"	"	100	1.10	110.00					
Apr.	20		"	"	"	51	1.10	56.10					
May	13		"	"	"	50	1.10	55.00					
						14,453		$13,311.60	$163.10	$314.73	51		$ 51.10

	Date		Customer			BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
Oct.	11,	'06	W. E. Foley, Peoria, Ill.			10	1.00	10.00		2.00			
Nov.	3		"	"		10	1.00	10.00					
May	11,	'07	"	"		10	1.00	10.00					
July	10		"	"		10	1.00	10.00		8.75			
			"	"		10	1.00	10.00		2.00			
			"	"		10	1.00	10.00		2.50			

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BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Jan.	22, '08	Fowler & Pay, Mankato, Minn.	350	1.13½	397.25		123.75				
Sept.	20, '06	S. French, Bradford, Ill.	10	1.10	11.00						
Nov.	16	" "	25	1.10	27.50						
July	8, '08	" "	15	1.10	16.50						
Nov.	13, '05	Robt. Gage Coal Co., Bay City, Mich	800	1.00	800.00						
"	14	" " "	800	1.00	800.00	60.00					
Sept.	30	Gartside Coal Co., Murphysboro, Ill.	50	1.05	52.50		7.76				
Oct.	14	Gapen, F. E., & Co., Sparland, Ill.	20	1.10	22.00						
Nov.	15	" " "	20	1.10	22.00						
Oct.	7, '05	Goetz Bros., St. Louis, Mo.	100	1.15	115.00	7.50	5.25				
Dec.	12, '06	Jos. Goss & Son, Carteville, Ia.	50	1.10	55.00		15.95				
May	10, '06	Grafton Quarry Co., Grafton, Ill.	25	1.15	28.75		8.61				
Nov.	7	" " "	10	1.15	11.50		2.55				
Oct.	14, '05	Great Northern Fuel Co., Novinger, Mo.	1,000	1.07	1,070.00		134.02				
Apr.	15, '07	Granite City Granite Co., St. Cloud, Minn.	20	1.35	27.00		5.88				
Sept.	28, '06	Greenview Coal & M. Co., Greenview, Ill.	300	.98	294.00			250	.98	245.00	
Oct.	12	" " "	100	.98	98.00		12.00				
"	26	" " "	200	.98	196.00		35.94				
Nov.	16	" " "	400	.98	368.00		30.00	176	.98	172.48	
Dec.	6	" " "	38	.98	37.24						
Dec.	19, '06	Greenview Coal Co., Greenview, Ill.	800	.98	784.00		35.20				
Aug.	27, '07	" " "	50	1.04	52.00		6.35				
Oct.	15	" " "	50	1.04	52.00		6.00				
Nov.	16	" " "	50	1.10	55.00						
Dec.	30	" " "	100	1.10	110.00						
Feb.	5, '08	" " "	100	1.10	110.00						
Mar.	6	" " "	100	1.10	110.00						
Apr.	14	" " "	100	1.10	110.00						
"	30	" " "	200	1.10	220.00						
June	25	" " "	200	1.10	220.00						
Aug.	17	" " "	50	1.25	62.50						

BUCKEYE POW DER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Date		Customer	BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
Mar.	24, '06	Hanson, A. J., Johnson City, Ill.	50	1.05	52.50					
Nov.	13, '05	Hart & Page, Rockford, Ill	50	1.10	55.00		6.88			
Mch.	20, '07	" " "	50	1.10	55.00		5.10			
			6.343		$6,557.24	$67.50	$456.49	426		$417.48
June	25, '08	Hart & Page, Rockford, Ill.	100	1.12½	112.50		10.20			
Aug.	13, '06	Heitzman, B. H., Bartonville, Ill.	5	1.15	5.75					
Sept.	5	" " "	10	1.15	11.50		1.25			
Oct.	27, '05	Henderson, Thos., & Son, Ashland, Ky. ..	800	1.00	800.00	40.00	96.30			
Jan.	3, '08	Higbee, A. W., Princeville, Ill.	25	1.10	27.50					
Apr.	15, '07	Holes Bros., St. Cloud, Minn.	20	1.35	27.00		27.65			
Dec.	24, '06	Howard, Charles, Bradford, Ill.	50	1.10	55.00					
Apr.	16, '07	" " "	50	1.10	55.00					
Sept.	21	" " "	50	1.10	55.00					
Nov.	26	" " "	50	1.10	55.00					
Sept.	18, '06	Howarth & Taylor, Edwards, Ill.	25	.96	24.00		.50			
Oct.		" " "	31	.96	29.76					
Nov.		" " "	95	.96	91.20					
Dec.		" " "	20	.96	19.20					
Jan.	'07	" " "	65	.96	62.40					
Feb.		" " "	280	.96	268.80					
Mar.		" " "	115	.96	110.40					
Apr.		" " "	125	.96	120.00					
Sept.		" " "	65	.96	62.40					
Oct.		" " "	75	.96	72.00					
Nov.		" " "	50	1.05	52.50					
"		" " "	85	1.05	89.25					

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Date			Customer	BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
Dec.	2		" " "	15	1.05	15.75					
"	11		" " "	25	1.10	27.50					
Mar.	30,	'08	" " "	10	1.10	11.00					
Nov.	9,	'05	Hutchinson Bros., Dawson, Ia.	50	1.45	72.50		16.77			
Jan.	8,	'06	" " "	60	1.45	87.00		20.01			
Nov.	2,	'05	Hydraulic Pressed Brick Co., St. Louis...	100	1.10	110.00		5.20			
Sept.	4,	'06	Illinois Colliers Co., Springfield, Ill.	50	.92	46.00		5.38			
Oct.	1		" " "	48	.92	44.16			48	.92	44.16
"	10		" " "	400	.95	380.00		6.86			
Nov.	22		" " "	100	.95	95.00		32.00			
"	30		" " "	20	.95	19.00					
Feb.	20,	'06	Jobst, Bethard & Co., Peoria, Ill.	2	1.00	2.00					
Aug.	31,	'06	Jones & Adams, Springfield, Ill.	210	.92	193.20			145	.92	133.40
Oct.	1		" " "	39	.92	35.88		30.00	8	.92	7.36
"	3		" " "	25	.92	23.00					
Nov.	7		" " "	100	.92	92.00			100	.92	92.00
Jan.	8,	'06	Jones, James H., Peoria, Ill.	15	1.10	16.50					
Aug.	10,	'06	Jones, Thomas, Pottstown, Ill.	6	1.15	6.90					
"	29		" " "	6	1.15	6.90					
Sept.	11		" " "	6	1.15	6.90					
"	29		" " "	6	1.15	6.90					
Oct.	31		" " "	31	1.15	35.65					
Nov.	21		" " "	10	1.15	11.50					
				3,525		$3,551.40	$40.00	$252.12	301		$276.92
Dec.		'06	Jones, Thomas, Pottstown, Ill.	20	1.15	23.00					
Jan.	20,	'07	" " "	10	1.15	11.50					

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Feb.		"	"	"	31	1.15	35.65					
Mch.		"	"	"	25	1.15	28.75					
Apr.	22	"	"	"	15	1.15	17.25					
May	9	"	"	"	15	1.15	17.25					
June	24	"	"	"	15	1.15	17.25					
Oct.		"	"	"	30	1.15	34.50					
Nov.	8	"	"	"	15	1.15	17.25	.60				
Dec.		"	"	"	30	1.15	34.50					
Jan.	14, '08	"	"	"	15	1.15	17.25					
Feb.		"	"	"	30	1.15	34.50					
Mar.	10	"	"	"	18	1.15	20.70					
Apr.	13	"	"	"	17	1.15	19.55					
May	11	"	"	"	15	1.15	17.25					
Oct.	12, '05	Keeler, Chas. F., Coal Co., Chicago, Ill. ...			800	1.00	800.00	56.25	1	1.00	1.00	
Nov.	2, '07	Keller Coal Co., Bartonville, Ill.			10	1.05	10.50					
Sept.	28, '05	Kewanee G. & M. Co., Kewanee, Ill.			50	1.10	55.00					
Oct.		"	"	"	150	1.10	165.00					
Nov.		"	"	"	150	1.10	165.00					
Dec.		"	"	"	200	1.10	220.00					
Jan.	'06	"	"	"	150	1.10	165.00					
Feb.		"	"	"	150	1.10	165.00					
Mch.		"	"	"	150	1.10	165.00					
Apr.	26	"	"	"	50	1.10	55.00					
May		"	"	"	200	1.10	220.00					
June		"	"	"	200	1.10	220.00					
July		"	"	"	100	1.10	110.00					
Aug.		"	"	"	100	1.10	110.00					
Sept.	26	"	"	"	50	1.10	55.00					
Oct.		"	"	"	150	1.10	165.00					
Nov.		"	"	"	100	1.10	110.00	3 71				
"		"	"	"	100	1.05	105.00					

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BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Dec.	11		"	"	"	100	1.05	105.00					
Jan.		'07	"	"	"	200	1.05	210.00					
Feb.			"	"	"	50	1.05	52.50					
Mch.			"	"	"	200	1.05	210.00					
Apr.			"	"	"	245	1.05	257.25					
May			"	"	"	225	1.05	236.25					
June			"	"	"	225	1.05	236.25					
July			"	"	"	225	1.05	236.25					
Aug.			"	"	"	225	1.05	236.25					
Sept.			"	"	"	250	1.05	262.50					
"	30		"	"	"	800	.95	760.00	24.00				
						5,906		$6,208.90	$24.00	$60.56	1		$1.00

Date	Customer	BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
Dec. 5, '07	Kewanee C. & M. Co., Kewanee, Ill.	800	1.05	840.00		30.00			
Apr. 11, '08	" " "	800	1.04½	834.00		31.50			
May 8, '06	Keystone Coal M. Co., Des Moines, Ia. ...	200	1.06	212.00		19.25			
Mar. 30, '06	Krakauer, Zork & Moye, El Paso, Tex. ...	1,000	1.40	1,400.00		451.00			
Apr. 28	" " "	1,000	1.35	1,350.00		451.00			
Mch. 7, '06	La Salle Co., Carbon C. Co., La Salle, Ill.	50	.95	47.50		4.23			
July 25	" " "	50	.95	47.50		4.23			
Oct. 5	" " "	800	.95	760.00		33.00			
Sept. 13, '07	" " "	800	1.00	800.00		46.86			
Nov. 26	" " "	600	1.05	630.00		48.00			
Feb. 6, '08	" " "	200	1.10	220.00		12.00			
June 16, '08	" " "	125	1.10	137.50					
" 8, '06	Lee Bros. Coal Co., What Cheer, Ia.	400	1.04	416.00		53.00			
Dec. 24, '06	" " "	400	1.02	408.00		58.30			
Sept. 14, '07	" " "	400	1.05	420.00		60.00			

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Jan.	23, '07	" " "	400	1.17½	470.00		60.00	
Jan.	3, '08	Lincoln Mng. Co., Lincoln, Ill.	10	.95	9.50		2.27	
Nov.	24, '06	Lincoln Park C. & B. Co., Spring, Ill.	100	.95	95.00			
Dec.	13	" " "	100	.95	95.00			
Oct.	24, '05	Lost Creek Fuel Co., Muchakinock, Ia. ...	750	1.07½	806.25		119.90	
Apr.	28, '06	" " "	800	1.00	800.00		55.00	
Aug.	31	" " "	800	1.00	800.00		83.00	
Jan.	10, '07	Henry W. Lynch, Edwards, Ill.	1	1.25	1.25			
"	10	(Warsaw Coal Co.)	1	1.25	1.25			
Aug.	7	" "	1	1.25	1.25			
"	8	" "	1	1.25	1.25			
	23	" "	1	.95	.95			
"	29	" "	25	.95	23.75			
Sept.		" "	25	.95	23.75			
"	30	H. W. Lynch, Peoria, Ill.	25	.95	23.75			
Oct.		" "	85	.95	80.75			
Nov.		" "	125	1.05	131.25			
Dec.		" "	200	1.05	210.00			
Jan.	31, '08	" "	35	1.05	36.75			
Feb.		" "	100	1.05	105.00			
Mar.		" "	150	1.05	157.50			
Aug.	8, '06	McAlester-Choctaw Coal Co., Archibald	30	1.25	37.50			
Sept.	11	" " " I. T.	800	1.25	1,000.00		262.80	
Sept.	30, '05	McCoy Co., Jas., Peoria, Ill.	5	1.00	5.00			
May	21, '06	McClure Coal Co., Tasker, N. Dak.	10	1.75	17.50			
Dec.	5, '06	McDaniel, Jacob, Wyoming, Ill.	10	1.10	11.00			
Aug.	27, '06	Manchester Coal Co., Chicago, Ill.	50	1.00	50.00			
Sept.	26	" " "	50	1.00	50.00			
Oct.		" " "	461	1.00	461.00		16.00	
			12,776		$14,028.70		$1,901.34	

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BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Date	Customer	BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
Feb. 20, '07	Manchester Coal Co., Chicago, Ill.	100	1.00	100.00		13.75			
Mch. 26	" " "	100	1.00	100.00					
May 17	" " "	100	1.00	100.00		12.10			
July 8	" " "	100	1.00	100.00					
Aug. 13	" " "	100	1.00	100.00					
Oct. 28	" " "	50	1.10	55.00					
Dec. 12	" " "	50	1.10	55.00					
Jan. 21, '08	" " "	50	1.10	55.00					
Feb. 28	" " "	50	1.10	55.00					
Mch. 23	" " "	20	1.10	22.00					
Apr. 14	" " "	50	1.10	55.00					
June 11	" " "	25	1.10	27.50					
Jan. 22, '08	Mankato Cement Co., Mankato, Minn.	225	1.13½	255.38					
Sept. 30, '05	Manufacturers' C. & C. Co., Connellsville, Mo.	100	1.10	110.00		33.00			
June 26, '06	Marquette 3rd Vein C. Co., Sparland, Ill...	10	1.30	13.00		2.55			
Aug. 2	" " "	10	1.30	13.00		2.55			
Jan. 29, '07	" " "	10	1.30	13.00		2.54			
June 8, '06	" " "	10	1.30	13.00		2.78			
" 12	Marshall, G. A., Cuba, Ill.	10	1.15	11.50					
Aug. 2	" "	10	1.15	11.50		2.56			
Oct. 17	" "	15	1.15	17.25					
Nov. 24	" "	20	1.15	23.00		4.62			
Dec. 15	" "	15	1.15	17.25		3.42			
Feb. 4, '07	Metzger, August F., Mackinaw, Ill.	12	1.00	12.00					
" 22	" " "	12	1.00	12.00					
Mch. 28, '08	Middleton & Seidel, Sandoval, Ill.	100	1.15	115.00					
Apr. 8	" " "	100	1.12½	112.50		12.50			
June 11	" " "	200	1.12½	225.00		12.50			

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

"	18			"	"	"		200	1.12½	225.00		12.00		
				"	"	"		200	1.12½	225.00		29.00		
July	8							10	.95	9.50				
July	1,	'07	Milan Coal Co., Milan, Mo.				.....	50	.95	47.50				
Aug.	28			"	"			25	.95	23.75				
Sept.	30			"	"			25	.95	23.75				
Oct.	18			"	"			30	1.10	33.00				
Nov.	8			"	"			50	1.10	55.00				
"	30			"	"			10	1.10	11.00				
Dec.	9			"	"			25	1.10	27.50				
"	26			"	"			6	1.10	6.60				
June	25,	'08		"	"			50	1.10	55.00				
Sept.	12							750	.87	652.50				
Mch.	25,	'07	J. G. Miller, Chicago, Ill.				(1,500-½)	12	.95	11.40				
May	17			"	"			400	.90	360.00				
"	21			"	"			1	1.00	1.00				
"	20			"	"		(2-½)	50	.95	47.50				
Apr.	5,	'05		"	"			20	.95	19.00				
Apr.	7,	'05												
								3.568		$3,632.88		$145.87		

			Customer				BILLED					RETURNED		
							Kegs	Price	Amount	Allowances	Freight	Kegs	Price	Amount
May	27,	'07												
June	14													
"	17		Miller, J. G., Chicago, Ill.			.....	400	.90	360.00					
			"	"			20	.90	18.00					
Aug.	13		"	"			1,000	.86	860.00					
"	19		"	"			50	.90	45.00					
Sept.	30		"	"			20	.90	18.00					
Oct.	8		"	"			1,000	.86	860.00					
Dec.	19		"	"		{ 1276½ }	638	.87 }						
Jan.	17,	'08				{	200	.86 }	727.06					

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BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Jan.	29		"	"		25	.95	23.75				
			"	"		400	1.12½	450.00	30.00			
Mch.	17		"	"	{ 2000½ }	1,000	.87 }					
April	8				{ }	220	.86 }	1,159.20				
"	30		"	"		50	1.00	50.00				
May	21		"	"		25	1.00	25.00				
June	3		"	"		1,000	1.00	1,000.00				
"	6		"	"		15	1.00	15.00				
Aug.	19		"	"		800	1.00	800.00				
Sept.	30,	'05	"	"		25	1.00	25.00				
Oct.	4,	'05	"	"		50	1.05	57.50				
Feb.	12,	'06	M. & O. Ry. Co., Mobile, Ala.			150	1.03	154.50				
June	15		Mt. Olive & Staunton C. Co., Staunton, Ill.			800	1.00	800.00	55.00			
Sept.	4		"	"	"	800	1.00	800.00	55.00			
Oct.	22		"	"	"	800	1.00	800.00	66.00			
Jan.	9,	'07	"	"	"	800	1.00	800.00	55.00			
Feb.	6		"	"	"	800	1.00	800.00	54.00	155	1.00	155.00
Oct.	17		"	"	"	800	1.00	800.00	62.70			
Mch.	26,	'06	"	"	"	800	1.00	800.00	61.60			
Nov.	1,	06	"	"	"	800	1.00	800.00	35.00			
Dec.	27		Myer, Carl, What Cheer, Iowa			12	1.02	12.24	3.50			
Feb.	6,	'07	Neave, Jas., Mineral, Ill.			12	1.10	13.20				
May	13		"	"		12	1.10	13.20				
June	18		"	"		12	1.10	13.20				
Sept.	4		"	"		12	1.10	13.20				
Oct.	18		"	"		12	1.10	13.20				
Nov.	14		"	"		12	1.10	13.20				
Feb.	10,	'08	"	"		12	1.10	13.20				
Oct.	1,	'06	"	"		25	1.10	27.50				
Oct.	27,	'05	"	"		12	1.10	13.20				
Feb.	4,	'07	Newsam Bros., Peoria, Ill.			25	.95	23.75	4.07			

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

June	5	N. Y. & St. L. Mg. & Mg. Co., Aetna, Tenn.	4	1.00	4.00					
Oct.	10	Noel, N., Frederick, Ill.	5	1.15	5.75		.78			
Oct.	22	" "	5	1.15	5.75					
Dec.	3	" "	5	1.15	5.75		.80			
		" "	10	1.10	11.00					
		" "	5	1.10	5.50					
			13,680		$13,154.85		$484.23	155		$155.00

			BILLED					RETURNED		
Date		Customer	Kegs	Price	Amount	Allowances	Freight	Kegs	Price	Amount
Dec.	30, '07	Noel, N., Frederick, Ill.	5	1.10	5.50					
Jan.	31, '08	" "	5	1.10	5.50					
Oct.	7, '05	Northwestern C. M. Co., Bevier, Mo.	800	1.00	800.00		70.72			
Nov.	14	" " "	800	1.00	800.00		70.08			
Dec.	12	" " "	800	1.00	800.00		70.40			
Jan.	6, '06	" " "	10	1.00	10.00					
"	10	" " "	800	1.00	800.00		75.56			
Feb.	1	" " "	800	1.00	800.00		79.04			
"	26	" " "	800	1.00	800.00		70.40			
Mch.	10	" " "	800	1.00	800.00		70.08			
June	15	" " "	800	.97½	780.00		70.97			
Aug.	11	" " "	800	.97½	780.00		67.52			
Sept.	12	" " "	800	.97½	780.00		70.40			
Oct.	5	" " "	800	.97½	780.00		70.40			
Nov.	3	" " "	800	.97½	780.00		70.81			
"	20	" " "	800	.97½	780.00		70.40			
Dec.	1	" " "	800	.97½	780.00		70.40			
Dec.	28	" " "	800	.97½	780.00		70.40			
Jan.	10, '07	" " "	800	.97½	780.00		70.40			
Feb.	4	" " "	800	.97½	780.00		70.40			

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BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

"	14		"	"	"	800	.97½	780.00		70.40			
"	28		"	"	"	800	.97½	780.00		70.40			
Mch.	29		"	"	"	800	.97½	780.00		70.40			
May	2		"	"	"	800	.97½	780.00		70.40			
May	27		"	"	"	800	.97½	780.00		70.40			
June	13		"	"	"	800	.97½	780.00		70.40	401	.97½	390.98
June	26		"	"	"	800	.97½	780.00					
July	2		"	"	"	800	.97½	780.00		140.80			
July	19		"	"	"	800	.97½	780.00		70.40			
Aug.	5		"	"	"	800	.97½	780.00		70.40			
Sept.	12		"	"	"	800	.97½	780.00		70.40			
Oct.	5		"	"	"	800	.97½	780.00		70.40			
Nov.	2		"	"	"	800	.97½	780.00					
Nov.	6		"	"	"	800	.97½	780.00					
Nov.	14		"	"	"	800	.97½	780.00		211.20			
Dec.	9		"	"	"	800	.97½	780.00					
Dec.	18		"	"	"	800	.97½	780.00		140.80			
Jan.	8,	'08	"	"	"	800	.97½	780.00		70.40			
Feb.	12		"	"	"	800	.97½	780.00		70.40			
Mch.	4		"	"	"	800	.97½	780.00		70.40			
Mch.	19		"	"	"	600	.97½	585.00		64.00			
May	25		"	"	"	800	.97½	780.00					
June	3		"	"	"	800	.97½	780.00		140.80			
Sept.	6,	'07	"	"	"	800	.97½	780.00		70.40			
						32,620		$31,946.00		$2,891.58	401		$390.98

Date			Customer	BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
June	12,	'08	Northeastern C. M. Co., Bevier, Mo.	800	.97½	780.00		70.40			
July	3		" " "	800	.97½	780.00					

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

"	9		"	"	"	800	.97½	780.00	140.80
Dec.	26,	'06	Northwestern Imp. Co., Red Lodge, Mont.			1,000	.88	880.00	
June	3,	'07	"	"	"	1,000	.87	870.00	
July	11		"	"	"	1,000	.87	870.00	
Aug.	12		"	"	"	1,000	.87	870.00	
Sept.	6		"	"	"	1,000	.87	870.00	
Oct.	17		"	"	"	1,400	.87	1,218.00	
Dec.	2		"	"	"	900	.87	783.00	
Dec.	22		"	"	"	5	.98	4.90	
July	17,	'06	Norwell-Shapleigh Hdw. Co., St. Louis, Mo.			6	.96	5.76	
Aug.	20		"	"	"	4	.96	3.84	
Oct.	23		"	"	"	4	.96	3.84	
Dec.	24		"	"	"	25	.96	24.00	
Jan.	10,	'07	"	"	"	25	.96	24.00	
Feb.	6		"	"	"	25	.96	24.00	
"	21		"	"	"	25	1.10	27.50	3.50
Oct.	29		"	"	"	25	1.10	27.50	
Nov.	30		"	"	"	25	1.10	27.50	
Dec.	19		"	"	"	4	1.10	4.40	
Feb.	10,	'08	"	"	"	25	1.10	27.50	
Nov.	22,	'07	Pendergast Bros., Soperville, Ill.			50	1.10	55.00	
Dec.	5		"	"	"	50	1.10	55.00	
Dec.	26		"	"	"	15	1.15	17.25	.75
Aug.	30,	'06	Peterson, Nicholas, Bradford, Ill.			50	1.10	55.00	
Oct.	1		"	"	"	50	1.10	55.00	
Dec.	1		"	"	"	50	1.10	55.00	
Feb.	14,	'07	"	"	"	50	1.10	55.00	
Oct.	22		"	"	"	50	1.10	55.00	
Dec.	21		"	"	"	50	1.10	55.00	
Feb.	6,	'08	"	"	"	25	1.10	27.50	
Apr.	14		"	"	"	35	1.25	43.75	
July	21								

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Plaintiff's Exhibit 1936

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BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Date	Customer	Kegs	Price	Amount	Allowances	Freight	Returned Kegs	Returned Price	Returned Amount
May 28, '06	Phillips Fuel Co., Rutledge, Iowa	800	1.00	800.00		44.00			
July 6	(Black Diamond Store)	800	1.00	800.00		44.00			
" 12	" "	1,000	1.00	1,000.00		55.00			
Sept. 4	" "	1,000	1.00	1,000.00		55.00			
" 26	" "	1,000	1.00	1,000.00		55.00			
Oct. 3	" "	1,000	.92½	925.00		55.00			
" 24	" "	1,000	.92½	925.00		55.00			
Nov. 24	" "	1,000	.92½	925.00		55.00	3	.92½	288.00
Dec. 24	" "	1,000	.92½	925.00		55.00			
		19,973		$18,604.24	3.50	$684.95	3		$288.00

Date	Customer	Kegs	Price	Amount	Allowances	Freight	Returned Kegs	Returned Price	Returned Amount
Jan. 29, '07	Phillips Fuel Co., Rutledge, Ia.	1,000	.92½	925.00					
Jan. 29	" " "	1,000	.92½	925.00		110.00			
Feb. 21	" " "	1,000	.92½	925.00		55.00			
June 5	" " "	1,200	.92½	1,110.00		66.00			
Sept. 9	" " "	1,000	.92½	925.00		55.00			
Jan. 14, '08	" " "	1,000	.92½	925.00		55.00			
March 4	" " "	1,000	.95	950.00		55.00			
June 9	" " "	1,000	.95	950.00		55.00			
July 29, '07	Pittman Bros., Cuba, Ill.	5	1.10	5.50					
May 10, '06	Port Byron Lime Assn., Port Byron, Ill.	100	1.15	115.00		12.77			
Sept. 18	" " "	100	1.15	115.00		12.82			
Apr. 6, '07	" " "	100	1.15	115.00		12.77			
Oct. 20, '06	Lowell & Son, Mapleton, Ill.	5	1.25	6.25		.82			
Oct. 28, '05	Powers & Williams, Streator, Ill.	800	1.00	800.00		35.45			
Sept. 20, '06	" " "	800	.98	784.00		30.30			
Sept. 30, '05	Randolph Macon Coal Co., Huntsville, Mo.	800	1.04	832.00		117.72	6	1.04	6.2
Oct. 2, '05	" " "	800	1.04	832.00		85.80	.7	1.04	7.2

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

"	7		"	"	"	800	1.04	832.00		85.80		
"	12		"	"	"	800	1.04	832.00		85.80 8.80		
"	28		"	"	"	300	1.04	312.00		63.53		
Nov.	6		"	"	"	800	1.04	832.00		111.24		
Nov.	9,	'05	Reents & Bros., A., Kramms, Ill.			40	1.05	42.00				
Dec.	16,	'05	"	"	"	33	1.05	34.65			33 1.05	34.65
Jan.	3,	'06	"	"	"	228	1.05	239.40				
Feb.			"	"	"	156	1.05	163.80				
March			"	"	"	208	1.05	218.40				
May			"	"	"	200	1.05	210.00				
June			"	"	"	160	1.05	168.00				
July	25		"	"	"	50	1.05	52.50				
Aug.	10		"	"	"	50	1.05	52.50				
Oct.	24		"	"	"	29	1.05	30.45			57 1.05	59.85
Nov.			"	"	"	100	1.05	105.00				
Dec.			"	"	"	135	1.05	141.75				
Jan.		'06	"	"	"	160	1.05	168.00				
Sept.	30,	'05	Robinson & Cary Co., St. Paul, Minn.			475	1.00	475.00		24.15		
Apr.	10,	'06	"	"	"	1,000	1.00	1,000.00		102.80		
July	18,	'06	Rockdale Powder Co., York, Pa.			350	.88	308.00				
Oct.	2,	'05	Rogers Coal & M. Co., Olivet, Iowa			50	1.40	70.00				
Oct.	4,	'07	"	"	"	75	1.30	97.50		21.86		
Nov.	11		"	"	"	100	1.30	130.00		30.00		
Feb.	24,	'08	"	"	"	50	1.30	65.00		14.58		
May	19		"	"	"	80	1.30	104.00		23.32		
Sept.	17,	'07	Royal Colliery Co., Virden, Ill.			150	.95	142.50		11.51		
"	30		"	"	"	800	.95	760.00				
Nov.	5		"	"	"	1,000	.95	950.00		74.25		
						20,089		$19,776.20		$1,417.09	103	$108.02

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Plaintiff's Exhibit 1986

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BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Date	Customer	BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
Sept. 30, '05	Sackville, Jas., Coal Valley, Ill.	750	1.03	772.50		81.05			
Aug. 8, '06	" " "	750	1.08	810.00		81.05			
Oct. 1, '06	Sangamon Coal Co., Springfield, Ill.	30	.98	29.40			30	.98	29.40
Nov. 13	" " "	400	.98	392.00		32.00			
Oct. 28, '05	Sexton Bldg. Matl. Co., Chicago, Ill.	10	1.15	11.50					
Nov. 2	" " "	25	1.15	28.75		9.04			
Nov. 15	" " "	25	1.15	28.75		6.38			
Dec. 2	" " "	25	1.15	28.75		6.38			
Jan. 12, '06	" " "	25	1.15	28.75		6.38			
Feb. 26	" " "	25	1.15	28.75		6.38			
Mch. 22	" " "	25	1.15	28.75		6.38			
Apr. 12	" " "	25	1.15	28.75		6.38			
" 26	" " "	50	1.15	57.50		6.38			
July 29, '07	Shady Lane Coal Co., Wyoming, Ill.	10	1.10	11.00					
Sept. 23	" " "	25	1.10	27.50					
Oct. 18	" " "	25	1.10	27.50					
Nov. 21	" " "	25	1.10	27.50					
Dec. 23	" " "	25	1.10	27.50					
Jan. 21, '08	" " "	50	1.10	55.00					
July 24	" " "	25	1.25	31.25					
Dec. 21, '06	Sholl Bros., Peoria, Ill.	20	.95	19.00					
Dec. 31	" "	40	.95	38.00			17	1.10	18.70
Aug. 13, '07	Simmons Coal Co., Canton, Ill.	20	1.05	21.00		2.37			
Jan. 24, '07	Simmons Hdw. Co., St. Louis, Mo.	4	.96	3.84					
" 24	" " "	2	.96	1.92					
" 29	" " "	10	.96	9.60					
Feb. 4	" " "	6	.96	5.76					
" 6	" " "	1	.96	.96					
Mch. 29	" " "	3	.96	2.88					

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

May	21		"	"	"	2	.96	1.92				
June	20		"	"	"	4	.96	3.84				
Sept.	14		"	"	"	4	.96	3.84				
Oct.	17		"	"	"	5	.96	2.88				
Apr.	24,	'07	Smith, Edison J., Ellwood, Ill.			7	1.00	7.00				
Oct.	18		"	"	"	7	1.00	7.00				
Nov.	6		"	"	"	7	1.10	7.70				
Nov.	21		"	"	"	7	1.10	7.70				
Dec.	17		"	"	"	7	1.10	7.70				
Jan.	25,	'08	"	"	"	7	1.10	7.70				
Feb.	3		"	"	"	7	1.10	7.70				
"	10		"	"	"	7	1.10	7.70				
"	25		"	"	"	7	1.10	7.70				
Apr.	20		"	"	"	7	1.10	7.70				
May	11		"	"	"	7	1.10	7.70				
						2,546		$2,680.14		250.17	47	$48.10

Date		Customer	BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
Mch.	9, '06									
Aug.	10, '06									
Dec.	5, '05	Somers, J. H., Coal Co., Cleveland, Ohio...	800	1.00	800.00		66.90			
Jan.	17, '06	South Mountain C. Co., Petersburg, Ill....	50	1.10	55.00		6.38			
Feb.	20	Spanhour, C., Bryant, Ill.	10	1.28	12.80		1.35			
		Springfield Colly Co., Springfield, Ill.	100	1.00	100.00		12.77			
		" " "	50	.92	46.00		6.38			
Jan.	16, '06	" " "	100	.92	92.00			100	.92	92.00
Dec.	13, '05	Spring Creek C. Co., Springfield, Ill.	50	1.00	50.00		6.38			
Jan.	8, '06	Standard Coal Co., East Peoria, Ill.	10	1.15	11.50					
Oct.	17, '05	Standard Co-op. Coal Co., Canton, Ill. ...	50	1.15	57.50					
Aug.	31, '06	" " "	50	1.15	57.50		2.69			
Nov.	22, '06	" " "	50	1.15	57.50		2.69			

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BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Apr.	2		"	"	"	50	1.15	57.50	5.38			
May	8		"	"	"	50	1.15	57.50	5.38			
June	7 & 30		"	"	"	100	1.15	115.00	4.94 & 2.69			
July	23		"	"	"	50	1.15	57.50	2.69			
Aug.	23		"	"	"	50	1.15	57.50	2.75			
Sept.	11		"	"	"	50	1.15	57.50	2.69			
Oct.	3		"	"	"	100	1.15	115.00	5.39			
Dec.	7, '05	Star Coal Co., Ottumwa, Iowa				365	1.20	438.00	56.10			
Aug.	25, '06		"	"	"	400	1.10	440.00	44.00			
Dec.	31		"	"	"	400	1.10	440.00	40.00			
June	26, '07		"	"	"	50	.99	49.50				
Aug.	13		"	"	"	400	1.05	420.00	51.00			
Dec.	10		"	"	"	400	1.17½	470.00	56.10			
Apr.	30, '08		"	"	"	400	1.17½	470.00	40.00			
Apr.	16, '06	Stevenson I. M. Co., Hibbing, Minn.				875	1.12½	984.38	158.00			
May	17		"	"	"	875	1.12½	984.38	244.80			
June	6, '07		"	"	"	1,500	1.10	1,650.00	266.06			
Apr.	15, '07	St. Cloud Granite Works, St. Cloud, Minn.				20	1.35	27.00	5.88			
June	18, '08	Sunnyside Fuel Co., Cuba, Ill.				10	1.00	10.00				
Sept.	26		"	"	"	10	1.00	10.00				
Oct.	19		"	"	"	10	1.00	10.00				
Dec.	20		"	"	"	10	1.00	10.00				
June	19, '06	Sunnyside Coal Co., Cuba, Ill.				731	.95	694.45	43.00			
Jan.	9, '07	Sunnyside Fuel Co., Cuba, Ill.				25	1.00	25.00				
Feb.	7		"	"	"	14	1.00	14.00				
Mch.	12		"	"	"	10	1.00	10.00	2.00	14	1.00	14.00
May	27		"	"	"	10	1.00	10.00				
June	14		"	"	"	25	1.00	25.00				
Sept.	12		"	"	"	25	1.00	25.00				
Oct.	14		"	"	"	50	1.00	50.00				
Nov.	21		"	"	"	50	1.10	55.00				

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

							BILLED				RETURNED		
Date		Customer				Kegs	Price	Amount	Allowances	Freight	Kegs	Price	Amount
Oct.	17, '07	Superior Coal Co., Bened, Ill.				100	1.05	105.00		15.77			
June	4, '08	Sparland Co-op. Coal Co.			Chillicothe, Ill.	10	1.10	11.00					
June	16	"	"	"		10	1.10	11.00					
July	10	"	"	"		10	1.10	11.00					
						8,565		$9,317.01		$1,160.16	114		$106.00
Nov.	14, '06	Talmage, W. A., Co., Red Lodge, Mont.				1,000	1.00	1,000.00		105.00			
Feb.	20, '07	"	"	"		1,000	1.00	1,000.00		105.20			
June	26	"	"	"		1,300	.99	1,287.00		136.80			
July	17	"	"	"		1,000	.99	990.00		120.00			
Nov.	8	"	"	"		800	.99	792.00		128.00			
Aug.	11, '06	Taylor Bros., Princeville, Ill.				10	1.15	11.50					
Oct.	10	"	"	"		20	1.15	23.00		5.11			
Dec.	12	"	"	"		20	1.15	23.00		1.98			
Dec.	26	"	"	"		15	1.15	17.25					
Jan.	5, '07	"	"	"		20	1.15	23.00					
Feb.	4	"	"	"		20	1.15	23.00					
Feb.	28	"	"	"		15	1.15	17.25					
Apr.	23	"	"	"		15	1.15	17.25					
Apr.	24	"	"	"		13	1.15	14.95					
July	15	"	"	"		15	1.15	17.25			13	1.25	16.25
Aug.	23	"	"	"		15	1.15	17.25					
Sept.	30	"	"	"		20	1.15	23.00					
Oct.	29	"	"	"		30	1.10	33.00					
Dec.	12	"	"	"		30	1.10	33.00					
Jan.	6, '08	"	"	"		20	1.10	22.00					
Feb.	1	"	"	"		20	1.10	22.00					
"	28	"	"	"		30	1.10	33.00					

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Plaintiff's Exhibit 1936

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

May	11		"	"	"	20	1.10	22.00				
Aug.	1		"	"	"	20	1.25	25.00				
Dec.	27,	'06	Third Vein C. Co., Orchard Miles, Ill. ...			10	.95	9.50				
Jan.	29,	'07	"	"	"	10	.95	9.50				
March	2		"	"	"	10	.95	9.50				
Sept.	30,	'05	Thomas Coal Co., Evansville, Ind.			50	1.04	52.00		10.31		
Oct.	20,	'05	Thomas Coal Co.,	{ Evansville, Ind. }		750	1.04	780.00				
				{ Morgansfield, Ky. }								
Aug.	29,	'07	"	"	"	400	1.10	440.00		199.00		
Jan.	29,	'07	"	"	"	100	1.10	110.00		22.45		
May	6,	'07	"	"	"	200	1.10	220.00				
June	17,	'07	Tripp Bros., Greenview, Ill.			20	1.00	20.00				
Dec.	13,	'05	Turigliatto, Jos., Diamond, Ill.			585	1.00	585.00		30.00		
March	7,	'06	"	"	"	600	.95	570.00		30.00		
June	21		"	"	"	500	.95	475.00		30.00		
Dec.	5		"	"	"	800	.90	720.00		33.00		
May	13,	'07	"	"	"	600	.90	540.00		30.00		
Sept.	23		"	"	"	600	.90	540.00		30.00		
Sept.	1,	'06	Tuxhorn Coal Co., Keys Station, Ill.				(Donated)					
Sept.	5,	'06	"	"	"	100	.92	92.00		10.00	51	.92	46.92
Jan.	29,	'07	U. S. Gypsum Co., Chicago, Ill.			10	.98	9.80		4.34		
Feb.	27		"	"	"	800	.98	784.00		136.40		
Apr.	25		"	"	"	800	.98	784.00		88.00		
						12,413		$12,237.00		$1,255.59	64		$63.17

Date			Customer	BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
June	28,	'07	U. S. Gypsum Co., Chicago, Ill.	800	.98	784.00		88.00			
Sept.	12		" " "	800	.98	784.00		88.00			
Nov.	6		" " "	800	.98	784.00		88.00			

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Feb.	6, '08	"	"	"	800	.98	784.00		88.00		
Mch.	21, '07	Utica Hydraulic Cement Co., Utica, Ill. ..			800	.92	736.00		33.00		
July	29	"	"	"	800	.92	736.00		30.15		
Oct.	26, '07	Wainwright, Arthur, Sweetwater, Ill.			150	1.00	150.00				
Sept.	22, '05	Walsh Coal Co., Peoria, Ill.			50	1.00	50.00				
"	28	"	"	(R. Walsh)	100	.95	95.00				
"	30	"	"	"	2	1.00	2.00				
Oct.	4	"	"	"	50	1.00	50.00				
"	7	"	"	"	100	1.00	100.00				
"	10	"	"	"	50	1.00	50.00				
"	12	"	"	"	50	1.00	50.00				
"	17	"	"	"	100	1.00	100.00		4.02	235	1.00	235.00
"	24	"	"	"	100	1.00	100.00				
"	27	"	"	"	100	1.00	100.00				
Nov.	9	"	"	"	100	1.00	100.00			1	1.00	1.00
Dec.	1	"	"	"	50	1.00	50.00		2.32	20	1.00	20.00
Jan.	13, '06	"	"	"	125	1.00	125.00			4	1.00	4.00
Feb.	20	"	"	"	75	1.00	75.00			84	1.00	84.00
July	2	"	"	"	150	1.00	150.00	18.75				
Mch.	2, '07	Wantling I. & Co., Peoria, Ill.			25	.96	24.00			57	1.00	57.00
Mch.	6	"	"	"	50	.96	48.00					
April	4	"	"	"	50	.96	48.00					
"	26	"	"	"	50	.96	48.00	7.00				
May	17	"	"	"	100	.92	92.00					
June	5	"	"	"	50	.92	46.00					
"	25	"	"	"	50	.92	46.00					
July	17	"	"	"	50	.92	46.00			50	.92	46.00
Aug.	2	"	"	"	75	.92	69.00					
"	16	"	"	"	24	.92	22.08			24	.92	22.08
Feb.	22, '08	"	"	"								

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BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

June	20, '06	Warrick & Warrick, Colfax, Iowa	50	1.35	67.50		15.40			
Jan.	31, '08	Watson & Anderson, Wyoming, Ill.	50	1.10	55.00					
March	1	" " "	50	1.10	55.00					
Nov.	13, '05	Waverly Coal Mfg. Co., Waverly, Mo.....	800	1.07	856.00		112.00			
Feb.	24, '06	" " "	400	1.08	432.00		110.00			
Oct.	10, '05	Wenoma Coal Co., Wenona, Ill.	12	1.50	18.00		3.06			
Nov.	25	" " "	12	1.50	18.00		3.06			
Jan.	13, '06	" " "	12	1.50	18.00		3.06			
June	16	" " "	12	1.30	15.60		3.06			
July	23	" " "	24	1.30	31.20		.72			
Aug.	14, '05	Waite, James, Peoria, Ill.	2	1.25	2.50			2	1.25	2.50
			8,150		$8,058.88	$25.75	$671.85	477		$471.58

			BILLED					RETURNED		
Date		Customer	Kegs	Price	Amount	Allowances	Freight	Kegs	Price	Amount
Dec.	1, '05	Wenoma C. & M. Co., Bay City, Mich. ...	800	1.00	800.00					
Aug.	16, '07	Western C. & M. Co., St. Louis, Mo.	1,000	1.08½	1,085.00		165.00			
Sept.	6	" " "	1,000	1.08½	1,085.00		165.00			
Oct.	31	" " "	1,000	1.08½	1,085.00		165.00			
Oct.	4	" " "	1,000	1.08½	1,085.00		165.00			
Dec.	6	" " "	1,000	1.08½	1,085.00		165.00			
Jan.	10, '08	" " "	1,000	1.08½	1,085.00		165.00			
"	14	" " "	1,000	1.08½	1,085.00		165.00			
"	18	" " "	1,000	1.08½	1,085.00		165.00			
Feb.	14	" " "	1,000	1.08½	1,085.00		165.00			
"	17	" " "	1,000	1.08½	1,085.00		165.00			
"	28	" " "	1,000	1.13	1,130.00		165.00			
July	2	" " "	1,000	1.13	1,130.00		165.00	1	1.13	1.
Feb.	24, '08	West Riverside Coal Co., Des Moines, Ia.	200	1.06	212.00		23.50			
May	8, '06	Westerly, Geo., Farmington, Ill.	15	1.10	16.50					

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Apr.	26, '06	Western Stone Co., Lamont, Ill.	600	1.00	600.00	30.00	30.00				
Apr.	6, '07	" " "	600	.95	570.00		30.00				
Jan.	26, '06	Whitacre & Co., R. B., St. Paul, Minn....	800	1.45	1,160.00		380.00				
Sept.	21, '05	Whitebreast Fuel Co., Chicago, Ill.	1,000	.92	920.00						
"	22	" " "	1,000	.92	920.00						
Oct.	16	" " "	940	.92	864.80						
"	18	" " "	1,000	.92	920.00						
"	27	" " "	200	.92	184.00						
"	30	" " "	200	.92	184.00						
Nov.	6	" " "	100	.92	92.00						
"	11	" " "	800	.92	736.00			247	.92	227.24	
"	11	" " "	800	.92	736.00						
"	21	" " "	100	.92	92.00						
"	25	" " "	800	.92	736.00						
Jan.	12, '06	" " "	1,000	.92	920.00						
Dec.	17, '07	Wickwire, H. H., Oak Hill, Ill.	4	1.10	4.40						
Jan.	16, '08	" " "	4	1.10	4.50						
Feb.	5	" " "	4	1.10	4.40						
May	13	" " "	4	1.10	4.40						
Jan.	22, '08	Widell & Co., Mankato, Minn.	150	1.13½	170.25						
Oct.	26, '05	Willis Coal & M. Co., St. Louis, Mo.	800	1.00	800.00		61.60				
"	31	" " "	500	1.00	500.00		55.46				
Nov.	20	" " "	800	1.00	800.00		60.20				
Jan.	24, '06	" " "	800	1.00	800.00		61.60				
Feb.	2	" " "	800	1.00	800.00		57.12				
"	26	" " "	800	1.00	800.00		57.12				
Apr.	24	" " "	800	1.00	800.00		60.20				
Jan.	11, '06	Walker, I.	30	1.00	30.00						
			28,451		$29,291.15	$30.00	$2,856.80	248		$228.37	

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Plaintiff's Exhibit 1986

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BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

Date	Customer	BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
Nov. 16, '06	Wantling, I. & Co., Peoria, Ill.	13	.96	12.48					
Dec. 17	" " "	10	.96	9.60					
Dec. 6	" " "	25	.96	24.00					
" 17	" " "	25	.96	24.00					
" 21	" " "	25	.96	24.00					
Jan. 5	" " "	25	.96	24.00					
" 3	" " "	25	.96	24.00					
" 10	" " "	25	.96	24.00					
" 21	" " "	25	.96	24.00					
" 24	" " "	25	.96	24.00					
Feb. 14	" " "	25	.96	24.00					
Jan. 10, '07									
June 5, '06	Winters Coal Co., Peoria, Ill.	20	1.05	21.00					
Sept. 19	Woodside Coal Co., Springfield, Ill.	125	.92	115.00		15.00			
July 20, '06	Zihlsdorf, Marissa, Ill.	800	.95	760.00		61.60			
Oct. 20	" "	800	.95	760.00		61.60			
Dec. 13	" "	800	.95	760.00		61.60			
Sept. 9, '07	" "	800	.95	760.00		61.60			
Aug. 3, '08	" "	400	1.05	420.00		56.00			
Dec. 1, '05	Cash Sales	50	1.08	54.00					
Jan. 6, '06	" "	12	1.10	13.20					
" 24	" "	3	1.40	4.20					
" 29	" "	2	1.25	2.50					
Feb. 15	" " (A. Roland)	50	1.08	54.00					
Feb. 28	" "	9	1.20	10.80					
Mar. 24	" "	3	1.25	3.75					
" 24	" "	10	1.05	10.50					
Apr. 18	" "	64	1.00	64.00					
" 18	" "	1	1.25	1.25					

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

"	23	"	"				2	1.00	2.00				
"	24	"	"				50	1.08	54.00				
May	19	"	"	(Bateman)			56	1.00	56.00				
"	19	"	"				1	1.25	1.25				
June	1	"	"				50	1.05	52.50				
"	21	"	"				3	1.13	3.38				
"	5	"	"				6	1.00	6.00				
July	2	"	"	(Bateman)			6	1.00	6.00				
"	9	"	"	"			6	1.00	6.00				
"	23	"	"				1	1.00	1.00				
Aug.	30	"	"				1	1.25	1.25				
"	30	"	"				2	1.25	2.50				
"	30	"	"				5	1.10	5.50				
							4,386		$4.249.66		$317.40		

(21)

Date				Customer	BILLED Kegs	Price	Amount	Allowances	Freight	RETURNED Kegs	Price	Amount
June	16, '06	Cash	Sales.	.....	10	1.00	10.00					
Sept.	7	"	"		4	1.00	4.00					
"	18	"	"		2	1.25	2.50					
"	18	"	"		5	1.10	5.50					
"	22	"	"		1	1.25	1.25					
Oct.	10	"	"		13	1.10	14.30					
"	19	"	"		8	1.25	10.00					
"	20	"	"		2	1.00	2.00					
"	22	"	"		6	1.10	6.60					
"	22	"	"		50	1.05	52.50		4.65			
"	25	"	"		3		3.45					
"	30	"	"		4	1.25	5.00					

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

"	30	"	"	5	1.10	5.50					
Nov.	7	"	"	7	1.10	7.70					
"	10	"	"	3	1.10	3.30					
"	22	"	"	7	1.10	7.70					
"	26	"	"	2	1.25	2.50					
Jan.	5, '07	"	"	6	1.10	6.60					
"	21	"	"	50	1.00	50.00					
Feb.	2	"	"	2	1.25	2.50					
"	9	"	"	2	1.25	2.50					
"	9	"	"	6	1.10	5.60					
"	9	"	"	1	1.25	1.25					
"	11	"	"	4	1.10	4.40					
Mch.	12	"	"	3	1.00	3.00					
April	17	"	"	2	1.25	2.50					
May	15	"	"	2	1.25	2.50					
June	17	"	"	3	1.10	3.30					
"	29	"	"	1	1.25	1.25					
July	29	"	"	1	1.25	1.25					
Aug.	8	"	"	50	1.00	50.00					
Sept.	18	"	"	10	1.10	11.00					
Oct.	10	"	"	10	1.00	10.00					
"	10	"	"	10	1.25	12.50					
"	15	"	"	12	1.25	15.00					
"	17	"	"	2	1.25	2.50					
"	19	"	"	12	1.25	15.00					
"	31	"	"	50	1.05	52.50					
Nov.	2	"	"	7	1.25	8.75					
"	6	"	"	1	1.25	1.25					
"	14	"	"	4	1.25	5.00					
"	29	"	"	1	1.25	1.25					
				384		$416.20		$4.65			

Plaintiff's Exhibit 1936

BUCKEYE POWDER COMPANY
SUMMARY FROM THE BOOKS FOR THE PERIOD FROM
SEPTEMBER 19th, 1905, TO SEPTEMBER, 1908.

1907		Customer	Kegs	Price	Amount	RETURNED				
						Allowances	Freight	Kegs	Price	Amount
		Cash Sales	50	1.10	55.00					
Dec.	5	" "	14	1.25	17.50					
"	18	" "	2	1.25	2.50					
Jan.	3	" "	5	1.25	6.25					
"	7	" "	2	1.25	2.50					
"	14	" "	3	1.25	3.75					
"	18	" "	2	1.25	2.50					
Mch.	30	" "	8	1.25	10.00					
June	22	" "	3	1.25	3.75					
Aug.	28									
			89		$103.75	———	———	—		———

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8794 **Plaintiff's Exhibit 1429.**

Average monthly spot price of Nitrate of Soda at New York, in 50 ton lots and over, 96%, compiled from actual sales, made by New York brokers.

	1903	1904	1905	1906	1907
Jan.	1.90	2.12	2.37½	2.20	2.45
Feb.	1.90	2.13½	2.31	2.29	2.45
Mar.	2.07½	2.17½	2.38	2.25	2.50
Apr.	2.01	2.27½	2.40	2.27½	2.75
May	2.01	2.27	2.40	2.30	2.55
June	206	2.20	2.55	2.35	2.55
8795 July	2.00	2.11	2.42½	2.28	2.47½
Aug.	2.12½	2.15	2.23	2.41	2.47½
Sept.	2.12½	2.12½	2.19	2.57½	
Oct.	2.10	2.25	2.27½	2.60	
Nov.	2.05	2.32½	2.25	2.60	
Dec.	2.12½	2.37½	2.25	2.47½	

Plaintiff's Exhibit 1433.

Buckeye Powder Company
Statement of Profit & Loss a/c Balances
Dec. 31, 1905 *and May* 31*st* 1906

8796 *Exhibit P* 73—*folio* 25

Balance at debit May 31st 1906

"1906 May 31 Deficit to date per statement J 28 $5,684.51

Exhibit P 71—*folio* 24-96

(Dr $13,183.48)

Balance at debit Jan 1st 1906

(Cr $13,049.29) $134.22

Plaintiff's Exhibit 1437.

RESUME OF BUCKEYE POWDER COMPANY.

			800 Kegs	400 Kegs
East of Mississippi River—	106,502 Kegs,	Buckeye Freight	.0688	.1058
" " "		Our freight	.0525	.0821
	Difference in our favor		.0163	.0237
West of Mississippi River—	138,180 Kegs,	Buckeye Freight	.1236	
		Our freight	.1092	
	Difference in our favor		.0144	

Do not understand from the attached statement that the competitive company is actually selling the number of kegs shown opposite customers' names.

These figures represent customers' consumption, and are used for the purpose of comparison of freight expense as between our mills and competitors' mills.

As an illustration, we mention the Whitebreast Fuel Co. who have secured a small lot of competitive powder. We are still selling this company and expect to retain the business.

This statement does, however, represent the names of the parties with whom competitive powder has been placed.

KENTUCKY. BUCKEYE POWDER COMPANY.

Name	Location	Annual Consumption	Competitive Price	Competitive Freight	Our Price	Our Best Freight	Remarks
Thomas Coal Co.	Morganfield, Ky.	1,200	$1.125	.63 .69 .173 .189	....	.47 .49 .129 .134	Poor credit
Eastern Freestone Co.	Freestone, Ky.	120	....	.60 .66 .165 .181	1.50	.42 .42 .115 .115	
Rowan Co., Freestone Co.	Farmer, Ky.	360	1.225	.62 .68 .17 .187	....	.42 .42 .115 .115	Buy thro' Thos. Henderson & Son, Ashland, Ky.
Bell Union Coal & Coke Co.	DeKoven, Ky.	600	1.50	.63 .69 .173 .189	$1.25	.47 .49 .129 .134	
TOTAL		2.280	AVERAGE	.172 .189		.128 .1304	

BUCKEYE POWDER COMPANY

St. Louis District.

Name	Location	Annual Consumption	Competitive Price	Competitive Freight	Our Price	Our Best Freight	Remarks
Brechnitz	Belleville, Ill.	19,250	....	.24 .39 .066 .107	....	Team 3½c	Interested in Buckeye
Summit Coal & M. Co.	"	3,600	$1.175	.24 .39 .066 .107	$1.10	"	
Little Oak Coal Co.	"	4,800	1.20	" "	1.15	"	
Willis Coal & M. Co.	Percy, Ill.	12,000	.95	.33 .58 .09 .159	1.00	.18 .25 .049 .068	Contract with Buckeye
" " "	Willieville, Ill.	8,400	.95	.38 .59 .104 .162		.23 .30 .063 .082	
Donk Bros. C. & C. Co.	Donkville, Ill.	18,000	....	.319 .469 .087 .129	1.10	.229 .249 .063 .068	Miami
" " "	Troy, Ill.	7,200	....	.319 .435 .087 .119	1.10	.249 .365 .068 .10	"
Oak Hill Coal Co.	Belleville, Ill.	960	1.20	.24 .39 .066 .107	1.15	Team 3½c	
Gus Blair Big Muddy C. Co.	Murphysboro, Ill.	480	1.15	.415 .515 .114 .141	1.15	.18 .25 .049 .068	
Lenz Coal Co.	Shiloh, Ill.	1,500	1.15	.25 .35 .068 .096	1.15	Team 3½c	
Ill. Hydr. Pressed Brick Co.	Cantine, Ill.	1,200	1.10	.35 .47 .096 .129	1.20	.26 .39 .071 .107	Expect to hold.
Marissa Coal & M. Co.	Marissa, Ill.	2,400	1.10	.30 .65 .082 .178	1.05	.22 .30 .06 .082	

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Plaintiff's Exhibit 1137

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BUCKEYE POWDER COMPANY.

St. Louis District.

Name	Location	Annual Consumption	Competitive Price	Competitive Freight	Our Price	Our Best Freight	Remarks
T. M. Meek Coal Co.	White Oak, Ill.	300	....	.28 .50 .077 .137	$1.15	.18 .24 .049 .066	
James Taylor	Belleville, Ill.	....	$1.25	.24 .39 .066 .107	1.35	Team 3½c	We are selling him through Hucke
L. Senior	Belleville, Ill.	960	1.15	.24 .39 .066 .107	....	Team 3½c	
Banner Clay Works	Edwardsville, Ill.	360	1.125	.15 .25 .041 .068	1.35	.255 .275 .07 .075	Equitable
Grandville Supply Co.	Grandville, Ill.	5,000	....	.15 .47 .041 .129	....	.15 .47 .041 .129	Buckeye sold 1200 kegs in March
	TOTAL	86,412	AVERAGE	.076 .121		.047 .057	

BUCKEYE POWDER COMPANY. Wyoming.

Name	Location	Annual Consumption	Competitive Price	Competitive Freight	Our Price	Our Best Freight	Remarks
Carney Coal Co.	Sheridan, Wyo.	4,800	$1.65	.618	$1.65	.591	Contract with Buckeye expires in Aug. Will then confer with us.
Lord & Poll	Sheridan, Wyo.	2,000	$1.65	.618	$1.65	.591	Will confer with us when in market next Fall.
	TOTAL	6,800	AVERAGE	.618		.591	

BUCKEYE POWDER COMPANY. IOWA.

Phillips Fuel Co.	Ottuma, Ia.	12,000	$1.125	.20 .51 .055 .14	$1.125	.19 .22 .052 .06	Bought one Buckeye fc We have since closed contract
Morgan Valley Coal Co.	Morgan Valley, Ia.	800	1.20	.40 .58 .11 .159	1.35	.275 .375 .075 .103	Credit bad
LeClaire Stone Co.	LeClaire, Ia.	2,000	1.08	.265 .365 .072 .10	1.35	.263 .335 .072 .092	Miami
C. Bailey	Frazier, Ia.	1,600	1.30	.40 .72 .11 .198	1.15	.487 .595 .133 .163	Expect to secure next order
Lost Creek Coal Co.	Eddyville, Ia.	5,000	1.10	.30 .50 .083 .137	1.10	.205 .235 .056 .064	Bought 1 car Buckeye. We have since closed contract
Dunreath Coal Co.	Dunreath, Ia.	12,000	....	.30 .58 .082 .159	1.35	.36 .46 .099 .1265	Credit bad
Rascher-Schricker & R. H. Co.	Davenport, Ia.	1,200	1.20	.265 .365 .072 .10	1.35	.15 .365 .041 .10	Connected with Abel Lime & Cement Co. Miami customer.
Drake Hdwe. Co.	Burlington, Ia.	300	1.15	.15 .37 .041 .101	1.35	.15 .20 .041 .055	
Abel Lime & Cement Co.	Bettendorf, Ia.	1,800	....	.268 .364 .073 .10	1.35	.15 .364 .041 .10	Miami
Whitebreast Fuel Co.	Albia, Ia.	28,000	....	.25 .58 .068 .159	1.00 F. O. B. Mooar	.216 .256 .059 .07	Testing 25 kegs Buckeye. We expect hold trade
TOTAL		64,700	AVERAGE	.044 .149		.066 .082	

Cincinnati District

BUCKEYE POWDER COMPANY. OHIO.

Name	Location	Annual Consumption	Competitive Price	Competitive Freight	Our Price	Our Best Freight	Remarks
The Globe Iron Co.	Jackson, Ohio	....	$1.10	.39 .45 .107 .123	$1.10	.19 .23 .052 .063	Promised us next order
Nelsonville Brick Co.	Nelsonville, O.	1,200	....	.35 .49 .096 .134	1.025	.25 .30 .068 .082	Same as Nelsonville Sewer-pipe Co.
W. A. Murdock	Ironton, O.	2,400	1.05	.39 .45 .107 .123	$1.05	.135 .135 .037 .037	We are promised next order.
Chas. G. Sheppard	Nelsonville, O.	1,200	1.20	.35 .49 .096 .134	1.35	.25 .30 .068 .082	Buy thro Nelsonville S. P. Co.
Hanging Rock Iron Co.	Hanging Rock, O.	720	1.25	.39 .45 .107 .123	$1.10	.135 .135 .037 .037	Buy thro Mur-dock, Ironton.
New York Coal Co.	Floodwood, O.	1,200	1.10	.39 .45 .107 .123	1.07	.25 .30 .068 .082	Miami @ $.05
Mike Riley	Centre Station, O.	600	1.20	.31 .35 .085 .099	1.35	.21 .21 .057 .057	Buy thro Mur-dock, Ironton.
E. B. Willard & Co.	Bartles Station, O.	960	....	.39 .45 107 .123	1.35	.21 .21 .057 .057	Buy thro Mur-dock, Ironton.
Nelsonville S. P. Co.	Nelsonville, O.	3,000	1.05	.35 .49 .096 .134	1.025	.25 .30 .068 .082	Have since secured this.
J. M. Lama	"	4,800	1.05	" "	1.025	" " " " " "	
TOTAL		14,880	AVERAGE	.100 .128		.061 .0706	

Plaintiff's Exhibit 1457

St. Louis District — BUCKEYE POWDER COMPANY. — Missouri.

Name	Location	Annual Consumption	Competitive Price	Competitive Freight	Our Price	Our Best Freight	Remarks
Northwestern C. & M. Co.	Bevier, Mo.	12,000	....	.45 .59 .123 .162	$1.10	.34 .60 .093 .163	Contract with B. P. Co. Expect to secure.
Bevier Coal Mng. Co.	" "	12,000	....	" "	1.10	" "	May secure
Vanderhoof & Co.	Birmingham, Mo.	1,200	$1.35	.55 .70 .151 .192	1.25	.45 .60 .123 .165	Expect to secure next order.
Randolph-Macon C. Co.	Elliott, Mo.	20,000	....	.71 .81 .195 .222	1.10	.41 .46 .112 .126	B. P. Co. sold 2400 kegs since Feb. 25—05.
Huntsville Gas & E. L. Co.	Huntsville ,Mo.	180	1.60	.43 .57 .118 .156	1.35 St. Louis	.38 .49 .104 .134	Buy thro' Wabash Coal Co.
Wabash Coal Co.	" "	12,000	....	" "	1.10	" "	Contract with B. P. Co.
F. C. Semple	" "	300	1.40	" "	1.25	" "	
L. J. Smith	Kansas City, Mo.	800	1.25	.55 .70 .151 .192	1.15 L.C.L.	.35 .49 .096 .134	Cerberite has preference
G. M. Boyd	Knocnoster, Mo.	....	....	.59 .84 .162 .231	1.35	.59 .96 .162 .262	B. P. Co. sold 25 kegs
Cerberite Pdr. Mfg. Co.	Lambert, Mo.	7,000 Est.	....	.62 .72 .17 .198	....	.35 .49 .096 .134	B. P. Co. since Dec. sold 2400 kegs.
Samuels & Homes Cons. Co.	Westport, Mo.	1,200	....	.55 .70 .151 .192	1.20 L.C.L. Kan. City	.35 .49 .096 .134	Have secured trade
TOTAL		66,680	AVERAGE	.15		.102	

Chicago District—3 BUCKEYE POWDER COMPANY. Illinois.

Name	Location	Annual Consumption	Competitive Price	Competitive Freight	Our Price	Our Best Freight	Remarks
	Forward—	41,070					
O'Connell Bros.	Danville, Ill.	1,800	....	.22 .30 .06 .082	$1.35	.17 .22 .046 .06	
Phoenix C. & M. Co.	Cornell, Ill.	1,200	$1.35	.25 .31 C.L. .068 .085L.C.L.	1.20 1.35	.15 .44 .041 .121	Expect to secure
J. Buckley	Coal Valley, Ill.	1,200	....	.15 .268 .041 .073	1.35	.15 .47 .041 .129	Selling thro' Knapp & Lees
Chgo. & N. W. Ry. Co.	Chicago, Ill.	960	....	.15 .40 .041 .11	1.20 F.O.B. Ple. Prar.	.15 .15 .041 .041	
Andrew Verino	Carbon Hill, Ill.	800	....	.15 .40 .041 .11	1.35	.15 .47 .041 .129	
Canton Coal & Mng. Co.	Canton, Ill.	....	....	.15 .225 .041 .61	1.35	.15 .37 .041 .101	Poor credit
Standard Coal Co.	" "	800	....	" "	....	" "	
W. E. Shepard & Co.	Braceville, Ill.	....	....	.15 .47 .041 .129	1.35	.15 .47 .041 .129	77 Buckeye and C. L. Austin—March.
McLain Co. Coal Co.	Bloomington, Ill.	300	1.10	.235 .29 .064 .079	1.35 L.C.L.	.18 .47 .049 .129	
Black Diamond Coal Co.	Auburn, Ill.	4,800	1.05	.29 .347 .079 .095	1.10	.28 .47 .077 .129	1000 Buckeye—March expect to hold.
TOTAL		52,930	AVERAGE	.048 .094		.055 .111	

Plaintiff's Exhibit 1937

BUCKEYE POWDER COMPANY

Name	Location	Annual Consumption	Competitive Price	Competitive Freight	Our Price	Our Best Freight	Remarks
C. F. Keeler Coal Co.	Atherton, Ind.	1,800 Kegs	$1.10	.27c .315 .074 .083	$1.10	.17c .22 .046 .06	Interested in B. P. Co.
Cloverland C. & M. Co.	Cloverland, Ind.	3,000 "	1.00	.27 .315 .074 .083	1.05	.16 .18 .044 .049	" "
Thomas Coal Co.	Evansville, Ind.	2,400 "	1.25	.34 .40 .093 .11	....	.22 .25 .06 .068	Poor credit.
Ind. Bituminous C. Co.	Turner, Ind.	1,800 "	1.10	.27 .315 .074 .086	1.05	.16 .18 .044 .049	Interested B. P. Co.
Deering Coal Co.	Westville, Ill.	25,000 "	1.00	.22 .30 .06 .082	1.05	.20 .47 .055 .129	
Powers & Williams	Streator, Ill.	6,000 "	1.10	.15 .15 .041 .041	1.10	.15 .15 .041 .041	We get about half this business Buckeye getting the other half.
TOTAL		40,000	AVERAGE	.061 .077		.051 .099	

Chicago District. BUCKEYE POWDER COMPANY. Illinois.

Name	Location	Annual Consumption	Competitive Price	Competitive Freight	Our Price	Our Best Freight	Remarks
Wenona Coal Co.	Wenona, Ill.	....	....	.15 .463 .041 .127	$1.35	.18 .47 .049 .129	24 Kegs Buckeye in March.
J. D. Paulo	Toulon, Ill.	....	....	.15 .47 .041 .139	1.35	.15 .47 .041 .129	200 Buckeye—March. Financially weak.

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Powers & Williams	Streator, Ill.	3,000	....	.15 .15 .041 .041	1.10	.15 .15 .041 .041	We get half of this business.
Streator Clay Mfg. Works	" "	600	....	" "	1.35	" "	
Capital Coal Co.	Springfield, Ill.	7,200	....	.15 .319 .041 .087	1.10	.20 .47 .055 .129	50 Buckeye—March—Gif
Morelli Bros.	S. Wilmington, Ill.	....	....	.15 .37 .041 .101	1.35	.15 .47 .041 .129	25 Buckeye—March
Peabody Coal Co.	Sherman, Ill.	6,000	....	.16 .464 .044 .127	1.10	.20 .47 .055 .129	10 Buckeye—April—Gif Belongs to Peabody of Egyptian
Rutland Coal Co.	Rutland, Ill.	....	....	.15 .464 .041 .127	1.35	.18 .47 .049 .129	
Hart & Page	Rockford, Ill.	400	$1.00	.15 .40 .041 .11	1.10	.15 .47 .041 .129	
Clear Lake Coal Co.	Bissell, Ill.	....	....	.15 .338 .041 .093	1.35	.20 .47 .055 .129	400 Buckeye—March.
Manchester Coal Co.	Petersburg, Ill.	....	....	.16 .46 .044 .126	....	.28 .47 .077 .129	200 Buckeye—March.
So. Mountain Coal Co.	" "	3,000	....	" "	1.10	" "	60 Buckeye—March.
Maligan & Johnston	" "	....	....	" "	1.35	" "	50 Buckeye—March—Gift.
Poundstone-Refior H. Co.	Ottawa, Ill.	450	....	.20 .51 .055 .14	1.35	.193 .238 .053 .059	
		20,650					

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Chicago District—2 BUCKEYE POWDER COMPANY. Illinois.

Name	Location	Annual Consumption	Competitive Price	Competitive Freight	Our Price	Our Best Freight	Remarks
	Forward	20,650					
Cusack & Edwards	Oak Hill, Ill.	....	....	.21 .39 .057 .107	$1.35	Team 3½c	
William Sutton	Minonk, Ill.	120	....	.15 .47 .041 .129	1.35	.15 .47 .041 .129	
F. W. Moore	Middlegrove, Ill.	240	....	.15 .225 .041 .061	1.35	.15 .47 .041 .129	Financially weak
W. E. Foley	Mapleton, Ill.	2,000	....	.15 .169 .041 .046	1.10	.15 .47 .041 .129	
Kewaunee C. & Mng. Co.	Kewaunee, Ill.	960	$1.10	.15 .37 .041 .101	1.10	.15 .37 .041 .101	
H. A. Tadfore	Kangley, Ill.	....	....	.15 .47 .041 .129	1.35	.15 .47 .041 .129	50 Kegs Buckeye March
Barrett Hdwe. Co.	Joilet, Ill.	800	1.15	.15 .40 .041 .11	1.10	.27 .315 .074 .086	
Bruce & Burdick	Joilet, Ill.	1,200		" "	1.10	" "	
Greenview Coal Co.	Greenview, Ill.	4,800	....	.16 .45 .044 .123	1.10	.28 .47 .077 .129	
Jno. O'Connell C. Co.	Grape Creek, Ill.	1,800	....	.34 .40 .093 .11	1.10	.28 .47 .077 .129	
Green River Coal Co.	Girard, Ill.	....	....	.15 .47 .041 .129	1.35	.15 .47 .041 .129	40 Buckeye March
Churchill & Hemenway	Galesburg, Ill.	1,500	1.10	.15 .47 .041 .129	....	.15 .37 .041 .101	"American"
Maplewood Coal Co.	Farmington, Ill.	6,000	....	.15 .206 .041 .056	1.10	.15 .37 .041 .101	858 Kegs Buckeye since Dec.
Leslie Kramm	Edwards, Ill.	1,000	....	.15 .37 .041 .101	....	.15 .37 .041 .101	
		41,070					

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Plaintiff's Exhibit 1937

8848 **Defendant's Exhibit A-167.**

THIS CONTRACT, made between the Buckeye Powder Company of Peoria, Illinois, first party, and

of second party.

WITNESSETH: That first party hereby sells, and second party buys, all the Black Blasting Powder, in kegs twenty-five (25) pounds each, required for use in the mines owned or controlled by second party as noted below, for the period of from this date, at the current carload price established by the first party, at the location named,
8849 at the time of receipt of order, the present carload price being $1.35 per keg.

The following conditions are mutually accepted:

(a) First party agrees to allow second party a rebate of 15c. per keg on powder purchased on this contract.

(b) First party agrees to allow second party the actual carload freight charges from shipping to delivery point.

(c) Terms are 60 days, or two per cent. (2%) discount for cash if remitted within ten (10) days from date of invoice.

(d) Second party agrees to buy from first party
8850 in carload lots of 400 kegs of 25 lbs. each, all the Black Blasting Powder required by it for the following mines:

NAME
LOCATION.

or for any other mines that may be acquired by the second party, in the same district, during the time of this contract.

(e) It is agreed that powder furnished under this contract is for consumption of the second party only, and not for sale, except to its own miners or employees. It is agreed that a violation of this

clause gives to first party the option of cancellation of this contract.

(f) The first party may furnish, and the second party will accept under this contract, powder of any standard brand, make and quality.

(g) The first party is not to be responsible for delays caused by strikes, accidents, or causes beyond its control.

Dated at , , 190

By

BUCKEYE POWDER COMPANY.

By 8852

Defendant's Exhibit A-207.

Copy.

Peoria, Ill., Oct. 19, 1903.

Hon. Geo. B. Cortelyou,

Washington, D. C.

Dear Sir:

For 21 years I was with the powder association and on Feby. 1, 1903, resigned as General Sales Agent for the U. S. of the Du Pont, Hazard and allied companies to establish a small business that is not associated. It was our hope that we would 8853
be permitted to peacefully conduct our affairs, but we are constantly harrassed and assailed by a tribe of detectives, paid spies and shyster lawyers, who are employed and directed by the Du Pont company. My home was at Wilmington, Del., and I am thoroughly familiar with all the details of the powder and dynamite associations, both of which are conducted in rank violation and defiance of the national and state statutes and compared with which the Beef Trust is angelic.

I have been a Republican for 30 years and was engaged in journalism, the practice of law and lat-

terly in the powder business. Mr. Roosevelt's idea that giving publicity to Trusts would control their evil effects is correct if practically applied and particularly with the unlawful organizations, or pools, that form conspiracies to destroy competitors.

It is but fair to submit this subject in detail to your Department, if it is desired, preliminary to the full discussion that will be given it in press and pamphlet form during 1904. Associated with this company are several stockholders, prominent in political and financial circles, all of whom resent
8855 the ill-advised and unscrupulous methods of the Wilmington outfit.

I am in position to furnish you sufficient proofs, written and oral, to abate these illegal organizations.

I have no desire to assume the role of a reformer and have refrained from presenting this matter until it has become a necessity in defense of our business. Now we shall exhaust every honorable means at our command, and we submit the matter to your Department.

As this is in the nature of a public paper, I have taken the liberty of submitting a copy to Hon. Ed-
8856 ward Addicks, who may feel some personal interest in the appeal of a late citizen of Delaware and lend his encouragement.

Will you kindly advise if we can depend upon your Department to investigate and apply the best remedy to this evil? We reserve the right to take up the question through State officials and the Courts, for I have not lost faith in the judiciary of the country.

I will be pleased to furnish you references to business men, commercial bodies and bankers, who have known my character for 20 years.

Truly yours,

W/AM President.

Defendants' Exhibit A-212. 8857

CENTRAL COAL AND MINING CO.
Miners and Shippers of
BITUMINOUS COAL.

Operating Mines in Fulton County, Ill.

General Offices, Kewanee, Illinois.

Kewanee, Ill., Sept. 3, 1903.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:—

We herewith propose to purchase from you such blasting powder as we may require during the coming year in our mine at East Bryant, Fulton County, Ill., or in such additional mines as we may open or acquire in that vicinity, to the extent of one-half of our actual requirements; you extending to us, however, the privilege of ordering from you our full yearly requirements, which we estimate at about 6,000 kegs. 8858

The price of the above will be $1.10 per keg, F.O.B., C.B. & Q. tracks, at your mill in Peoria.

Terms, 60 days or 2% discount for cash if remitted in 10 days from date of invoice.

Such powder as you furnish us is to be for our own requirements unless otherwise specially agreed and of such quality as to be acceptable and satisfactory for our work. 8859

Should you make a reduction during the year in the present regular price, which we understand to be $1.35 per keg, you are to reduce your price to us proportionately.

Your acceptance of the herein proposal to constitute a contract between us, the same being executed in duplicate.

Very truly yours,
CENTRAL COAL & MINING CO.,
Chas. I. Pierce, Pres.

ACCEPTED:

8860 **Defendant's Exhibit A-377.**

PROSPECTUS.

All of the powder mills in the middle western states, a territory consuming approximately 4,000,000 kegs of powder per year, are now under control of the Powder Trust, excepting one plant owned by coal operators, and the independent plant owned by Buckeye Powder Company.

Negotiations have been pending during the past three months and offers have been made for the Buckeye mills. As the largest stockholder in the
8861 Company, I am opposed to accepting the offer that has been made, and if a sale of the plant is to be effected, as now seems probable, I would prefer to see the mills pass under the control of the Coal Operators and remain independent of the Monopoly that now controls 90% of the production.

A few months ago an offer of $125,000.00 for the plant, exclusive of all stocks and materials on hand was declined by Buckeye Powder Company. It considered its plant and stocks worth $180,000.00, exclusive of the cash and book accounts of the Company.

The plant, good will, all materials and manufac-
8862 tured product on hand, being all physical assets, and exclusive of book accounts and cash can now be purchased for $125,000.00.

I propose to the Coal Operators of Illinois, Indiana, Michigan, Iowa and Missouri to organize and incorporate a company under the laws of Delaware with a full paid Capital Stock of $150,000.00. With the proceeds of said stock to purchase and take over the mills, plant and physical assets free and unincumbered of Buckeye Powder Company of Peoria, Illinois, at a total cost of equally at two and four months. The remainder $125,000.00 to be paid half cash and balance to be used as a working capital.

Defendants' Exhibit A-377

8863

Several Coal Operators have signified their desire to join in this enterprise.

The mills have a total capacity of 1200 kegs dialy and a nominal operating capacity fo 1000 kegs per day. The mills are favorably located and widely distributed, in separate ravines, over a large portion of 101 acres of land owned by the Company, on which there are no mortgages or encumbrances.

If desired, I will agree to operate the mills on same salary that I have received, for one year and the powder can be produced at less than 87c per keg f. o. b. mills, including all salaries and 8864
expenses. During the year my successor can be chosen and instructed, unless one of my sons, at present officers of the Company and Superintendent of the mills, shall be selected. They are fully competent.

This is the only plant that stands between the Coal Operator and much higher prices for powder. It would be a grave mistake if the Coal Operators of the Middle West permit the Buckeye plant to go under the control of the Powder Trust. There is a good revenue in powder at present prices, but a few of the smaller stockholders of the Company, who have defended it during the 8865
past four years against the Powder Trust, at very low prices, wish to retire from the business. These mills are built, have operated successfully, can produce a powder second to none in quality and the Coal Operators can now acquire them at about two-thirds their value.

Powder is essential to the mining of coal and is a considerable ite mof the expense. This is a rare opportunity for the Coal Operators to insure themselves against future extortion and to acquire a plant ready for operation, at much less than they can build one.

8866 *Defendants' Exhibit A-377*

The first thirty Operators, or less, who signify their desire to take this plant at $125,000.00 by subscribing the stock in blocks of $5000.00 each, will be accepted. The excess of $25,000.00 cash to be reserved for working capital. This tender is made confidentially to you and a few others, and if there are any special Operators to whom this offer my anot have been extended and whom you would like associated in the purchase, the invitation to subscribe will be extended to them on receipt of your advices.

8867 Subscriptions for stock should be based on the estimated requirements of powder from the mills by each stockholder.

That is: $5000.00 stock to be subscribed for each

> 10,000 kegs, or less, per year that the stockholder may expect to take from the mills, at prices fixed by the Directors of the Company, all of whom shall be Coal Operators.

The mills are open for inspection on application at the office of the Company and subscribers to this proposal are cordially invited to visit and inspect
8868 the plant.

May we count on you as one of the parties who will join in the purchase of this plant, and shall it be for one, two, or more blocks of the stock?

Very respectfully,

R. S. WADDELL.

Defendants' Exhibit A-519.

DYNAMITE.

	Capacity		Output	
1905 vs. 1904 Competitors	24.94%	Increase	50.02%	Increase
1905 vs. 1904 Du Pont	13.08%	"	23.47%	"
1906 vs. 1904 Competitors	51.66%	Increase	80.16%	Increase
1906 vs. 1904 Du Pont	25.14%	"	55.53%	"
1907 vs. 1904 Competitors	98.65%	Increase	106.10%	Increase
1907 vs. 1904 Du Pont	44.12%	"	67.90%	"
1908 vs. 1904 Competitors	129.68%	Increase	97.93%	Increase
1908 vs. 1904 Du Pont	49.46%	"	43.27%	"

BLACK POWDER.

	Capacity		Output	
1904 vs. 1903 Competitors	32.13%	Increase	25.44%	Increase
1904 vs. 1903 Du Pont	03.92%	Decrease	12.06%	Decrease
1905 vs. 1903 Competitors	55.13%	Increase	54.99%	Increase
1905 vs. 1903 Du Pont	15.24%	Decrease	10.70%	Decrease
1906 vs. 1903 Competitors	88.06%	Increase	73.24%	Increase
1906 vs. 1903 Du Pont	01.53%	Decrease	01.52%	Increase
1907 vs. 1903 Competitors	93.36%	Increase	96.40%	Increase
1907 vs. 1903 Du Pont	03.37%	Increase	10.84%	Increase
1908 vs. 1903 Competitors	96.54%	Increase	62.49%	Increase
1908 vs. 1903 Du Pont	03.92%	Increase	15.17%	Decrease

Defendants' Exhibit A-524. 8875

Chicago, June 22nd, 1905.

E. I. duPont Co.,
Sales Dept., Wilmington, Del.

Gentlemen:

Kindly refer to my letter of June 19th upon the subject of Rock Island Ry. Co.'s connection with the Consolidated Indiana Coal Co., in which I further gave the make-up of the new organization.

Next read copy of letter received this morning 8876
from Pur. Agent Forbes of the Rock Island, finally, my reply thereto, and let me have your instructions as to advisability of meeting Forbes and this new consolidation half way in an effort of conciliation and trade-getting.

What would you think of a price f. o. b. rails of the Rock Island, Keokuk, Iowa, of 95c for the combined business of the interests under consideration? If this proposition meets with your favor, please advise, when I will cause to be forwarded the formal application for reduced price.

Yours truly,

E. S. Rice. 8877

Dictated
(E)
COPY

8878 **Defendants' Exhibit A-525.**

Chicago, June 19th, 1905.

Mr. E. S. Rice,
Gen'l Agent, E. I. Du Pont Co.,
Masonic Temple, Chicago, Ill.

Dear Sir:

Your favor of the 10th inst.

Please allow me to thank you for your courtesy in taking up this matter of reduction in price on
8879 powder with your home office and to state that I note you decline to meet the cut price of 95c.

Of course, under a contract which does not expire until Nov. 1, we are under obligations to pay you the price you are asking. However, it may interest you to know that we are losers by this contract this year, as we could, at the present time, obtain our powder at a less price than we are paying for it, all of which we have duly noted.

Yours truly,

Signed, S. F. FORBES, Pur. Agent.

8880

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY. 8881

THE BUCKEYE POWDER COMPANY, a Corporation,
Plaintiff,

against

E. I. DU PONT NEMOURS POWDER COMPANY, EASTERN DYNAMITE COMPANY and INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY, Corporations,
Defendants.

Reasons on Rule Show Cause. 8882

The following are the reasons and causes upon which the plaintiff rests its motion for a new trial of the above-stated cause of action:

1.—Because the verdict in favor of the E. I. du Pont Nemours Powder Company, returned herein on the 25th day of February, 1914, is against the clear weight of the evidence. 8883

2.—Because the verdict for the Eastern Dynamite Company and International Smokeless Powder and Chemical Company returned herein on the 25th day of February, 1914, is against the clear weight of the evidence.

3.—Because said verdict rendered in favor of the E. I. du Pont Nemours Powder Company is against the law.

4.—Because said verdict in favor of the Eastern

8884 *Rule to Show Cause*

Dynamite Company and International Smokeless Powder and Chemical Company is against the law.

5.—Because the charge of the Court was erroneous in law.

6.—Because of the failure of the Court to instruct the jury on material issues in its charge to the jury.

7.—Because of the refusal of the Court to instruct the jury on material issues as requested by the plaintiff in its charge to the jury.

8885

8.—Because the jury while deliberating upon their verdict had before them a large number of letters, files, pleadings, and other papers that were not in evidence in said case and which they examined and inspected contrary to law.

MacFARLAND, TAYLOR & COSTELLO,
TWYMAN O. ABBOTT,
WALTER J. BARTNETT,
Attorneys for Plaintiff,
Office & P. O. Address,
No. 63 Wall Street,
8886 Borough of Manhattan,
City of New York.

UNITED STATES DISTRICT COURT, 8887

DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY against E. I. DU PONT DE NEMOURS POWDER COMPANY, *et als.*	At Law.

Rule to Show Cause why Verdict should not be 8888
set aside and a new trial granted.

An application for a rule to show cause why the verdict rendered in favor of the defendants in the above-stated cause should not be set aside and a new trial granted, having been made on behalf of the plaintiff within the time required by the rules and practice of this Court, now, upon motion of Twyman O. Abbott, Esq., counsel for said plaintiff, and upon the reasons and affidavits filed in support of said application, it is, on this 13th day of March, 1914, ordered that the defendant, the E. I. du Pont de Nemours Powder Company, do show cause before this Court on the 30th day of March, 1914, why 8889
the verdict rendered by the jury in favor of the defendant, the E. I. du Pont de Nemours Powder Company, should not be set aside and a new trial granted on the ground that the jury while deliberating upon their verdict had before them a large number of letters, files, pleadings and other papers that were not in evidence in said case and which they examined and inspected, contrary to law.

And it is further ordered that both parties may take depositions under this rule, the plaintiff to take and complete its depositions on or before

6890 *Rule to Show Cause*

March 20, 1914, the defendant to take and complete its depositions on or before March 26, 1914, the plaintiff to take and complete rebuttal affidavits on or before March 28, 1914. All depositions to be taken before a notary public of the State of New Jersey on two days' notice to the attorney for the opposite side.

A copy of this rule to be served within two days.

JOHN RELLSTAB,
Judge.

6891

6892

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF NEW JERSEY. 8893

BUCKEYE POWDER COMPANY,
Plaintiff,

against

E. I. DU PONT DE NEMOURS POWDER COMPANY, *et als.*,
Defendants.

At Law.
Stipulation.

It is hereby stipulated that the taking of depositions, under the rule to show cause why a new trial should not be granted, in the above-stated matter, shall be on the following dates, instead of the dates named in said rule, to wit: That the plaintiff shall take its depositions on Monday, the 6th day of April, 1914, and the following day if needed; that the defendant shall take its depositions on Wednesday, the 8th day of April, 1914, and the following day, if needed; that the plaintiff shall take its depositions in rebuttal on Friday, the 10th day of April, 1914; and that the argument on said rule shall be made on Monday, the 13th day of April, 1914. 8894

It is further stipulated that if either party shall be unable to complete the taking of its depositions on the dates named, that consent shall be given to an order of the Court making a reasonable extension of time for taking depositions and for said argument of time for taking depositions and for said argument if the parties cannot themselves agree upon the time for such extension. 8895

TWYMAN O. ABBOTT,
LINTON SATTERTHWAITE,
Attorneys of Plaintiff.
F. S. KATZENBACH, JR.,
ROBERT H. McCARTER,
Attorneys of Defendants.

8896 IN THE DISTRICT COURT OF THE UNITED STATES, DISTRICT OF NEW JERSEY.

BUCKEYE POWDER COMPANY, Plaintiff, against E. I. DU PONT DE NEMOURS POWDER COMPANY, *et als.*, Defendants.	At Law. On rule to show cause.

8897

Depositions taken in the above-entitled cause, pursuant to a rule to show cause, dated the 13th day of March, 1914, before Elwood W. Moore, a notary public of the State of New Jersey, at the Post Office Building, in the City of Trenton, on the 6th day of April, A. D. 1914, at 11 A. M.

Present:

LINTON SATTERTHWAITE, Esq., and TWYMAN O. ABBOTT, Esq., for the Plaintiff.

ROBERT H. MCCARTER, Esq., FRANK S. KATZENBACH, Esq., WILLIAM H. BUTTON, Esq., and E. H. LAFFEY, Esq., for the Defendant.

8898

CHARLES S. CHEVRIER, a witness produced on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. Satterthwaite:

Q. Mr. Chevrier, the position which you hold is what? A. Deputy Clerk of this Court.

Q. Were you such at the time of the trial in this cause of the Buckeye Powder Company vs. E. I. du Pont de Nemours Powder Company et als.? A. I was.

Q. Were you in attendance as such on the day the case was given to the jury? A. I was.

Q. What was that date? A. February 24th, I think was the date.

Q. Did you hand any papers to the jury to take to the jury room or send them to the jury room? A. I sent them through a bailiff, I handed none directly to the jurors.

Q. Will you describe what you had to do with sending out the papers to the jury room as nearly as you can remember? A. Directly after the Judge had taken the exceptions to the charge by counsel, 8900
I went up to the Judge's bench and asked him if he wouldn't call the attention of counsel to the exhibits in the case and ask them to sort out and arrange anything that was to go to the jury room as there was so many of them I was absolutely unable to tell anything about them and Judge Rellstab then called attention of counsel for both parties and said to them that neither the clerk if the Court could tell what exhibits were to go and that counsel must sort them out and be responsible for what exhibits went to the jury room. There was some talk between the attorneys and the court about it and as I recollect one thing Mr. Abbott said was 8901
there might be some exhibits that counsel couldn't agree upon and Judge Rellstab said if they found themselves in that position he would be in his office and would hear them on any such matter. Judge Rellstab then left the bench. I went over to my desk where all the exhibits and papers in the cause were, I don't mean by that the files, all the papers that had been offered in evidence and used in the case, and myself called the attention of counsel to what the court had just said and said to them that they must be responsible for such exhibits as went to the jury room, as I was not familiar enough with them to sort them out.

8902 Q. You say you stated that to counsel? A. Yes, I was just going on to say that Mr. Abbott was standing right in front of me, Br. Button and Judge Laffey were just a little to the right in front of me and Mr. Kattzenbach was at my desk. I am not sure whether he was standing or sitting at that time. I said to counsel that all the papers were there on the desk and then there was some suggestion made by one of the counsel that there were letters or papers of some kind there that had not been admitted in evidence.

8903 Q. Which counsel was that do you know? A. I can't be positive in my mind who said that, or who that suggestion came from.

Q. That is the papers on which desk did the suggestion refer to? A. The desk I had used all through the trial as clerk. Mr. Button turned to Judge Laffey and made some remark that I didn't hear and then turned around and said, "Oh, well, let them all go in."

Q. Whom did he say that to? A. Well, to us all, I didn't—the remark was made generally to Mr. Abbott, to me and Judge Laffey and Mr. Button, we all stood there together.

8904 Q. You all stood there together. With reference to the table occupied by the different counsel, where was that? A. That was at the corner of my table and would be about where Mr. Graham sat during the trial.

Q. During the trial? A. Yes, sir.

Q. Where was Mr. Abbott at that time? A. Mr. Abbott at that time stood practically in front of me, possibly a little to the left.

Q. Then what did you do? A. I then directed my brother who was there with me to go down to the office and get some large red envelopes we have there and put these papers in, and he did so and

8905

came back and put all the papers that were on the top of that desk in those large red envelopes and they were then handed to the bailiff, whether he handed them to me or directly to the bailiff, I can't say. I don't think he handed them to me although I am not sure about it.

Q. With reference to the remark made by Mr. Button to let them all go out, did Mr. Abbott make any response to that? A. Not that I can recollect.

Q. When next did you see any of these papers? A. The next morning, about half past ten o'clock I guess, I am not sure of that hour.

8906

Q. Under what circumstances did you see them the next morning? A. I came in the office that morning about 10 o'clock, I think, and the Judge's stenographer came in and told me that Judge Rellstab wanted me in his room; that Mr. Abbott was there and had said that papers had gone to the jury that should not have gone and he wanted me up-stairs. I immediately went up-stairs and Judge Rellstab was there in his room alone and Mr. Abbott met me, as I recollect, in the outer room, the Judge's outer room and Mr. Katzenbach came in at just about that time and we all went into the Judge's office together and the Judge asked Mr. Abbott what the trouble was, and Mr. Abbott stated that he had learned that papers, letters and so forth had gone in to the jury that were not marked in evidence. There was some talk between the court and Mr. Abbott and the Court directed Mr. Van Horne, or rather I was to tell Mr. Van Horne, or rather he came in just then, I don't remember, either he told Mr. Van Horne directly or I told him, to go to the jury room and get all the paper exhibits that had gone out to the jury. Mr. Van Horne did that and come back with the large red envelopes that went to the jury room.

8907

8908 Q. What was done with them then? A. They were handed to me and we all, Mr. Abbott, Mr. Katzenbach and I went out into the large room, into the other room and I took the envelopes and handed them to Mr. Abbott, I opened them, untied the string and handed the envelopes to Mr. Abbott and Abbott took out the papers and said there were letters and other papers in there that had not been marked in evidence. I handed all the envelopes to Mr. Abbott and he took from them a lot of papers which I have here and handed them to me, and I
8909 asked Mr. Abbott if he had sorted them out and he said it was not his business to do so, but he had done so to the best of his ability, simply to oblige counsel or something. I don't exactly know what that statement was.

Q. Was that in the presence of Mr. Katzenbach? A. Mr. Katzenbach was there when I handed the envelopes to him and my recollection is that Mr. Katzenbach, Mr. Button and Mr. Laffey, they had come in after that, had left the room and gone to the court room. That I took these papers from Mr. Abbott and Mr. Abbott and I followed them to the court room.

8910 Q. And then what was done? A. We all went out into the court room and there was some discussion, I don't remember just exactly what about, there was a suit case of exhibits that had not gone to the jury at all, and I called counsel's attention to them and said they had not gone and Mr. Abbott looked over them and found there was one, two or three articles of incorporation as I remember, and he said they should be with the papers that went to the jury. I took them and put them in the envelopes and I asked counsel then if they were satisfied if the papers now in the red envelopes were such as should go to the jury, and Mr. Button an-

swered that "they were satisfied" and Mr. Abbott said that he would take no responsibility in the matter.

Q. What was done with the papers that were separated? A. I took the papers that were separated with me, and have had them in my possession all the time, I took them down to the office and put a tape and seal on them and they are still under that seal.

Q. That is the package you have in your possession? A. That is the package I have in my possession here now. 8912

Q. Have they any marks on them so they can be identified? A. I don't know, I haven't looked at them at all.

Q. For the purpose of the record, about how many of them are there there? A. I should judge about 300 sheets there.

Q. Purporting to be letters? A. Yes, they look like letters, they may not all be.

Q. Is there anything by which they can be identified? A. I don't know that they can be identified if separated, they are under a seal and as they are now I can identify them.

Q. Are they individually marked for identification? A. This is marked "Plaintiff's exhibit 1322," that is the only mark I see on them. 8913

Package of papers referred to by the witness is offered in evidence and marked "Plaintiff's exhibit P. 1, April 6, 1914. E. W. M."

Q. Do you know anything about any other papers that got in before the Jury? A. Only hearsay.

Q. Mr. Chevrier, do you know whether all the file envelopes in which papers had been placed were

8914 brought out or only part of them? A. That is only what the bailiff told me, he brought them out, I didn't go in the Jury room.

Cross examination by Mr. McCarter:

Q. Mr. Chevrier, the several counsel, Mr. Katzenbach, Mr. Laffey, Mr. Button and you were all standing around near the table and quite close together were they not? A. Yes, quite close together.

Q. If I understand you after the Court had said
8915 that counsel had to take all the responsibility with regard to the exhibits that had to go out to the jury room and if they couldn't agree, he would take the responsibility and settle the matter, the question arose with regard to some exhibits that had been technically not offered in evidence, is that what you said, but had been marked for identification, or something of that kind? A. No, I don't understand it just that way, Mr. McCarter.

Q. I have it in my notes that there was some suggestion that there were some papers or letters that had not been offered? A. There might be some question as to papers, that is if counsel couldn't
8916 agree whether they had been admitted or not that there might be some dispute between them as to those papers and he would see them and he would decide whether they had been admitted.

Q. Who made the suggestion that some papers or letters had not been put in evidence that laid on this table? A. That is one question I can't seem to get clear in my own mind. I don't remember.

Q. There was some discussion as to how long a time it would take to sort them out? A. That was an interminable task.

Q. It would probably take several hours. A. I don't remember the time, they said it would take a long time.

Q. Mr. Abbott was there and Mr. Laffey and Mr. Button and Mr. Katzenbach and yourself during all that discussion, weren't they? A. Yes.

Q. And finally you remember its being said it is not worth while to take that trouble, let them all go out? A. Yes, that is the suggestion I understood to come from Mr. Button.

Q. And you took up the red envelopes and package and put them in those red envelopes which your brother had secured? A. Yes, sir; I put all these papers in these red envelopes.

Q. Right then and there? A. Yes, right then 8918
and there.

Q. Before everybody? A. Yes, before everybody.

Q. And your understanding was that they were all to go out and there was to be no selection made? A. That was my understanding, certainly.

Q. Your understanding was all hands agreed to that? A. Yes, that was my understanding.

Q. Now, did you clear the top of the table of all the exhibits which lay there and put them in those red envelopes? A. Yes, I say I did.

Q. You, or your brother Robert? A. Yes, everything was put in the envelopes that was on the top of the table.

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Q. A little later do you remember a discussion with regard to the green books? A. Yes, that followed just where I said.

Q. Tell us what you remember about that. A. Mr. Abbott then said as to the exhibits in the green book that he didn't want to mutilate the book and thought if the leaves were pasted down it would answer the purpose just as well, and I turned away at that time when counsel was discussing the pasting down of the leaves of that green book. I don't know what became of that discussion except by hearsay, afterward I heard they were pasted down and were sent in.

8920 Q. Was your brother Robert engaged in collecting the exhibits that laid on the top of the desk and putting them in the large red envelopes while this discussion concerning the green book was in progress? A. My recollection is that that had been finished.

Q. Finished before that? A. By that time anyhow.

Q. Yes, and then the envelopes were either handed to Van Horne or he took them, as far as you know, took them into the jury room? A. Yes.

8921 Q. The jury had retired long before? A. The jury had gone out and the bailiff came back.

Q. Now I will next direct your attention to what transpired after the conversation you had detailed in the presence of the Judge and ask you to state where it was that Mr. Abbott selected from the exhibits in the red envelopes the package which has been marked for identification and under a seal, exhibit P. 1, where was that? A. That was in the Judge's outer room, I mean where his stenographer sits.

Q. You waited there while Mr. Van Horne went and got the red envelopes? A. Yes.

8922 Q. And did Mr. Van Horne deliver them to you or what was his disposition of them? A. He delivered them to me.

Q. And you laid them on the table? A. He delivered them to me in the Judge's private office and we went out together, the Judge said he didn't want to take it up then and we went out into the other room and I opened the envelopes, untied the tape that was around them and opened the envelopes, and either laid them down on the table or handed them directly to Mr. Abbott, I am not absolutely positive of that. Mr. Abbott and I were there together and Mr. Abbott took them and sorted out those papers.

Q. How long a time did that sorting out process consume? A. Three minutes, I suppose; a short time, a very short time.

Q. Were the other gentlemen present during the sorting out? A. No, I don't think so; my recollection is that Mr. Katzenbach and Mr. Button had left and walked out the door and had gone to the Court room.

Q. You think it wasn't longer than three minutes that it took to select from that mass of exhibits those 300 letters? A. It was a short time, Mr. McCarter, it may have been five minutes, I am not 8924
positive; it was a short time.

Q. And after the package, Exhibit 1, had been opened by you and the conversation that you have related occurred, what became of the remainder of the exhibits, those not put in the package, were they restored to the envelopes? A. My recollection is that I restored them to the envelopes and went out in the court room for Mr. Katzenbach, Mr. Button and Mr. Laffey were having a conversation and I handed them to Van Horne and told him to take them back to the jury room.

Q. Yes, I see; so that after Mr. Abbott had inspected the exhibits and made the selection of those 8925
contained under your seal, the Judge was not interviewed by any one, either you, Mr. Abbott, Mr. Button, Mr. Katzenbach or Mr. Laffey before the exhibits were returned to the jury? A. No, they didn't go back to the Judge's room.

Q. Now, with regard to the desk upon the top of which these exhibits were at the time the Jury retired, that was the desk furthest west, about opposite the one I sat at, wasn't it? A. Yes, right where you sat. You know one corner which Mr. Graham had, at the other corner of that desk.

Q. Now, these gentlemen you name so often, were

8926 all standing right around that desk, weren't they? A. That desk is on a slightly raised platform. I was at what would be the southeast corner of that desk, right where Mr. Graham sat and Mr. Abbott and Mr. Button and Judge Laffey were not on the platform, they were on the main floor right in front of me, about so, at my feet, this way, and Mr. Katzenbach was over on the side where I sat, either standing or sitting down, doing something with the papers, doing something with some papers down there out of my range of vision, I couldn't see him.

8927 Q. Do you remember remarking after Mr. Button's remark concerning which you have testified, something like this, "Well then I will put them all in the red envelopes"? A. Yes, something like that, not directly like that. I said "Well then I will have them all put in these large envelopes and sent to the jury room."

Q. The gentlemen were occupying the same position? A. We were all standing there just the same, I don't remember any change in the position to amount to anything.

Re-direct examination by Mr. Satterthwaite:

8928 Q. Mr. Chevrier, your recollection of the position of counsel, is that recollection of the position during the entire time? A. Yes, it is Mr. Satterthwaite; this whole concern took only a short time, I don't remember of any change in it.

Q. Do you remember whether Mr. Abbott had some exhibits at his table? A. No, not at that time, before that happened I went to counsel for both sides and asked them if they had any exhibits among their papers that had not been turned over to the Clerk, and my recollection is that they both said to me, no; they had turned everything over. If you

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remember when the case was closed the Court made an order that all exhibits must be turned into the custody of the Clerk and while some were used by counsel after that, my recollection is that everything was put back in my possession.

Q. Mr. Chevrier, do you recollect that after the separation of these papers that Mr. Abbott, Mr. Katzenbach, Mr. Button were before the Judge and that the Judge asked them if the papers had been separated, do you remember something like that? A. No, I have no recollection of it.

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Q. Do you recall Mr. Abbott replying that he had separated them to the best of his ability and would take no responsibility for it, do you recall anything of that kind? A. Yes, to my recollection, that was in the outer room, I said to Mr. Abbott had he sorted the papers and he said I have done so to the best of my ability, and then it was after our conversation had in the court room he turned around and left us just as I sent the papers back to the jury he said he would take no responsibility for the matter, he did make those remarks.

Q. Did he make those remarks in the presence of the Judge? A. The Judge was in the next room and the others walked away out in the court room.

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Mr. McCarter: The Judge all the time was in his private chamber?

Witness: Yes.

Q. Do you recollect that counsel, Mr. Abbott, Mr. Button and Mr. Katzenbach, going into the Judge's chambers after the papers had been separated? A. I have a recollection that we started in there and the Judge said that he had no time and didn't want to be bothered with the matter again, or something of that kind, nothing was said, we merely started in

the room, turned right around and came out; he didn't want to take the matter up again, he was busy or something, and I think the remark was that he had other matters to attend to and we went out.

Q. Mr. Chevrier, you said that you understood that counsel had agreed that those papers—that all hands had agreed that these papers should go out, just what was said that led to that understanding? A. The remark of Mr. Button, "let them all go," on his side, and no opposition from Mr. Abbott and he
8933 stood right there, and I said I will put them all in and send them out; I thought it was agreed by counsel that they should go as there was no opposition to it after the caution I had given counsel, that the Clerk could make no assortment.

Q. Had Mr. Abbott just before said, or called to Mr. Button or yourself that there were papers on that table that ought not to go out? A. Some one called attention that there were papers there not offered in evidence, that is what started the discussion.

Q. That wasn't from Mr. Katzenbach, Mr. Button or Mr. Laffey was it? A. No, I imagine that
8934 was from Mr. Abbott, although I can't remember that distinctly because then Mr. Button turned to Judge Laffey and had a conversation with him and they said, "let all go out."

Q. Are you sure Mr. Abbott stood by you in the same place when Mr. Button made that remark as he had a moment previous? A. I am very sure.

Q. What circumstances led you to think he had not moved from there? A. Just the very vivid impression I still have in my mind of having Mr. Abbott stand right there in front of me while the whole conversation was going on.

Q. He was down there before and was there dur-

ing most of the conversation? A. In my own mind I am sure he was there during all of that conversation.

Q. Have you any circumstances other than the impression that he was down there all the time, that he was there? A. No, I have a mental picture before me of Mr. Abbott standing there.

ROBERT S. CHEVRIER, a witness produced on behalf of the plaintiff, being duly sworn, testified as 8936
follows:

Direct examination by Mr. Satterthwaite:

Q. Mr. Chevrier, what official position do you hold? A. Deputy Clerk of the Court.

Q. Of this court? A. Yes, sir.

Q. And were you acting as such on the 24th day of February when the case of the Buckeye Powder Company vs. The E. I. du Pont de Nemours Powder Company was submitted to the jury? A. I was deputy at that time, yes.

Q. Did you have anything to do with the sending the papers out to the jury? A. Yes, I did. 8937

Q. What? A. I was present in the courtroom after the judge had cautioned counsel, through the judge's charge and then cautioned counsel, and then my brother said to me to go down stairs and get some large red envelopes to put the exhibits in, and I went out and down to the office and came back to the courtroom with a number in my hand, I don't know just how many.

Q. Who were present in the courtroom at that time? A. When I went out or when I came back?

Q. When you came back. A. Well all of the

8938 counsel in the case that had been around. The judge had left the bench and Mr. Abbott was pasting up the green books when I came back, and there was a discussion about pasting of certain exhibits in the green books.

Q. Where was Mr. Abbott at that time? A. He was standing on the main floor at the end of the desk that had the exhibits on, is my recollection.

Q. Had which exhibits on do you mean? A. All the exhibits, the ones spoken of here before, the one the clerk had used.

8939 Q. These green books which contained exhibits, they weren't on the desk? A. No, sir, they were not.

Q. They were on the desk which Mr. Abbott had occupied during the trial?

Mr. Katzenbach: I think that is leading.

Q. (Continuing) What table were they on? A. Well, I don't remember where the green books were, my recollection is there was a set on the other counsel's desk, too.

Q. A set on each desk? A. A set on each desk,
8940 that is my recollection, which ones they were, I couldn't tell, I never looked at them. My brother told me to put them in envelopes and I took the papers to the desk and put them all in envelopes and handed them to the bailiff to take to the jury.

Q. Did you take all the papers that were on the desk? A. My recollection is we cleaned the desk.

Q. You say you handed them to the bailiff? A. That is my recollection, I handed them to the bailiff.

Q. Which bailiff? A. Van Horne.

Q. Now, when was your attention next called to these papers? A. The following morning when in the train before it left Clinton Street station for

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New York, Mr. Abbott asked me if the letters had gone to the jury and I told him "yes, everything that was on his desk was gone." I think that is the next I remember of these papers.

Q. Mr. Abbott boarded the train you were going on? A. Yes.

Q. What then did he do, what did he say in reply to that? A. That they shouldn't have gone out—a great many among them were not exhibits, he may not have said it in that form, some such expression as that, I don't remember his exact words.

Q. Did Mr. Abbott make any further remark as to what he proposed to do? A. Not that I remem- 8942
ber, he was very emphatic that there were papers there that should not have gone out, but what he was going to do about it I don't think he said anything to me about that.

Q. Did he say anything about calling the judge's attention to that? A. If he did, I don't remember it now.

Q. What did you do? A. He was with Mrs. Abbott, seeing her off, we only had a few minutes there then he left the train and came back, of left the train, I don't know where he went after that.

Q. Did Mr. Abbott after that time ask you about any particular papers going out? A. The next 8943
time, it was after that, some days after, I have forgotten the date, when Mr. Abbott came in the office and was talking about the papers and he wanted to know where the exhibits were that had been brought back from the jury room, and I told him I didn't know; I had never seen them after they went out. He said how would he find out or some such remark as that, and I said Mr. VanHorne, the bailiff, put them away in a room upstairs, and I would call him, and he told me to, and I think Van Horne just came in the door then and I asked him to take

8944 Mr. Abbott up and show him those exhibits and Mr. Abbott turned to me and asked if I wanted to go up with them, and I said if you prefer, of course, I will go up and we went up then to the fourth floor, the file room, and looked over the exhibits and sorted out certain ones which I have present here.

Q. You have papers here, then, which you sorted out then from papers which had been returned from the jury room? A. Papers Mr. Van Horne said had been returned from the jury room.

8945 Q. Were they put in your custody subsequent to that? A. Yes, sir.

Q. And have been since? A. And have been since.

Papers produced by the witness are offered in evidence and marked Plaintiff's Exhabit P-2 and P-3 respectively.

Q. This red file envelope which you produce containing papers which are marked as exhibits, and is now marked Exhibit P-4 this envelope and its contents were likewise among the papers sorted out from those which had been identified by Mr. Van

8946 Horne as coming from the jury room? A. Yes, sir

Red file envelope referred to by the witness is offered in evidence and marked Plaintiff's Exhibit No. 4.
Not cross examined.

JOHN S. NEARY, a witness produced on the part of the plaintiff, bein duly sworn, testified as follows: 8947

Direct examination by Mr. Satterthwaite:

Q. Mr. Neary you were one of the jurors in this case? A. I was, yes, sir.

Q. Were certain papers and documents brought to the jury room for the jury to examine? A. They were, yest, sir.

Q. How were they brought? A. In red envelopes.

Q. By whom? A. The bailiff.

Q. Mr. Van Horne? A. Mr. Van Horne.

Q. Have you any idea how many therewere? A. No, there were four or five of them. 8948

Q. In the course of the deliberations of the jury were those envelopes opened and the papers taken out? A. Yes.

Q. Were they all opened? A. They were.

Q. Were the papers examined by the jury in the course of the deliberations? A. Yes, some of them, some the papers by some of the jurors.

Q. How generally were they examined by some of the jurors? A. I don't know that I can tell you that, any more than to say that they looked through the papers.

Q. Were they looked through generally or not? A. I don't think they were all looked at. 8949

Q. Were the papers generally— —

Mr. McCarter: Don't lead him, let him say what was done.

Q. Can you say whether or not the contents of the envelopes were examined and inspected by nearly every member of the jury?

Mr. McCarter: That is objected to as leading.

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A. I think so.

Q. What do you mean by that answer?

Mr. McCarter: That is objected to.

A. I can say this to explain that I don't think that all the papers were examined by all the jurors.

Q. What do you think about it? A. In fact some of the jurors didn't look at them at all.

Q. Do you know who looked at them? A. I think all but one.

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Q. Did the bailiff before the jury had agreed upon its verdict come to the jury room and get the file envelopes? A. My recollection is he took out one envelope.

Q. Do you recollect whether the papers had been out and examined by some of the jurors? A. I can only repeat what I have said, that all of the envelopes had been opened.

Q. That particular one had been opened? A. I expect it had been.

Q. Was that returned afterwards? A. It was.

Q. I hand you a paper marked exhibit P-2 and ask you if you recollect seeing that? A. That looks like a paper I saw there.

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Q. I hand you a paper just marked P-3 and ask you if you have seen that before?

Mr. McCarter: I offer the same objection.

A. I don't remember this one.

Q. You say you don't remember that? A. I don't remember that one.

Cross examination by Mr. McCarter:

Q. Do you remember what time the first ballot was taken Mr. Neary?

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Mr. Satterthwaite: That is objected to as not cross examination and immaterial.

A. I think it was in a half hour after we went out.

Q. At that time had you seen Exhibit P-2?

Mr. Satterthwaite: Objected to as immaterial.

A. I don't think I had seen it at that tme.

Q. Had the envelope been opened and the papers looked at in the manner you have described before the first ballot was taken? 8954

Mr. Satterthwaite: Objected to as immaterial.

A. My recollection was that the envelope had not been opened at that time.

Q. What gentleman of the jury can you remember to have examined any of the documents at any time? A. Most all of the jurors examined the documents more or less with the exception of one.

Q. That is, you, during the time that you were out, observed with the exception of one of the jurors, the other eleven, had some of the papers, is that it? A. Yes. 8955

Q. When was the second ballot taken?

Mr. Satterthwaite: Objected to as immaterial and not cross examination.

A. Mr. McCarter, I don't think I can tell that.

Q. Was it during the evening? A. It was taken probably within the next hour or hour and a half after the first one.

Q. How many ballots were taken before you finally reached a conclusion?

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Mr. Satterthwaite: Objected to for the same reason.

A. I think there were eight or nine ballots, I am not positive.

Q. How many ballots had been taken before any of the papers were examined or looked at by anybody?

Mr. Satterthwaite: That is objected to.

A. I can't answer that Mr. McCarter.

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Q. Isn't it a fact that none of the papers were looked at until night fall came on and more for the purpose of amusing or interesting the gentleman than anything else, they merely glanced through the papers?

Mr. Satterthwaite: That is objected to on the ground that it is immaterial.

A. They were examined more after lunch than they were before lunch, that would probably mean after nightfall.

Q. Now, so far as you are personally concerned you voted the same way on each ballot?

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Mr. Satterthwaite: That is objected to as immaterial and improper.

JAMES E. VANHORNE, a witness produced on the part of the plaintiff, being duly sworn, according to law, testified as follows:

Direct examination by Mr. Satterthwaite:

Q. Mr. Van Horne you are bailiff of this court?
A. I am.

Q. And you were on the 24th of February? A. Yes, sir.

Q. Did you deliver some papers in this case to the jury? A. I did.

Q. From whom did you receive them? A. I took the books and the map from the court room and I took the paper exhibits from Mr. Robert Chevrier.

Q. And you delivered them to whom? A. To the jury.

Q. How were those paper exhibits arranged? A. They were, my recollection is they were envelopes like that (indicating).

8960

Q. Red files? A. Red file envelopes, there might have been some loose ones, I don't remember, I think they were all in envelopes.

Q. You say like this, you are pointing to P 4? A. Like this red envelope (designating P 4).

Q. Did you see anything of them after that? A. Yes, I was directed by the Court the next morning to go and get the exhibits.

Q. What time was that? A. Somewheres around nine or ten o'clock in the morning, I don't know the exact time.

Q. Did you go and get them? A. I did.

Q. How many did you get? A. I don't remember exactly how many I got, the Court directed me to go and get the exhibits and I said "Do you want the books" and he said "no, the papers," and I brought out the envelopes, my recollection is I brought out three or four.

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Q. You left some in there? A. I think not; I was told to get the paper exhibits.

Q. You don't remember how many you brought out, what did you do with them? A. I took them in the judge's room and Mr. Abbott and Mr. Laffey and Mr. Katzenbach and Mr. Button, that was all.

Q. You subsequently returned them to the jury room? A. Yes, sir.

Q. You don't know what papers were removed? A. I do not.

Q. After the jury had rendered a verdict did you do anything with the exhibits that were in the jury room? A. After they rendered the verdict?

Q. Yes. A. Yes, I did.

Q. What did you do with them? A. They were taken upstairs.

Q. By whom? By me and Mr. Sailor the books and map.

Q. What did you do with them? A. Put them in
8963 the exhibit room on the fourth floor east of the court room on the other side of the court room.

Q. Under lock and key there? A. Yes, I have a key, the clerk has another key and the janitor has the third.

Q. Did you visit them subsequently in the presence of Mr. Abbott and Mr. Chevrier? A. Yes.

Q. Did you point out to Mr. Abbott and Mr. Chevrier where the papers were? A. I pointed out to Mr. Chevrier where they were, they were segregated, the books under the table in a box and the paper exhibits on the table in another box that was there.

8964 Q. Did you see whether Mr. Chevrier took any of them? A. No; I left them upstairs.

Q. Then you pointed out to Mr. Chevrier and Mr. Abbott the exhibits in this case? A. The exhibits that came from the jury room.

Q. You made a distinction between the maps and the green books and the books of account and the so-called paper exhibits, do you classify them? A. There were three classifications, I call it.

Q. So far as you know, I understand you to say, you took back to Judge Rellstab's office all the so-called paper exhibits? A. Yes, sir.

Q. When the judge sent for you and directed you

to go upstairs where the jury was did you go in the jury room and get the exhibits, or did you ask him whether he wanted the books of account and the green books? A. The Judge said, "Mr. Van Horne, go and bring the exhibits in here," and I said "do you want the books" and he said "no, I want the paper exhibits and envelopes."

Q. And you followed his direction? A. I might say this, that I was also directed by the judge to ask if the envelopes had been examined, the papers in the envelopes and I asked the foreman if they had been examined and I think Mr. Sturgeon ans- 8966
wered that they had.

Q. Did you comply with the judge's request and bring out all of the exhibits? A. I did, sir, to the best of my recollection.

Q. Do you know whether among the papers there were so-called contracts? A. I don't know anything about the contents of the envelopes.

Q. At the time that you went into the jury room to get the envelopes, were the paper exhibits all in the envelopes or all loose around the table? A. I think they were all in the envelopes because they were handed to me immediately.

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Cross examination by Mr. McCarter:

Q. I understand you to say that you took back all the paper documents, all the paper envelopes? A. Yes, sir.

Q. You don't know what papers were left in them? A. No, sir, I do not know.

8968 PETER O. STURGEON, a witness produced on behalf of the plaintiff, being duly sworn according to law, testified as follows:

Direct examination by Mr. Satterthwaite:

Q. Mr. Sturgeon, you were one of the jurors who tried this case? A. Yes, sir.

Q. Were any exhibits or papers brought to the jury room in red file envelopes? A. Yes, sir.

Q. What was done with those exhibits and the contents? A. You mean when they were first brought in, you mean?

8969 Q. After they were brought in? A. They were all on the table, six or seven of them near the box of books in the corner.

Q. Was this one that you referred to, P. 4? A. There were six or seven, the papers, some had papers in some had leases and different other things.

Q. Were these envelopes opened? A. Yes, sir; I opened some myself.

Q. How many of them were opened? A. Well, during the course of the time we were in the room every one of the envelopes were opened and examined by nearly all of the jurors.

Q. Did you notice how many of the papers you examined were marked? A. I didn't take particu-

8970 lar attention to all the papers, only one paper in particular I paid attention to, the letter regarding the union business which had been sent out, a circular letter of some description, they wouldn't have a man who didn't belong to the union in their employ, and I showed it to Mr. Rockhill and Mr. Woodhouse, that part.

Q. I ask you if you noticed how many of them were marked with some kind of mark? A. I didn't pay any particular attention to that.

Q. Marked as exhibits or for identification? A. I didn't pay particular attention to only this one.

8971

Q. Do you remember the bailiff coming into the jury room and getting some of the papers? A. Yes, I helped to pick them up and helped him put them in the envelopes.

Q. Had the envelopes which he took out been opened and examined? A. Yes, sir.

Q. And the papers in them examined? A. Yes, sir; I put them in the envelopes and I handed out, one or two of them.

Q. I hand you exhibit P 2 offered in this hearing to-day and ask you if you remember seeing that? A. Yes, sir.

8972

Q. Where? A. In the jury room I paid particular attention to it, Mr. Graham's name appeared on it at 42 Broadway and I thought he was a Philadelphia lawyer.

Q. I hand you P 3 in this matter and ask you if you remember seeing that? A. Yes, sir.

Q. Where? A. In the jury room, I remember reading the list regarding Brewster's report, a similar list, I wouldn't say positive this is the list, a similar list regarding Brewster's report. I don't know what the paper was, I don't know anything except it was something about Brewster's report; I don't know whether I saw that particular one or not, I saw so many papers I wouldn't say positively I saw that.

8973

Q. Did you see one similar to that? A. I saw one, it might be four or five or six or seven sheets. I don't know whether it was marked for identification or an exhibit, I don't know whether it was that particular one; I might have seen it, I don't remember positively, I seen every paper in there, glanced over it or something.

Not cross examined.

8974 *August Jenter—Cross*

AUGUST JENTER, a witness produced on the part of the plaintiff, being duly sworn according to law, testified as follows:

Direct examination by Mr. Satterthwaite:

Q. Mr. Jenter, you were one of the jury that tried this case? A. Yes, sir.

Q. You remember the papers being brought to the jury room? A. They came, if you have reference to those envelopes, they came in envelopes just
8975 the same as this (indicating P 4) I think about four or five of them, something like that.

Q. Do you know whether or not these envelopes were opened? A. They were all opened.

Q. By whom? A. Opened by some of the jury, not all of them but by somebody.

Q. After they were opened what was done? A. They looked them over, some of the jurymen looked them over during the time we were in there and we put them back in the envelopes again generally after we looked them over.

Q. Do you remember any of them being taken out? A. Yes.

Q. By whom? A. By Mr. VanHorne.

8976 Q. Do you know whether the contents of these envelopes had been taken out and examined? A. I think so.

Q. I show you P 2 in this matter and ask you whether you remember seeing that at any time? A. No, sir; I don't remember seeing that.

Cross examination by Mr. McCarter:

Q. Had there been a vote as you recall before the envelopes were opened?

Mr. Satterthwaite: Objected to as immaterial and not cross examination.

A. I think so.

Q. Did you change your vote at all?

Mr. Satterthwaite: Objected to as improper and immaterial.

A. No, sir.

JOHN F. DICKSON, a witness produced on the part of the plaintiff, being duly sworn, testified as follows: 8978

Direct examination by Mr. Satterthwaite:

Q. Mr. Dickson, you were one of the jurors in this case? A. Yes, sir.

Q. You remember the papers being brought in the jury room in red file envelope similar to that marked Exhibit P 4? A. I didn't take notice of them being brought in, I saw a number of these after they were in.

Q. What was done with these envelopes after you noticed them? A. I saw different members of the jury opening them and reading the papers, some of them. 8979

Q. Were the envelopes all open or were they not? A. That I couldn't say.

Q. Did you see some of the papers taken out of the jury room? A. Yes, sir.

Q. About when was that? A. I think it was the second day we were out.

Q. Do you know whether they were taken out in the envelopes? A. I ain't positive whether that was the envelope or a package of papers, I saw the bailiff come in there and get a lot of papers, which excited my wonder, what was up.

8980 *John T. Dickson—Cross*
W. Howard Shreve—Direct

Q. Did you see them brought back? A. I did not.

Q. Do you know whether the papers were taken out and examined? A. I don't know whether the papers were taken out of this envelope, the papers were pretty generally used.

Cross examination by Mr. McCarter:

Q. You didn't examine them, did you? A. I did not; no, sir.

8981 W. HOWARD SHREVE, a witness produced on the part of the plaintiff, being duly sworn according to law, testified as follows:

Direct examination by Mr. Satterthwaite:

Q. Mr. Shreve, you were one of the jurors in this case? A. Yes.

Q. Did you see some papers brought in the jury room? A. Yes, sir.

Q. How were they brought in? A. In envelopes similar to that, I think.

Q. What was done with those envelopes after
8982 they were brought in the jury room? A. I think they were opened by some one, I don't know who.

Q. You say they were opened, what do you mean, were they all opened? A. I couldn't say all, which ones were I couldn't say that.

Q. Did you examine any of the papers? A. I did not.

Cross examination by Mr. McCarter:

Q. Had you taken a ballot before the envelopes were examined?

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Mr. Satterthwaite: Objected to as not cross examination.

A. I think we took several ballots.
Q. Before they were examined? A. Yes.

JAMES B. BELL, a witness produced on the part of the plaintiff, being duly sworn according to law, testified as follows:

Direct examination by Mr. Satterthwaite: 8984

Q. Mr. Bell, you were one of the jurors that tried this case? A. Yes, sir.

Q. Do you remember certain documents being brought into the jury room, papers and documents? A. Yes, sir.

Q. After the jury had retired? A. Yes, sir.

Q. They were brought in how? A. Why, my recollection is they were brought in by one of the court officers and said there were a lot more papers in this case.

Q. Were they in envelopes? A. In a large package.

Q. I show you Exhibit P 4 in this matter; were 8985
they similar to that? A. In packages of that kind.

Q. What was done with these envelopes after they came in? A. They were used by the jury, looked over very thoroughly.

Q. How do you mean used, taken out of these envelopes and some of the loose papers were read? A. I recollect there were letters from Mr. Waddell to the du Pont Powder Company and also to the Hazard Powder Company.

Q. You say they were taken out of these envelopes, what do you mean? A. They were taken out of a large package like this and they were sep-

8986 arate papers that had been packages with rubber bands.

Q. How many envelopes were there? A. I couldn't tell that.

Q. Were they all opened? A. Quite a number, I haven't a recollection of the exact number I should say there were thirty or forty.

Q. Were the papers examined by the jurors after they were taken out? A. I believe they were, I examined some of them.

Q. And do you remember the bailiff coming and
8987 getting some of these papers the next morning after you went out? A. Yes, I can't remember how long after the papers brought in but the court officer came in and said there was a package of papers the court asked for and he took them away and my recollection is he brought back some of the papers but not all of them I am not positive about that, my impression is he brought back some of them after taking those papers out.

Q. I hand you P-2 in this matter and ask you if you have ever seen that before? A. Yes, sir; I recollect this paper very well, several of them were speaking about the attorney's names on here.

8988 Q. Where did you see it? A. In the jury room we saw the name of George B. Graham, Broadway, New York, and the question was brought up whether he was a New York lawyer, we were all under the impression his office was in Phailadelphia, and for that reason I recollect this paper very well.

Cross examination by Mr. McCarter:

Q. Did you look inside of that paper or only at the endorsement? A. Yes, sir.

Q. You looked inside of it? A. Yes, sir. And

the different particulars in this paper were discussed whether they had been proven or not.

Q. That is a bill of particulars? A. That is the paper I had.

LLOYD H. ROCKHILL, a witness produced on the part of the plaintiff, being duly sworn according to law, testified as follows:

Direct examination by Mr. Satterthwaite:

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Q. Mr. Rockhill, you were one of the jurors in this cause? A. Yes, sir.

Q. Do you remember after the jury retired to consider the verdict papers and documents being brought into the jury room? A. Yes.

Q. They were brought in in envelopes? A. Yes.

Q. Similar to P 4? A. Yes.

Q. What was done with those envelopes after they were brought in? A. They were opened, I couldn't say that all were opened, a number were opened and the papers handled and some of them read.

Q. How many of the jurors would you say handled them? A. I couldn't say, I think probably five or six. 8991

Q. Would they all handle the same papers? A. Well, I couldn't say, I think some of the papers and some of the envelopes were handled by five or six of the jurors, I couldn't say they all were.

Q. Do you remember the bailiff calling to take some out? A. Yes, sir.

Q. When was that? A. The next morning.

Q. Do you know whether the papers in the envelope which he took out had been examined? A. Yes, quite some of them, I couldn't say as to all of them.

8992

Q. Do you remember his returning any? A. Yes.

Q. I hand witness P 3 and I ask him whether he has seen that before? A. No, I think not.

Q. Did you see anything similar to that?

Mr. McCarter: That is objected to.

Question withdrawn.

Q. Just examine that more thoroughly and see whether you can say whether you saw anything similar to that?

8993

Mr. McCarter: That is objected to, the witness has carefully examined it and says he didn't see it; it is immaterial.

A. I never saw this document, I saw a document similar to that which had sheets of this size and quality of paper, that is one similar to the one I recollect seeing.

Q. Describe the one you recollect seeing. A. It had a blue or green cover.

Q. What was the nature of its contents? A. I don't recall.

Q. P 2 is handed to the witness and he is asked
8994 "have you ever seen that?" A. I saw a document of this character, this color, it had Mr. Graham's name on it, 42 Broadway, New York City, but I don't think this is the one.

Q. Why? A. Because the one I recollect seeing had a list of names in it commencing on the first page, my recollection is.

Q. It had a list of names commencing on the first page. I call your attention to P 3, which has a list of names commencing on the first page.

Mr. McCarter: Objected to as leading.

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A. This is not the one I referred to, this list of names continued down for several pages and then there were names on the first page, two paragraphs of reading matter at the top, which, as I recollect, this is not the one I refer to.

Q. Do you know what that paper purported to be which you refer to? A. Yes, I think it was a list of the customers which had been, as the Buckeye claimed, taken away from them.

Q. Did you notice, Mr. Rockhill, how many envelopes Mr. Van Horne took out at the time? A. I think only one, I think at this time only one.

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Cross examination by Mr. McCarter:

Q. How soon did you take a ballot, Mr. Rockhill.

Mr. Satterthwaite: Objected to as not cross examination and immaterial.

A. I think within five or ten minutes after we went out.

Q. Did you change your vote at all?

Objected to as improper and immaterial.

8997

A. No.

At this point a recess was taken until 2.15 P. M., for lunch.

8998 *Edgar T. Beers—Direct*

After Recess—2.15 P. M.

EDGAR T. BEERS, a witness produced on the part of the plaitiff, being duly sworn according to law, testified as follows:

Direct examination by Mr. Satterthwaite:

Q. Mr. Beers, were you one of the jurors in this case? A. I was.

Q. Do you remember papers and documents coming to the jury room after the jury had retired? A.
8999 A number of papers being brought into the jury room after the jury had retired.

Q. After you had gone into the jury room to consider your verdict? A. Yes, I remember papers being brought in.

Q. How were they brought in? A. I couldn't say.

Q. Were they in envelopes, do you remember- A. Some of the papers were in envelopes.

Q. Witness is shown P 3 in this cause and asked were they similar to that? A. Yes, they were envelopes similar to that.

9000 Q. Did those envelopes contain the papers you speak of? A. What papers?

Q. Papers that were brought into the jury room that you have spoken of, were they in envelopes? A. There were papers in envelopes similar to that one.

Q. Were there any papers in any of these envelopes, do you remember? A. I couldn't say.

Q. You don't know? A. No, I couldn't say.

Q. What was done with these envelopes after they were brought into the jury room? A. They were resorted to at various times for examination.

Q. By whom? A. By different jurors.

Q. How many of the envelopes were opened and the papers removed? A. I couldn't say.

Q. About how many jurors looked at them? A. There may have been a half dozen.

Q. Do you remember any of these papers being called for by the bailiff, Mr. VanHorne? A. Yes.

Q. When was that? A. I can't recollect the time, I know they were called for.

Q. Was it some time after you went out? A. I think they were.

Q. Wasn't it the following day? A. You said the day we went out, I misinterpreted that it was 9002
the day the jury went out.

Q. You were out two days. A. Yes, we were out two days, it was when the jury retired.

Q. When, the second day? A. The last day the jury was out.

Q. Did you see what he took out from the jury room? A. No.

Not cross examined.

GEORGE W. PRALL, a witness produced on behalf of the plaintiff, being duly sworn according to law, 9003
testified as follows:

Direct examination by Mr. Satterthwaite:

Q. Mr. Prall, you were one of the jurors who tried this case? A. Yes, sir.

Q. Do you remember papers being brought into the jury room? A. Yes, I do.

Q. After you had gone out? A. After we had retired.

Q. What were they in, were they in envelopes? A. I recollect them in envelopes.

9004 *George W. Prall—Direct*

Q. Similar to P 4? A. Similar to that in size, I had the impression, I think, they were manilla, large envelopes.

Q. Look at P 4, were they similar to that? A. Similar to that except as I say, I had an impression they were manilla and different color.

Q. After they were brought into the jury room what was done with them? A. They were deposited on the table and the contents were inspected by some of the jurors.

Q. How many of the jurors inspected the con-
9005 tents? A. I saw three or four at least, possibly more.

Q. Do you know how many of the envelopes were opened? A. I do not.

Q. Do you know whether they were all opened? A. I have the impression that most of them were opened, if not all.

Q. Do you remember papers being called for or part of them being called for? A. Sent for?

Q. Yes. A. I am unable to say whether I recollect that distinctly or whether from what I heard. I am unable to say, I think they were sent for.

Q. Do you know any of the officers of the du
9006 Pont company, Mr. Prall? A. I do, Mr. Patterson

Q. When did you meet him?

Mr. McCarter: That is objected to as irrelevant and immaterial and not covered by any of the reasons or theory upon which this rule was granted, the rule being granted upon the ground of the alleged or supposed examination, and at the time when Mr. Prall knew Mr. Patterson or anybody else is entirely irrelevant and immaterial.

A. I think about three years ago.

Q. Have you met him recently?

Mr. McCarter: The same objection.

A. I have not.

Q. Have you met him during the progress of this trial?

Mr. McCarter: The same objection.

A. I shook hands and spoke to him during the progress of the trial.

Q. What did you say to him at that time?

Mr. McCarter: Same objection.

A. Just simply a casual meeting, do you wish to know whether I said anything in regard to the trial? 9008

Q. Yes. A. Absolutely nothing.

Q. Did he say anything as to why the suit was being defended or anything of that sort?

Mr. McCarter: Same objection.

A. Nothing at all.

Q. Did you meet any other officer of the company during the progress of this trial?

Mr. McCarter: Same objection.

A. I did not.

Q. Do you recall Harvey Satterthwaite seeing you to get an affidavit? A. Yes, sir. 9009

Q. Do you recall the conversation with him? A. Yes, sir.

Q. Did you have a conversation with him in which Mr. Patterson's name was mentioned?

Mr. McCarter: Same objection.

A. No, sir.

Q. Did you mention any name of any officer of the company in that conversation?

Mr. McCarter: Same objection.

A. I did not.

Not cross examined.

9010 *Twyman O. Abbott—Direct*

TWYMAN O. ABBOTT, a witness produced on the part of the plaintiff, being duly sworn according to law, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Abbott you were one of the counsel for the defendant in the trial of this case? A. Yes, sir.

Q. You were present at the time the jury retired? A. Yes. sir.

9011 Q. After the Judge's charge? A. Yes, sir.

Q. You have heard Mr. Chevrier's testimony as to what occurred at that time? A. Yes.

Q. Will you state what took place in regard to the sending out of exhibits? A. Yes, as I recall the circumstances they were about like this. Just as the court had sent the jury out, either before or after, I don't recall exactly, I arose and told him I wanted to have some of the exhibits at least go to the jury room and mentioned particularly the books and called attention to the fact that the green books which contained the records of the Government case, some exhibits some parts of them had been admitted and other parts had not and

9012 the question then came up as to how those papers should go to the jury room. The Judge in fact stated that we should try to stipulate with counsel as to that matter and I told him there might be some difficulty about that, and he said he hought we would be able to agree and if not to bring the matter before him, that was as I recall before he left the bench. I then stepped over to the clerk's desk where these papers were and Mr. Katzenbach, Mr. Laffey and Mr. Button were there, I don't recall whether Mr. McCarter was there or not and I brought up the question as to what should be done with those exhibits and I suggested that we

paste down the leaves of those that had not been admitted, and after a little discussion that was agreed to. Well, just about this time I noticed Mr. Button with a pile of letters which he had read into the record, at least over near that part of the desk where those papers were and I asked him if he was going to send those out and he said, "yes, he was thinking of it," or something to that effect, and I said "there are some papers among those that have not been admitted you want to look out about this." I don't recall exactly what he said but he did turn around and make some remark to 9014
Mr. Laffey, I believe he was standing next to him, and I think before he did that he said he didn't care to take the trouble to separate them. Then I made some remark to the effect that they were his exhibits and of course I didn't care whether they went to the jury room or not. Something to that effect. Well, now, just what transpired after that I don't recall further than this, that I took the books then and went to the adjoining room where we were keeping our papers for he purpose of pasting the leaves down and I was in there some time, I think I went to lunch, I wanted to get something to eat before that, but I am sure at any 9015
rate when I came into the jury room again.

Q. The court room, you mean? A. The court room. I saw the desk had been pretty well cleaned off and they were just carrying out the defendant's map exhibits and I spoke to Mr. Robert Chevrier who was doing that and said if you are going to take exhibits, take ours too, and he said "Oh, yes, he was doing that." Well, I went out, it might be some other remarks did pass, but just what they were, I am unable to say. I did not hear anything more about any of the exhibits, and I attempted to give to the clerk the book exhibits after they had

9016 been pasted in and when I gave them to Mr. Van Horne I understood him to say that he had taken them into the Judge's room to show them to him and to see if they were properly pasted and after that deliver them to the jury room. The next morning——

Q. Before you come to that, did you hear Mr. Button say at that time "let them all go out"? A. No, I can't recall that statement by Mr. Button, after the statement which I made to him about there being other papers there but I can recall that he
9017 said he didn't want to take the trouble to separate them and I saw him talking to Mr. Laffey, what happened after that if anything I am unable to say.

Q. Did you hear any such remark made as Mr. Chevrier has testified to? A. No, I didn't hear that remark.

Q. Were you standing by Mr. Chevrier's table all the time the papers were being gotten ready to go out? A. No, Mr. Chevrier is mistaken about that, at least that is my recollection of it because when I left the court room nothing had left the table. I took the books and went out of the room and
9018 at that time nothing had left the table. I went back and when I came back into the court room at 4 o'clock I heard the maps were being taken out and I noticed the table was cleared and I didn't know whether the papers got to the jury room or where until the next morning.

Q. Did you agree in any way to the sending out of the papers that were not exhibits, those that were not exhibits?

Mr. McCarter: That is objected to.

A. I certainly did not agree. If anything was said as Mr. Chevrier testified that there was, I cer-

tainly didn't make any reply to that, I have no recollection at this time of ever having heard that statement made.

Q. Did you hear any such statement and remain silent? A. No, I say if I had heard the statement I think I would have recollection of it. I certainly did not intend to accede to it and my recollection is that I said a second time "I don't want any papers sent out that were not admitted." I know I said it once, whether I said it twice or not I don't know.

Q. What about the next morning? A. The next morning I went down to the train to see my wife off 9020
to New York and Mr. Robert Chevrier came in, I think that is the one, Robert, yes; he said he sat in the seat just in front and just as the train was ready to start I said by the way, "What did they do about the exhibits" and he said he took out everything that was on the table. I said "I am afraid if you did that papers have gone to the jury room that have not been admitted and I shall call the Court's attention to it." So I came up to the Judge's chambers right away and went in there, the Judge was not there and I spoke to his clerk, Mr. Vaughn and I told him what I heard Mr. Chevrier say and I thought it ought to be looked into, and I 9021
think he said he would call the Judge's attention to it and about half an hour after that he came and called me and said the Judge was in his chambers and would like to see me. I went in and when I got in, he said he had sent for Mr. Katzenbach and he would be up there in a few minutes and when he came we went into the Judge's chamber and talked to him about it. I told him then what I heard from Mr. Chevrier and after some discussion the Court directed that the papers should be sent for and Mr. Van Horne was sent for and shortly returned with the papers.

9022 Q. Then what was done? A. Well, Mr. Chevrier, Mr. Charles Chevrier, I believe is the gentleman, laid them out on the typewriter desk of Mr. Vaughn and opened them and I think there was two packages, two envelopes and I looked at them and saw some marks for identification and when I called his attention to that, I believe Mr. Button, Mr. Laffey and Mr. Katzenbach, who were present at that time and myself had some controversy regarding it and after that was ended, I undertook to segregate the papers, telling them I didn't feel it my duty
9023 to do it, excepting as I separated them as a matter of convenience and I pointed out those I thought were not admitted and it took may be a few minutes, I don't think it was more than five minutes possibly.

Q. Who was present when you were doing that? A. Mr. Chevrier was there part of the time, I think he went out for a few moments, maybe he was there all of the time, a short time, I simply looked at them and saw they were marked for identification, not marked for exhibits and segregated them, separated them that way and called his attention to it and told him I separated them the best I could and then
9024 we went out in the court room and he asked the other attorneys whether they were satisfied that the papers were properly segregated and then some more discussion took place between counsel and I recall after the discussion that Mr. Chevrier didn't know whether to take them or not, he seemed to be somewhat in doubt about them and he took them as I recall and went into the judge's chambers again, and in a little while I was called. I think Mr. Katzenbach and possibly Mr. Button and I went in then to the judge's chambers again and at that time I stated I had separated the papers as I thought they ought to be separated, and the judge asked me what

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was to be done with them. I believe I said I didn't care to take any responsibility in regard to the matter. The Court said he wouldn't rule on it, he didn't care to be bothered with it and the clerk took the papers. After that, I don't know what transpired to my own personal knowledge.

Q. Was anything said that you would assume responsibility for the correctness of this separation? A. Well, I said I wouldn't assume any responsibility in regard to it, that they had simply been separated to the best of my ability.

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Q. To whom did you say that? A. I said that to Mr. Chevrier, I said it to the judge and I said it to the three gentlemen present, Mr. Katzenbach, Mr. Laffey and Mr. Button.

Q. After the verdict was rendered did you do anything further towards seeing what papers were in the jury room? A. After the verdict was rendered I saw several of the jurors with reference to just what transpired in the jury room in regard to the papers, and in the course of the conversation with one or two of them they spoke of this bill of particulars, using that expression. I didn't know anything at that time about the bill of particulars being in the jury room. I came up shortly

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afterwards to the clerk's office and Mr. Robert Chevrier was there, I believe, and I asked him if he knew where those papers were that came from the jury room, and he called Mr. Van Horne and Van Horne told him he had taken them in a certain room, and I mentioned that I had learned from these jurors there were some other papers out there would he kindly let me see the papers, so we three went together, Mr. Van Horne, Mr. Robert Chevrier and myself, to the room in this building where the papers were taken by Mr. Van Horne and he pointed them out and he left, Mr. Van Horne left, and Mr. Chevrier and myself examined the papers

at that time and we found there this paper marked P 2, and also this paper marked P 3, and also the papers enclosed in this document marked P 4, and I called Mr. Chevrier's attention to this particularly as not having been in the case, admitted, and he took them, took them away with him and I haven't seen them until today again.

Q. Did you have any idea or knowledge that those papers were upon the table, the clerk's table, at the time you, Mr. Button, Mr. Laffey and Mr. Katzenbach were around there? A. Yes, I had knowl-
9029 edge that P 4 with its contents was on the table.

Q. These are the book exhibits, P 2 and P 3? A. I didn't know these papers were on the desk, P 3 I had never seen before. I didn't know anything about that until I saw it among the papers there in the room. This P 2 I may have seen this, being a copy of the document similar to the one which I have.

Q. At the time you spoke of having papers out there that were not marked exhibits on the clerk's desk, what papers did you have knowledge of there then? A. The papers that I had in mind at that time were the letters, I know the letters that had
9030 been admitted as exhibits and those that had not been there were much handled and had been intermixed, and I saw Mr. Button with his hands on that pile; I was thinking of those papers and that is what I called his attention to.

Q. Have you any further statement you want to make, Mr. Abbott? A. Not that I think of.

Cross examination by Mr. McCarter:

Q. Mr. Abbott, you had heard the judge during the progress of the trial, and I think before the summing up, direct that all exhibits be collected

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and given to Mr. Chevrier and put out there on the desk? A. I can't recall, Mr. McCarter, just what the judge did say, I remember there was some discussion about the matter, and I assume the record will show just what he said about it.

Q. And didn't you in fact collect what had been given to the clerk on your side and deliver them at that time? A. I don't think I did, except it was some paper which had reference to those contracts and other documents I may have had on my desk there. And one exhibit I recall particularly, not handing to anybody, was a book exhibit, that is the 9032
books of account, and the exhibits that were in the Government record that had been admitted and the map, I paid particular attention to the maps, but as to the other papers, I don't recall anything unless some of those documents known as the contract list which I had, were handed to me.

Q. Didn't you, in fact, in the course of the several days' argument in summing up the case to the jury, go to that desk of the clerk and refer yourself to some exhibits which you used in the course of the argument? A. I think very likely I did. I was familiar with the papers on that desk very largely.

Q. And didn't you know at that time that all the 9033
exhibits were by direction of the court on that table, except perhaps one or two which had been removed during the argument of the gentleman who had preceded you? A. That may be, I can't say that, I had seen a great many of the papers on that desk.

Q. After, or about the time Judge Rellstab left the bench you recollect standing near the same table we have been talking about, where the exhibits were, where some of the exhibits were and that closely around that table Mr. Charles Chevreir, Mr. Katzenbach, Mr. Laffey and Mr. Button, do you know that? A. We were all very close to the table at the time.

Q. Could you recall that something was said with regard to the Waddell letters that you had offered in evidence and that had not been actually marked in evidence? A. No, Waddell's letters had not been offered in evidence, they were offered for identification.

Q. Do you remember there was some talk on this occasion concerning letters other than those that were marked in evidence on Mr. Button's cross examination of Mr. Waddell? A. Yes.

9035 Q. Now don't you recollect the fact that it was at least suggested that they should be segregated from those that had been marked, and that in reply to that suggestion it was stated that that would take an hour or two and it didn't seem worth while to do that, do you remember that? A. No, I remember this, though that may mean about the same thing. I heard Mr. Button saying he didn't think the jury would read them if they went in and he said it would take some time to segregate them.

Q. And don't you recall some one making the suggestion that so far as he was concerned, he was going to let them all go in and both sides would be spared the trouble of separating them? A. No, I

9036 don't remember that.

Q. Don't you recall the fact that Mr. Button turned around to Mr. Laffey and said "Mr. Laffey, I guess we will send them all in"? A. If I heard anything Mr. Button said to Mr. Laffey I don't recall it, I do remember his turning around.

Q. Did you have any curiosity to learn what he said? A. No.

Q. You were right there, weren't you? A. Yes.

Q. It was after Mr. Button made some remark at any rate to the effect that he was going to let all go out, that you said that you didn't care whether they went or not or something like that? A. No, what

I said was with reference to the papers being his exhibits and I did say I didn't care whether his exhibits went or not, that they weren't ours and I was looking for my exhibits, I made that statement, I think, more than once or words to that effect.

Q. You knew at that time that these letters, which I will refer to as not offered in evidence on the cross examination of Mr. Waddell, according to your recollection, you know they were on the table? A. Yes, I knew those letters were on the table that is the reason I called attention to it.

Q. They were quite bulky? A. Yes, there were a 9038
lot of them.

Q. Now, whatever had been said about it, whatever the understanding was, after you came back into the court room, after pasting up the green books you found they had gone? A. I found everything on the table had gone, that was, I think, it must have been an hour or a little more or it may not have been as long as that.

Q. The maps had not gone for an hour after the jury went out? A. The maps had not gone when I came back into the court room, that is what made me speak of it, they were just taking out the maps of defendants, I notice they had gone out.

Q. Was Robert Chevrier there when you went 9039
out? A. Robert is the younger one?

Q. Yes. A. You mean when I went out the first time?

Q. Yes. A. Well, I can't say as to that; I don't remember Mr. Chevrier being there, he said he was there, but I don't wish to controvert that but I don't remember his being there at the time I went out.

Q. You saw the envelopes in which the papers were put? A. No, I didn't see them put in the envelopes, I know some of them were in envelopes at the time; all those contracts there, I think those

9040 *Twyman O. Abbott—Cross*

contracts were arranged alphabetically, there must have been fifteen or twenty envelopes or papers these were in I should say there were twenty to twenty-five different envelopes that went to the jury room that I know of.

Q. Did you hear any discussion with regard to lunch for the jury? A. I don't know, I was pretty hungry myself, I remember that; I can't recall whether I heard any discussion about the lunch.

Q. Don't you remember its being agred—— A. I do now, I remember there was a discussion about
9041 that and Mr. Chevrier said that this was a private matter and the expense of feeding the jury would have to be borne by counsel. I told him we would bear our share.

Q. And as I understand your evidence as soon as it was agreed that you might paste up rather than mutilate the Government records you left and went into your own room for the purpose of preparing the book? A. Quite soon after that I can't recall being in the court room at all after that was agreed on, it might be I was for a little time.

Q. That is the last subject of conversation you can remember while you remained in the room? A.
9042 I wouldn't swear to that positively but my recollection is that I went very quickly after that.

Q. And this conversation you remember preceding the talk about the green book? A. Well, it seems to me it was co-incident with it, I am not so sure. We spoke about these papers part of the time and about the books part of the time, I think it was sort of intermixed.

Q. Had you thought at all during the balance of the afternoon in regard to the question as to whether those other papers had gone out to the jury. What was it, that meeting Mr. Robert Chevrier on the train that called your attention to it? A. It

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was this: Seeing him there and not knowing what disposition had been made of those other exhibits, and not having seen Mr. Button or any one since, I just out of curiosity thought I would inquire as to what was done, it wasn't a matter I had thought of seriously at all, but inasmuch as I saw Mr. Chevrier it brought the last time I met him before my mind, and I just inadvertently or casually asked him the question.

Q. You then now recall that you had seen him in connection with the matter the day before? A. I said before, I did. You asked me as I understood 9044
it, Mr. McCarter, whether I saw him in the room when I left the room, that is the way I understood your question, that I could not say.

Q. You said you hadn't seen any other gentlemen, hadn't you talked to Mr. Laffey at breakfast at the Hotel Sterling, that mornnig? A. Yes, I think I I did, I don't think I spoke to him about the papers.

Q. At any rate, who opened the conversation with Mr. Robert Chevrier on the train? A. I think I introduced him to my wife.

Q. You came back to the court house and saw the Judge? A. I saw his clerk then.

Q. How many envelopes did Mr. Van Horne bring 9045
back? A. My recollection is there were two, there might have been three.

Q. You swore in the affidavit forming the basis of this proceeding that there were several. A. I think that will cover the affidavit, I understand several to be two or more.

Q. There were not three or four? A. I think there were at least two, there may have been three. I don't think there were four, but I am not so sure about that, I am only giving my recollection offhand.

Q. After Mr. Van Horne appeared with the

9016 brown envelope they were given by him to whom? A. I think they were placed in the hands of the clerk, Mr. Chevrier.

Q. That was in the presence of the Judge or outside in the anteroom? A. The picture that is now in my mind is that Mr. Chevrier had those papers and I can see him now with the papers on the typewriter desk of the Judge's clerk, and that is the first I can see now of those papers after they came out of the jury room, whether they were handed to Mr. Chevrier there or in Judge Rellstab's chamber
9017 and carried there, I can't say.

Q. This typewriter desk, in what room is that located? A. In the ante-room of the Judge's chamber.

Q. Leading into the Judge's private room? A. Yes, sir.

Q. So that the first picture you have of these envelopes Mr. Van Horne had brought down after they had left the hands of Mr. Van Horne or Mr. Chevrier is of them on this typewriter desk in the adjoining room to the Judge? A. That is the only place I can see them at this moment.

Q. What conversation took place there after they
9018 had been brought in before Mr. Katzenbach and Mr. Button left? A. That is more or less personal; I don't care to relate it, as it has nothing to do with the case.

Q. There was some altercation about the matter, some feeling about the matter? A. I don't care to bring that in, Mr. McCarter; it was unpleasant to both sides.

Q. I don't care to bring that in; anything that transpired, these gentlemen left you in there with Mr. Chevrier. A. I think that is correct; they disappeared.

Q. And you went through the papers and selected

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the batch now under the Clerk's seal and marked P 1 here? A. I selected what I thought were papers that should not have gone in and handed them to the Clerk and except that I haven't seen them except as they were brought here.

Q. You went through all the envelopes that were there? A. I think I did; yes.

Q. How long did that take? A. Well, my recollection is about five minutes; it was a pretty short time.

Q. And after that was over, you told Chevrier to take the balance back to the jury? A. No; I just handed them to him and I didn't give any instructions at all; that was a matter left to more discussion between counsel in the court-room. I simply showed him; I said, "Now, I have separated these to the best of my ability," I think I used that expression, and the Clerk inquired of us what he should do, and I declined to take any responsibility regarding them.

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Q. Did you see Judge Rellstab again that morning? A. Well, my recollection is just as I testified a moment ago, that after this discussion between counsel, which occurred in the court-room that all the counsel except myself disappeared in the direction of the Judge's chamber, and I think Mr. Chevrier and in a little while I was requested to come in, that is my recollection, and I went in there, and we had some colloquy about the papers. The Judge said he was busy, and I think finally said he was too busy to consider it, and declined to give any order in the matter.

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Q. Do you remember asking him for any order? A. I don't think I did; I told him what had transpired and that I had separated these papers, it is possible I did, I thought that the Judge could make such order as he cared to make in the premises.

9052 *Twyman O. Abbott—Cross*

Q. Do you remember distinctly saying that? A. No; I do not.

Q. You knew Mr. Van Horne, Mr. Chevrier or somebody took the residue of the papers back to the jury room? A. I heard so afterwards.

Q. In fact, you went to look for the exhibits after the jury came in the same day? A. After the jury came in, not the same day.

Q. The day after? A. No; I think it was, just a moment, I think it must have been a week or ten days.

9053 Q. Whenever it was, at any rate, you found the residue of the paper exhibits, so-called, had been with the jury after your segregation? A. Yes; the only reason I went back to see if any had been in the jury room was because of what I had learned from these jurors that they had seen certain papers; I don't know what ones they had seen.

Q. Which jurors were they? A. Some of these spoke as you notice in these affidavits, nearly all of them speak of the demand for the Bill of Particulars; I knew I had not seen any such paper among those I examined, and I wondered what they had seen, and I had sort of an idea I would inquire

9054 of the Clerk, and that is when I saw Mr. Van Horne and Mr. Chevrier, and we went up to the room where they were and I saw the papers there at that time.

Q. Do you recall that in the court-room, I think it was, or some room in that building, after you had segregated the papers that are under the Clerk's seal when the question arose in the presence of yourself, Mr. Katzenbach, Mr. Laffey and Mr. Button a sto what disposition should be made of the exhibits that Mr. Button spoke for the three gentlemen and said he didn't care whether they all went back or whether none of them went back, and

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you said you would take no responsibility in the matter, or words to that effect? A. I think Mr. Button made some remark very much like that, and I think I made the remark very much as you have indicated; that it wasn't, I think, I always coupled it with the statement that they weren't my exhibits and I was not looking after any but my own exhibits.

Q. Well, you didn't hand your own exhibits to the jury, did you? A. I had handed all I cared anything about to the Clerk.

Q. When? A. At the time when he was preparing to take the papers out to the jury room. 9056

Q. During this conversation we were speaking of? A. The original conversation, yes.

Q. What exhibits had you that you then and there handed to the Clerk that were not all on the table? A. I called his attention to these contract exhibits and the Brewster report and others of that character and the 95-cent prices and whether I handed this matter or not or whether in the package I can't say. I was anxious to have those parts go out and this book.

Q. I am not speaking of the book; there isn't any difference between us about that; I am speaking of the papers of counsel; are you quite sure you handed a single paper exhibit to Mr. Chevrier at that time? A. No; I am not. 9057

Q. Did you really handle or touch a single document on the desk? A. No, sir.

Q. Weren't your hands occupied with this green book or books about which you were interested about having certain portions go to the jury? A. I think that is right, because I might have handled some of those other papers; I am not sure.

Q. You have no recollection? A. These papers I just referred to, this 95-cent price list.

9058 *Twyman O. Abbott—Redirect—Recross*

Q. You have no distinct recollection about that? A. I have no recollection about that distinctly.

Redirect by Mr. Satterthwaite:

Q. When you sorted over these papers after they had been brought from the jury room by Mr. Van Horne, the bailiff, did you see among the papers then P 2, P 3 or P 4? A. No; they were not among those papers.

Q. Did you as a matter of fact know, until you
9059 had been informed by Mr. Robert Chevrier the following day that the papers you understood were on the Clerk's desk, and not exhibits had been sent out? A. No; I did not.

Recross by Mr. McCarter:

Q. Then you are quite certain that your examination of the papers at the time you segregated them was sufficiently careful to enable you now to positively say that none of those documents could have been overlooked by you? A. Yes; I know that and the reason I know that was because there were no papers in that package that Mr. Van Horne
9060 brought out except these letters.

Q. Well, you have already sworn in the proceedings that several packages were brought out, and you have said to-day it might have been three or four. A. Whatever was brought out I examined all of them, and nothing but letters in any of them.

Q. Do you remember what directions Judge Rellstab gave Mr. Van Horne when he sent him to the jury room? A. No; I don't know that I heard that direction; it is just possible I did hear it, but all I know is what I heard Mr. Chevrier testify to here to-day, but I am certain that none of the contracts were brought back, because they were in a number

of envelopes and I looked through all of the papers that were brought out at that time and I saw nothing of any of these papers. Since you ask me that question, I do remember that Mr. Van Horne had been instructed to bring out all the letters. Whether the instructions that were given by Judge Rellstab or somebody else, simply telling me that is what has been done, I don't know. 9061

Q. You were there and heard the directions and waited until Van Horne came down, didn't you? A. I was there and heard the directions, whether I heard the directions or not I can't say; I saw the papers when Mr. Van Horne came in with them and gave them to the clerk, saw the package. 9062

At this point the further hearing in this matter was adjourned to Tuesday, April 7th, at 10.30 A. M.

9063

9064 IN THE DISTRICT COURT OF THE UNITED STATES, DISTRICT OF NEW JERSEY.

BUCKEYE POWDER COMPANY, Plaintiff, against E. I. DU PONT DE NEMOURS POWDER COMPANY, *et als.*, Defendants.	At Law. On Rule to Show Cause.

9065 Trenton, N. J., April 7, 1914.

The hearing in the above-stated case was continued pursuant to adjournment. Appearances as heretofore noted.

HARVEY T. SATTERTHWAITE, a witness produced on the part of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. Satterthwaite:

9066 Q. Do you know George W. Prall? A. I do.

Q. Did you have a conversation with him recently? A. Yes, sir.

Q. State just what that conversation was.

Mr. McCarter: That is objected to as calling for a conversation between a witness and some third person, and if he is to testify as to particular testimony Mr. Prall gave yesterday, it is contrary to law to undertake to do that upon a collateral matter, and thirdly and finally that the whole subject of which Mr. Prall was interrogated and which we

expect this witness is to be asked about is outside of the scope of the rule to show cause in this matter.

A. I had a talk with him at the time I approached him to obtain a deposition from him for use in obtaining the rule to show cause in this case and during the conversation he told me he had met a Mr. Patterson of the du Pont Company and that after meeting Mr. Patterson and talking with him that he had a thought that he understood the du Pont side of the case the their motives in fighting this 9068
case and that he understood the du Ponts regarded this as a strike case or an attempt to hold them up and that they anticipated other costly suits and were fighting this suit to discourage any other suit.

Mr. McCarter: Notice of a motion is now given to strike out the testimony as incompetent, for all the reasons stated.

A. (Continuing) And he went on and he asked who was financing the suit against the du Ponts and if the lawyers were getting paid on a contingent basis.

Mr. McCarter: I give the same notice. 9069

Not Cross Examined.

ROBERT CHEVRIER, recalled for the plaintiff.

Direct examination by Mr. Satterthwaite:

Q. Mr. Chevrier, I think you testified yesterday that you gathered up the papers from the clerk's desk in the court room and put them in envelopes before they were taken to the jury? A. Yes.

9070 Q. Now, how many envelopes did you put those papers in? A. All the papers or the letters?

Q. The letters? A. Two or more, I am not sure how many more there were, two or three.

Q. That is the letters as distinguished from the other documents? A. Yes.

Cross examination by Mr. McCarter:

Q. The envelopes had no endorsement or indication on the exterior that they contained letters as against other papers, did they? A. No, sir.

9071 Q. All just alike? A. All just alike, blank envelopes with nothing on them.

Plaintiff rests.

DEFENDANT'S PROOFS.

JOHN P. LAFFEY, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. McCarter:

Q. Mr. Laffey, you were one of the counsel for
9072 the defendant in this case and were present I think throughout the entire trial? A. Yes, sir.

Q. Do you remember then, of course, the Judge's charge to the jury? A. I do.

Q. Now I think it would be well if you would go on in your own way and recite what occurred after the Judge finished the charge? A. After the Judge finished his charge there was some discussion between the counsel and the court with reference to the Rice list of contracts found in one of the green books, that resulted in the stipulation or agreement between Mr. Katzenbach and Mr. Abbott that he could give a copy of that list to the clerk. Just

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immediately before the Judge left the bench he cautioned counsel with reference to the exhibits, saying, as I remember, that counsel must agree with reference to the exhibits that were to go out. Mr. Abbott remarked that it might be possible to agree, and the court then stated, as I recall that he would be in his chambers, and they could take up with him any matter in which counsel were unable to agree as to the exhibits. Immediately after the court went to his chambers, Mr. Katzenbach, Mr. Button, Mr. Abbott and myself drew near to the desk on which the exhibits were piled, the desk

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which the Deputy Clerk Chevrier had sat at a good part of the time during the trial. Just about that time, as I recall, the Judge appeared in the court room in front of the bench, down on the floor where the attorneys were and stated to the counsel in substance that he had promised the jury their lunch; that the Government made no provision for the meals of the jury and that would have to be a matter of agreement between the parties. Thereupon, I think Mr. Abbott stated that they would be responsible for one half of the meals for the jury and Mr. Katzenbach immediately said that they would be responsible for half of the cost of furnishing

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meals to the jury, and both Mr. Katzenbach and Mr. Abbott assured Mr. Chevrier that that was satisfactory.

Mr. Katzenbach then took his seat at the desk where the clerk had usually sat, Mr. Button stood at his right, right close to him and I stood at the right of Mr. Button and somewhat in the rear. Mr. Abbott stood almost facing Mr. Button and Mr. Katzenbach, I am not entirely certain as to just the position that Mr. Chevrier, Charles Chevrier occupied, but he was in the group. A discussion ensued, between counsel, all the counsel present at

the table with reference to the exhibits then on the table. Mr. Katzenbach had started to separate the papers. Mr. Button as I recall stated that it would be difficult to determine what had been read in evidence or what had been marked in evidence or what had not without reference to the printed record. That remark on the part of Mr. Button was the occasion of Mr. Abbott then stating—that he said I have no objection to their all going out, thereupon Mr. Button turned to me and stated, "have we any objection to their all going out," or "we have
9077 no objection to their all going out." It was in the nature of an inquiry to me. I stated in a very loud voice that it could be heard by all those present at the table I saw no objection to their all going out, and Mr. Katzenbach at the same time said, "I see no objection to their all going out." Mr. Button thereupon said to Mr. Charles Chevrier, "let them all go out." Mr. Chevrier then looked at the gentlemen present and said, "well I will put all these papers in these envelopes and send them out." And as I recollect he and his brother started to do it and Mr. Abbott had one of the green books in his hand all of the time and then said, "well if those
9078 papers are going out I want these exhibits in this book to go out," mentioning the Waddell-T. C. du Pont correspondence. Mr. Button, to whom the remark was addressed, said, "why don't you cut them out." Mr. Abbott said in substance, "I can't do that, I don't like to mutilate the volume, this is the only volume I have, won't it be satisfactory if I seal up the book," and Mr. Button said, "all right, seal them up." And Mr. Abbott said, "will it be satisfactory if I do it myself." And to that Mr. Button assented, as all the members were in agreement as to the papers to go out we immediately left the court room, I got my overcoat and joined Mr

Turner, Mr. Katzenbach and Mr. Button and we went to lunch. 9079

Q. What was the next thing that transpired to your knowledge in regard to the question of some exhibits having gone to the jury which should not have done so? A. The next day, the jury being still out, in the neighborhood of 11 o'clock we went in Mr. Katzenbach's office and he received a message which caused him to go over to the court room, and he left and said something about there being some question raised as to the exhibits and he preceded us over, we remained a while in the office Mr. Button and I concluded to go over also, and when we arrived in the court room, or shortly after we arrived in the court room, Mr. Katzenbach came in and said, "Abbott has raised some question with the Judge as to exhibits going to the jury that had not been offered in evidence, and he stated that Mr. Abbott had quoted some arrangemnet or understanding with Mr. Button or something that he had stated to Mr. Button. Thereupon Mr. Katzenbach, Mr. Button and myself went into the anteroom of the Judge's chamber where Mr. Abbott was and Mr. Chevrier was and the red envelopes were lying on the table. Mr. Button, as I recall(inquired of somebody as to what statement he had made with reference to the exhibits and Mr. Katzenbach, as I recall undertook to explain the situation to Mr. Button and the others present, making a statement and Mr. Button inquired of Mr. Abbott if that was his contention and Mr. Abbott said I prefer to make my own statement and proceeded to make a statement. The effect and substance of this was that he had stated to Mr. Button that nothing but exhibits or at least those that had been read should go out, and Mr. Button immediately said in substance that is not the fact, and stated that 9080 9081

90-2 Mr. Abbott had agreed that all of the papers should go out. I immediately said that is my recollection of the arrangement. Thereupon some further conversation occurred between Mr. Abbott and Mr. Katzenbach, the first of which was the reference to whether or not Mr. Abbott would stipulate as to what papers might be returned to the jury. Mr. Abbott said that he would make no stipulation and would do nothing in the premises and thereupon some further conversation occurred between Mr. Abbott and Mr. Katzenbach, it was not a very pleas-
90-3 ant thing and we retired from the ante-room to the court room. A short while after Mr. Abbott came to the court room and some one produced the Powis valise and the exhibits or papers in the valise were the subject of discussion, and Mr. Abbott gave his judgment as to what papers were exhibits and what were not and repeatedly stated that he would assume no responsibility with reference to whether they were or whether they were not. Th Court about that time came upon the bench to dispose of some criminal matters and when he had disposed of them retired to his chamber. And Mr. Button Mr. Katzenbach and myself then concluded to go
90-4 into the Judge's chamber and Mr. Abbott I think was advised we were going in. We went into the Judge's chambers and Mr. Button was the spokesman and stated to the Judge——

Q. Was Mr. Abbott there? A. Mr. Abbott came in shortly afterwards, whether he came in voluntarily or whether the Court requested that he be called in, I am not certain. At any rate when Mr. Button made his statement, Mr. Abbott was there. Mr. Button stated something to the Judge with reference to the contention of Mr. Abbott that the papers had gone out and Judge Rellstab said in substance as I remember, I don't see how that is going

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to help me any. Judge Rellstab inquired of Mr. Button if papers not exhibits had gone to the jury, and Mr. Button replied that was a difficult question to answer and rather difficult to say just what the status of some of the papers in the case was. Some further remarks were made and Mr. Button made the statement that so far as the defendants were concerned Mr. Abbott could send back the whole or any part of the exhibits. Judge Rellstab said then in substance I suggest that you take that course, Mr. Abbott, or is that course satisfactory. Mr. Abbott, one or the other or something of that nature, and Mr. Abbott stated "I will not, I don't care to assume any position in the matter, I will assume no responsibility in the matter." That is about all that occurred. Then the Judge intimated that he had other work to do, and we took it as an invitation to——

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Q. To retire? A. To retire.

Q. Had you observed Mr. Abbott segregating the exhibits? A. In the anteroom?

Q. In the anteroom. A. Yes, Mr. Abbott was doing something with the exhibits but I paid no attention to that.

Q. Was that before or after you saw Judge Rellstab? A. That was before we went into to see Judge Rellstab.

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Cross examined by Mr. Satterthwaite:

Q. Mr. Laffey, you stated how the counsel and the clerk were grouped after the Judge's charge had been completed and the Judge had retired from the room. I think you said you wouldn't be sure where Mr. Chevrier was? A. Not his exact position, I wouldn't undertake to say his exact position, he was standing in the group.

Q. Wasn't he at the far end, nearest to where the Judge's desk is? A. He may have been, I wouldn't undertake to place him.

Q. Did you see the pile of letters on his desk? A. There was a pile of papers on his desk, in fact, all the exhibits had been kept on the desk for several days.

Q. Was Mr. Button at that part of the desk where these papers were? A. Yes, in front and to the right of Mr. Katzenbach.

Q. To the right of Mr. Katzenbach? A. To the
9089 right of Mr. Katzenbach.

Q. Then we understand that with reference to the Judge's chambers, which side, was he facing? A. Mr. Button was facing the Judge's chambers.

Q. As to his position? A. So there would be no doubt about it, Mr. Button was facing where the Judge sat during the trial.

Q. And standing at the end of the table. A. No, standing at the front of the table. Mr. Katzenbach was sitting in the chair on the raised platform where the clerk Chevrier sat a good part of the time.

Q. What was the first that was said about the
9090 papers going out that you recall? A. You mean at this table?

Q. Yes. A. The discussion was had between counsel.

Q. You don't remember that discussion, the nature or the subject of it? A. There was reference to the difficulty in determining just what was read in evidence and what were not. Q. Did any one say anything about some of those papers not having been marked as exhibits that were on that table? A. The remark that I remember distinctly was made by Mr. Button that it would be difficult to determine whether they were exhibits or whether

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they were simply identification without reference to the printed record, and that was the occasion of Mr. Abbott's statement that he had no objection to their all going out.

Q. What called forth that remark from Mr. Button, what called that forth, do you remember? A. I don't recall what called forth.

Q. Didn't Mr. Abbott's remark that there were papers there that weren't marked and he didn't want any to go out that were not marked, and he didn't want any to go out except those that were marked as exhibits? A. Mr. Abbott may have remarked that, I know that there were papers there marked for identification and exhibits but Mr. Abbott never said in my presence that he wanted nothing to go out that weren't exhibits.

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Q. Did he remark that there were papers there that weren't exhibits and was that what called forth the remark from Mr. Button to which you testified that it would be difficult to separate them? A. I don't recall Mr. Abbott making such a remark, he may have made such a remark.

Q. Now you have said that Mr. Abbott said, to the effect that he saw no objection to their all going out, can you recall Mr. Abbott's exact words? A. Those were his exact words, I have no objection to their all going out. Q. Did he say all what going out? A. I have given you his word.

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Q. Do you know whether he referred to all the exhibits or to all papers, do you know which? A. We were separating a pile of papers on the clerk's desk, we undertook to separate, we were at the work.

Q. What was Mr. Abbott doing at that time? A. He was standing at the end of the desk, as I remember.

Q. Now are you sure who it was said something

about sealing the books? A. Mr. Abbott spoke of sealing the books.

Q. Was he the first one that spoke of it? A. I have given you that conversation, shall I give it to you again?

Q. I think you testified that Mr. Button gave his consent to the sealing of the books and I asked whether it was Mr. Button or Mr. Katzenbach, if you recall it? A. Mr. Abbott, after Mr. Button had stated to Charlie Chevrier that the papers could all go out, and Mr. Charles Chevrier had started
9095 to put them in these envelopes as I have said, Mr. Abbott then brought up the matter of getting some exhibits in the green book out, and he stated as I have heretofore testified that if those papers were going out I would like to have these exhibits in the green book, and Mr. Button said well, why don't you cut them out, and Mr. Abbott then stated that he didn't like to mutilate the book, would it be satisfactory if he would seal them up, that is the first time the suggestion to seal up the books was made in that connection.

Q. That was while the Judge was on the bench or after he left it, this sealing up of the books? A.
9096 After he had left, in fact, that was the last agreement we made with Mr. Abbott, the sealing up of this green book.

Q. Do you recall anything he said while the Judge was on the bench about the sealing up of these books? A. There was something, and that shows on the record, and resulted simply in the stipulation relative to the Rice list.

Q. In the discussion about those papers on the desk was there anything said specifically about letters being there that were not marked as exhibits? A. Not that I recall.

Q. What arrangement was it you say Mr. Abbott

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quoted to Mr. Button, you said he quoted some arrangement to Mr. Button in the Judge's anteroom. A. The substance and effect of it was that he had stated to Mr. Button that he didn't want any papers that were not exhibits to go out, that was the substance of it, I wouldn't undertake to recall the exact language?

Q. You don't remember his exact language? A. Mr. Button immediately took issue and the further conversation that I have detailed occurred.

Q. Was it Mr. Button or Mr. Katzenbach that took issue with that? A. Mr. Button took issue with that.

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Q. Did Mr. Katzenbach say anything with regard to the occurrence or otherwise of Mr. Abbott's statement when you were with the Judge about any papers going out except exhibits? A. Mr. Katzenbach got in the conversation immediately after.

Q. What did Mr. Button say? A. In what connection?

Q. You say that Mr. Button took issue, what did he say, do you remember? A. Mr. Button said in substance that is not the fact.

Q. You don't remember his language? A. I can't, I wouldn't undertake to give his exact language, but he said in substance, that is not the fact, there was an understanding or agreement that all the papers should go out, and I immediately stated that is my recollection of the understanding.

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Q. Do I understand you, Mr. Laffey, to say that Mr. Button said to Mr. Chevrier I have no objection to all the papers going out? A. No, I don't want you to have such understanding.

Q. I did have such understanding, how did you say that? A. He said that, the gentlemen were surrounded around that desk, and in answer to the suggestion it would be difficult to separate those papers without reference to the printed record.

9100 *William H. Button—Direct*

Q. Was Mr. Chevrier present among those gentlemen who said this? A. Yes, sir.

Q. Did you hear Mr. Abbott say anything to the effect that he didn't care whether your exhibits got out or not? A. I never heard Mr. Abbott make any such statement.

Q. You never caught any of that? A. I never caught any of that.

WILLIAM H. BUTTON, a witness produced on be-
9101 half of the defendant, being duly sworn according to law, testified as follows:

Direct examination by Mr. McCarter:

Q. You were in court when Judge Rellstab finished his charge to the jury? A. I was.

Q. And you cross examined Mr. Waddell? A. Yes.

Q. Did you have in mind some colloquy that had taken place between the Court and counsel with reference to additional letters other than those that were actually marked as exhibits? A. I have had
9102 it generally in mind, yes.

Q. Now, please state in your own way your recollection of all that occurred touching the matter of the exhibits that were to go to the jury after the judge finished his charge. A. Well, after the discussion with reference to the Rice list, which resulted in some arrangement that copies should be made and submitted to the clerk, it seems to me it was also to be submitted to some of us, but I may be mistaken about that, the judge got up and stated in effect after the charge that counsel must agree upon the exhibits and see that they went to the jury, otherwise I will have to settle it myself, and

he went off the bench. Immediately after he left the room we went up to Mr. Chevrier's desk, a small desk at one end of the judge's bench and where all these exhibits were, Mr. Katzenbach, Mr. Laffey and myself, Mr. Charles Chevrier and myself and Mr. Abbott, and Mr. Abbott had one of the green Government records in his hand. Mr. Katzenbach, as I recall it, first took up from the desk a deposition which turned out to be the deposition of Mr. Luthy and turned to the book and said, "here are some letters attached to this deposition" and showed them to me and I said, "yes," and he laid 9104
it down, and sat down in Mr. Chevrier's chair and in front of him were a large bunch of Waddell letters and some miscellaneous papers, other papers, I don't know what they were. It was on the desk on which the exhibits had been kept for weeks and then Mr. Katzenbach then began to take off these Waddell letters one by one and put them in other piles, and he took about a half a dozen of them off when I think, when I asked him "how are you going to do this?" And he said "I think you will have to go through all these papers and pick out anything not marked as exhibits." I then remarked that I think that will be a difficult thing to do, be- 9105
cause I assume there are some documents you can't tell whether they are actually in or not without examining the record, and it will be a long job. He said he thought it would be a long job, whereupon Mr. Abbott said "we see no objection to their all going to the jury." I immediately turned to Mr. Laffey and asked him if we had any objection, I saw none myself, and he said "no," and Mr. Katzenbach said "let them go," and then I said "let them all go." Mr. Chevrier at that time, according to my recollection, was standing right back of Mr. Abbott and he said "very well, we will put them all

9106 in red envelopes and send them out," and walked over to his chair, and Mr. Katzenbach got up and began to pick the papers up and commenced putting them into these envelopes. Then Mr. Abbott held out his green book, and said if all these are going to the jury, I think the rest of the exhibits, the green books, should go, particularly the Rice-T. C. du Pont negotiations, or he referred to those negotiations, and said "what can I do about that?" Well, I suggested that he cut the pages out and send them in, he said he could do that, but it seemed
9107 to be unnecessary and he would like to avoid mutilating his books, would we not agree that the rest of the books should be sealed up and sent in. Well, I turned to Mr. Laffey and he assented and I said I see no particular objection to that; I doubt if there is anything in the book anyhow to hurt anybody, and he said "will it be satisfactory if I do the sealing up myself?"

Q. Who said that? A. Mr. Abbott. I said I have no objection, and we left. We stopped the work and went to lunch. In the meantime, either immediately before or in the early part of it, the episode about the lunch came in. Judge Rellstab
9108 came out and had his overcoat on and said that some arrangement should be made about the lunch for the jury. It was agreed that Mr. Chevrier should furnish the lunch and should be reimbursed by the two parties equally, that is about my recollection.

Q. How close were you all together? A. All in an immediate group, any one of us could touch this little table, it was a small table.

Q. You went out to lunch. What was the next thing that occurred so far as your information goes as to things? A. I heard nothing more about it until the next morning, the jury was still out, about

ten o'clock or a little later, Mr. Laffey and I went over to Mr. Katzenbach's office and we sat there and a telephone message came and Mr. Katzenbach was wanted at the Judge's chambers. That some objection was being made with reference to the exhibits. He immediately went over and Mr. Laffey and I immediately followed him over there, and Mr. Katzenbach was inside, and sat down in the court room and almost immediately Mr. Katzenbach came in and said Mr. Abbott had been in and objected to the situation to Judge Rellstab on the ground that some of the Waddell letters, as I re- 9110
call it, had gone into the jury, that they were not in evidence and that he objected, at least called to the attention of Judge Rellstab, and stated to the Judge that he had cautioned me not to let anything go in to the jury that was not an exhibit. Well, we had some conversation on that subject then, and Mr. Katzenbach wanted me to go in and give the Judge my version of it. I told him I was willing to do that and we three, Mr. Laffey, Mr. Katzenbach and myself, went into the ante-room and there Mr. Abbott was over by the window, as I recall it, and we stood there, and Mr. Katzenbach said, now Mr. Button Mr. Abbott stated to Judge Rellstab, and he 9111
detailed his version of what was said, and I turned to Mr. Abbott, and I said, "is that your statement?" And he said, "I will make my own statement, is it not a fact that I didn't want any exhibits to go to the jury," I think he mentioned the letters, the Waddell letters, that were not in evidence, and I said that is not the fact we all agreed that these things should go to the jury, and Mr. Laffey immediately broke in and said that was his understanding, and then Mr. Katzenbach remarked that he hadn't said anything about it, he had already had his conversation on the Judge's room, according to

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his report to me, but he proposed to Mr. Abbott, "well, what do you want to do about that? Will you stipulate that special parts of these papers go back to the jury as we select, and nobody take advantage of the situation." And Mr. Abbott said he would make no agreement, whereupon we walked back into the court room and Judge Rellstab came out to attend to some criminal matters and stayed on the bench, and we said among ourselves outside, we had better take it up with the Judge, and I started to one side, I think, and Mr. Katzenbach said we
9113 are going in to talk it over with Judge Rellstab, will you come, or come if you desire and he did come shortly after, he followed along in and we went in there and had some little conversation and there were other matters for the Judge and then he said, "are you all here," and we did seem to me, and we all sat down, or many of us did. The Judge wanted to know what we wanted, and I said, that Mr. Abbott had made some statement or stated that an arrangement had been made with me with reference to the exhibits and I desired to tell him what occurred, and he said that he didn't see that that helped him any and then I said all right, and then
9114 he said, "did any papers that were not exhibits go into the jury room." I said "that was a very difficult question to answer for the reason that it was true that some of the Waddell letters went into the jury room that were marked only for identification; that the state of the record in regard to those letters was such that I was not prepared to say whether they were exhibits or not. I thought they well might be exhibits, although only marked for identification, and according to my recollection of what occurred when they were put in.

Judge Rellstab said, you are objecting because they went in. I said no, we are not objecting, Mr.

Abbott is the man who objects, we are willing to have all go in, part of them or none. Judge turned to Mr. Abbott and he said, "why isn't that satisfactory to you," and he said he didn't care to make any agreement about it or take any responsibility in the matter, "I merely call the situation to the attention of the court." He went out after the Judge said he had other matters to attend to, into the court room, and Mr. Chevrier was there and Mr. Abbott took out all these red envelopes on the counsel table in the court room which we had used during the trial, a number of them there, and Mr. Abbott sat down and opened them up and began to examine them, and Mr. Chevrier wanted to know what he was going to do, and I think I said I don't know what you are going to do about it, we will say what we said to the Judge, we have no objection to all these papers going back to the jury, part of them going back or none going back, that is the last I heard of it. 9115 9116

Cross examination by Mr. Satterthwaite:

Q. Mr. Button, the discussion while you were around this table of Mr. Chevrier's with regard to the manner of separating the exhibits was confined to letters, as I understand? A. Well, that depends on what you mean by letters, of course I made that remark, I thought it was difficult to separate them correctly without referring to record. I did state though I can tell you why I thought that. 9117

Q. I understand you that Mr. Katzenbach had commenced separating letters that were exhibits from those that were not exhibits? A. As I understood it.

Q. And then you said to him, "how are you going to do it?" And Mr. Katzenbach replied I suppose

9118 we will have to go one by one or words to that effect? A. Go through them, he said.

Q. I understand you, Mr. Abbott said he didn't care if they all went in, that was the sequence? A. Except there was nothing specified about the letters.

Q. That is the sequence? A. That is the sequence as I recollect.

Q. The subject matter of the conversation were the letters Mr. Katzenbach was separating? A. The subject matter of the conversation was how we were going to get these exhibits in shape to go to the
9119 jury. Mr. Katzenbach was at the moment engaged on the Waddell letters.

Q. And you were asking him how he was going to separate them, he was then engaged in separating these letters? A. My remark was how are you going about to do this.

Q. What was he doing, was separating the letters? A. At that time, separating the Waddell letters.

Q. Mr. Abbott's remark, if he made the remark you speak of, was addressed in response to the remark Mr. Katzenbach just then made, stating he would have to go over them one by one or words to
9120 that effect? A. No, that was not it. That response followed after my remark that it would be necessary to compare or consult the record in the case in order to do this that was a sequence, that was after that.

Q. The remark was from Mr. Katzenbach? A. A. That is my recollection.

Q. Did you remark that you didn't think it would be necessary to arrange anything, it didn't make much difference? A. I remarked something of that sort with reference to the green book, I may have about the letters, I may have, that was my thought on the subject.

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Q. Did you go over to the end of the table where these letters were and start to pick them up? A. I touched no papers except the Luthy exhibit, Luthy deposition, during the whole performance.

Q. I don't mean sort them over? A. I didn't touch them.

Q. Didn't the taking up of these start a discussion? A. No, the discussion started when I asked Mr. Katzenbach how he was going to do this thing.

Q. When you were discussing about the exhibits in the green book, did you say you thought the du Pont negotiations ought to go in? A. No, Mr. Abbott stated he wanted the rest of the exhibits, if all of these papers were going in, he wanted the rest of the exhibits in the green book, and said that he particularly desired to have some of the T. C. papers go in.

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Q. You said, the rest of the exhibits, had any of the green book exhibits been stated at that time? A. All I know about if the Rice list in the green book concerning which arrangement had been made to paste, the Judge left the bench.

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FRANK S. KATZENBACH, a witness produced on the part of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. McCarter:

Q. Mr. Katzenbach, I would be glad if you will detail all you know touching those exhibits and the dispute about them, from the time of the Judge's charge. A. Well, after the Judge charges the jury, there was a discussion while the Judge was upon the bench between Mr. Abbott and myself with reference to the green books, especially a list of con-

9124 tracts contained in one of those volumes known as the Rice list. The discussion ended in a stipulation made between Mr. Abbott and myself that a copy of the Rice list was to be handed to Mr. Charles Chevrier and submitted to the jury. Then Mr. Charles Chevrier went up to the Judge and then Judge Bell stab stated that the counsel would have to agree upon what exhibits should go to the jury, and if we couldn't agree, that he would be in his chambers to pass upon any exhibits that might be in dispute. Immediately after that the Judge left the bench and
9125 counsel immediately gathered about the desk that had been used by Mr. Charles Chevrier and I presume would be called the Clerk's desk. It is a desk that is upon an elevation from the main floor in that portion of the court room within the bar. I sat down in Mr. Chevrier's chair and Mr. Button stood to my right, and Mr. Laffey was at Mr. Button's right, but standing a little ways behind him. We three were facing where the jury sat during the trial, and Mr. Abbott was on the main floor of the court room, at the corner of the desk that would be called the southeast corner. He was about, I should judge half way from the desk. Mr. Chevrier
9126 as I recall it, stood on the elevation and about opposite where I sat, a little bit nearer to the southeast end of the desk, but taking such a position that I could see Mr. Abbott and did see Mr. Abbott during what followed. The exhibits in the case were upon this desk and had been there for some time, several days, if not longer, perhaps a week or so, and I was sorting over the papers on the desk. I had examined some letters that were affixed to depositions that had been taken upon my first trip to the west and which contained the deposition of Mr. Ferdinand Luthy of Peoria. Then I started in with the Waddell letters and was separating the

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Waddell letters, putting in one group those which didn't have the identification clause crossed off. Mr. Button said to me out loud, "how are you going to do this?" or something to that effect, and I said it would be a long and difficult task, and Mr. Button said, "well, he said we will probably have to consult or refer to the record in the case, in order to determine what are exhibits and what are not. Thereupon Mr. Abbott said I can see no objection to all these going in, and Mr. Button said to Judge Laffey, made a remark to him which as I recall was that he could see no objection to them and I said I 9128
could see no objection to them. While I was sitting in the chair and before this conversation had been completed Judge Rellstab came into the room with his overcoat on and stated that the Government made no provision for the supplying of meals to the jury that he had promised the jury their lunch and then the suggestion was made that counsel supply the jury with their meals and that the expense of it be divided. I immediately after the statement of Mr. Abbott that he saw no objection to all of them going in and Mr. Button's remark to Mr. Laffey, and my remark, Mr. Charles Chevrier said that he would put all of the exhibits in these large en- 9129
velopes, and they were so produced at that time by Mr. Robert Chevrier, three or four large red envelopes. There already had been a pile, there was already a large pile of large red envelopes, if not identical of a similar character on the desk in which had been placed the contracts that had been offered in evidence, they were to the extreme right as I had been sitting at the desk. Then all of the exhibits had been gathered up as I recollect it by Mr. Charles Chevrier and Mr. Robert Chevrier, and placed in these envelopes. The gathering of the exhibits and placing them in these envelopes occupied only about

9130 a minute or two, and during that time, Mr. Abbott, who had been standing in the same position during the entire time, then said if all of these are going in, I want the green books to go in also. Then the suggestion was made, I think, by Mr. Button, that the portion of the green books that had been offered in evidence should be cut out, Mr. Abbott made the remark that it was the only set that he had and he didn't like to mutilate it and would it be satisfactory if he sealed them up. Mr. Button said that he saw no objection to that and my recollection is that
9131 I said that I saw no objection to it, and that closed the interview. The desk had been cleared of all the exhibits, they had all been placed in the envelopes, and my recollection is that while the discussion about the green books was in progress that they had been handed to Mr. Van Horne by Mr. Robert Chevrier, Mr. Van Horne having come into the room.

Q. That is the envelopes had? A. Yes, sir; the envelopes had.

Q. In which all of the exhibits were? A. And also the contracts. I then left the court-room with Mr. Button, Mr. Laffey and Mr. Turner, is my recollection, and I think that Mr. Graham and yourself
9132 had preceded us by a few seconds out of the court-room. I heard nothing further regarding this matter until I was in my office at 10 o'clock on the morning following, when I received a telephone message to the effect that some question had been raised regarding the exhibits and would I come over to the Judge's office immediately. Mr. Laffey and Mr. Button were in my office at the time; I stated to them where I was going and I preceded them out of the room and came over to the Federal Building and went upstairs through the court-room into Judge Rellstab's work room or clerk's office. Mr. Charles Chevrier came in at that time and Mr.

Abbott came in; we got there almost simultaneously, and Judge Rellstab was sitting at his desk and Mr. Abbott occupied a chair to the left of Judge Rellstab. I sat down in a chair to the right of Judge Rellstab, and then Judge Rellstab asked Mr. Abbott what the matter was, and Mr. Abbott said that there were letters or that he thought there were letters had gone to the jury that ought not to have gone and repeated a conversation that he had with Mr. Robert Chevrier at the station a short time before, about an hour before, I presume it was. I then made the statement that there had been an agreement that all the letters, all the papers should go to the jury and Mr. Abbott then stated that he had an agreement with Mr. Button respecting the matter. That ended the conversation so far as I was concerned except that Judge Rellstab then said Mr. Abbott that if there was any one that did know or should have known what papers should have gone to the jury, he was the one, as he had expressly charged counsel with that duty, and then he summoned, I think, Mr. Chevrier to get Mr. Van Horne to come and Mr. Van Horne came to the room, standing within a few feet, and he said to him he wanted him to go to the jury room and get the exhibits. Mr. Van Horne asked whether the green books and the maps should be brought out, and he said no, and then Mr. Abbott, Mr. Chevrier and myself passed out into the room and Mr. Van Horne met us, as I recollect it in the outer office with an armful of these red envelopes and other envelopes were there and my recollection is that three of the large bunches in which the exhibits had been placed the preceding day. Then I passed out into the court-room and met Mr. Laffey and Mr. Button and then came back into the outer room where the large envelopes were and where Mr. Ab-

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bott and Mr. Chevrier were, I had previously given the substance, in the court-room of the conversation that had occurred in Judge Rellstab's office to Mr. Button and to Mr. Laffey, and then upon reaching the outer room of Judge Rellstab I repeated what had occurred before Judge Rellstab and Mr. Abbott stated that he preferred to make his own statements. He thereupon made a statement that he had agreed with Mr. Button that none but papers that had been offered in evidence should go to the jury, which Mr. Button said was not so, and Mr.
9137 Laffey thought it was not so. Then the suggestion was made by me that if Mr. Abbott desired we could go through the exhibits or having them before us could agree upon what should then be sent back to the jury and enter into a stipulation that neither side should be affected by what had occurred and Mr. Abbott said he would make no such stipulation at all, and then we passed out to the court-room again and Judge Rellstab came on the bench and disposed of some criminal matters while we were then in the court-room Mr. Chevrier produced a valise called Mr. Powis' valise and that was opened, there were some letters and bills in that valise
9138 and also a certified copy of the charter of the Buckeye Powder Company and one or two other documents relating to the Buckeye Powder Company. I made the remark we might go through the other envelopes, they were also opened in the outer court-room and casually looked over; they contained exhibits, letters and papers of different kinds; and then Mr. Laffey, Mr. Button and myself, we wanted to go into the Judge's room and speak to Judge Rellstab about it, and when we passed into the room we met Mr. Abbott or he was sent for; my impression is he was in the Judge's outer office at that time, and we all went into the clerk's office of Judge Rellstab; and Mr. Button made a

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statement with reference to what had been said and Judge Rellstab asked whether there were any papers that had gone to the jury that had not been put in evidence. Mr. Button replied that owing to the state of the record it was a very difficult thing to tell and then Judge Rellstab asked whether he was making any objection and Mr. Button said no, that we were perfectly satisfied to let them all go back or to keep out any that Mr. Abbott desired and the Judge then asked Mr. Abbott whether that would not be satisfactory, and Mr. Abbott said that he would take no position in the matter and would

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assume no responsibility. Then we all sat there without anybody saying anything for some seconds, possibly a minute or two, and Judge Rellstab said, "Well, gentlemen, I have some other work to do," and we all took the hint and left.

Q. I show you P 3, which has been produced and stated to have been found among the exhibits; tell us what you know about that document. A. On the Thursday of the week preceding that upon which Judge Rellstab charged the jury and at the time of the conclusion of Mr. Abbott's argument and after, I think, the jury had been dismissed until the following Tuesday, Judge Rellstab asked Mr.

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Abbott and myself to step up to his desk and stated that he would like to have the assistance of counsel in any matter that they could be of assistance to him during the next few days, and asked whether we would be in town. Mr. Abbott said it was not his intention to remain in town, but he would remain in town, and I said I would be in town. On Monday, the 23d of February, about 10 o'clock in the morning, I received a telephone message asking if I wouldn't go over to Judge Rellstab's office, and he said there were some questions that he would like to have me look the record over and furnish

9142 him the evidence that would be answers to those questions. He then told me what those questions were. I telephoned from Judge Rellstab's office to my office and asked Mr. Gildea, who is in my office, to come over to the Federal Building. I found that the record in the case had been removed from the room in which I had left them to this, the Grand Jury room, in which we are now sitting, and I came up here and shortly afterwards Mr. Gildea came in and I asked him to go down to Judge Rellstab's office and ask Judge Rellstab to dictate to
9143 him the questions he desired to have answered. Mr. Gildea came back and I asked him to write out at the head of certain pieces of paper that were about this room the questions which Judge Rellstab had asked and then wrote out those answers to the questions at the top of this Exhibit P 3, constituting the first two and one-half sheets, these were the questions which he wrote out. I then during the course of the entire day wrote out for Judge Rellstab these answers to the different questions, using copies of exhibits necessary that I had, and also using the evidence which had, as I stated, been left by the counsel in the building and placed in the
9144 room on the third floor which had been removed to this room. The other questions asked while taking considerable time to search the record, didn't take as much time to prepare as Exhibit P 3, and about 5 o'clock in the afternoon, this paper P 3 was finished, and I went with it to Judge Rellstab's office and delivered it in person to Judge Rellstab in his inner office and at the same time explained to Judge Rellstab the method I had used in making up this paper.

Q. When did you next see it? A. I next saw it in the Clerk's office on Thursday; I will consult this calendar; I think it was March 26th; yes, on Thurs-

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day, March 26th, in the office of the clerk. I asked Mr. Chevrier if I could see the papers that had been referred to in the affidavits used upon the rule in this matter, and he said that Mr. Robert Chevrier had them and he asked Mr. Robert Chevrier in my presence to get them. Mr. Robert Chevrier brought them in the small office occupied by Mr. Charles Chevrier, and I there saw them, which was the first time I saw it after placing it in Judge Rellstab's hands at about 5 o'clock on the afternoon of February 23d.

Q. You were away from Trenton from what time to what time? A. I left Trenton at 5 P. M. on February 27th, and I returned to Trenton on March 24th in the afternoon at 4.30. 9146

Cross examination by Mr. Satterthwaite:

Q. Mr. Katzenbach, you spoke about having envelopes which contained the contracts, do you mean envelopes after Mr. Van Horne had brought the exhibits from the jury room or before they were taken out, to which do you refer? A. There were envelopes containing the contracts on Mr. Chevrier's desk with the other exhibits in the case prior to their submission to the jury and Mr. Van Horne also brought the same envelopes I presume, brought them out again with him when he brought the other three or four large envelopes which contained the other exhibits that had been put in those envelopes from Mr. Chevrier's desk. 9147

Q. Do you know or did you only assume that he brought out the envelopes which contained the contracts when he brought them from the jury room? A. I saw them.

Q. Did you examine them to see what they were? A. I could see, I didn't open any of the envelopes containing contracts.

9148 Q. How many did you notice he brought out? A. I couldn't answer, but I judge there was twenty or more, they weren't very thick, that is containing probably many papers each, but they were a large number of envelopes.

Q. Were there red file envelopes with papers in them on the clerk's table before you gathered up the papers after this conversation and put them in some envelopes? A. I couldn't say as to that, I didn't pay sufficient attention to the putting of them in the envelopes except I know the desk was cleared.

9149 Q. Do I understand you, Mr. Katzenbach, that you say these envelopes were handed to Mr. Van Horne by Mr. Chevrier while Mr. Abbott was present? A. My recollection is that Mr. Robert Chevrier handed them to Mr. Van Horne in the court room while Mr. Abbott was present.

Q. Are you sure he was present then? A. Very sure.

Q. What was the agreement that Mr. Abbott said that he had had with Mr. Button? A. Mr. Abbott in the Judge's inner room didn't specifically say what the agreement was, he said he had some agreement with Mr. Button respecting the Waddell

9150 letters.

Q. Mr. Button made what remark? A. Mr. Button respecting the Waddell letters.

Q. What was it that you say Mr. Abbott told Mr. Button as to the agreement with him? A. While in the outer room of the Judge's suite of offices Mr. Abbott made a remark to Mr. Button that he had an agreement with Mr. Button that nothing that had not been offered in evidence should go in, or words to that effect which Mr. Button immediately denied and said there was no such agreement.

Q. With regard to the conversation in Judge

Relistab's chamber where Mr. Abbott remarked to the Judge that he would take no position, do you remember that was the word, or did he say he would take no responsibility? A. My recollection is that he used both words, he said he would take no position in the matter and assume no responsibility.

Q. You remember the latter clearly, that he said he would assume no responsibility? A. I recall, I certainly recall his stating that, yes.

Q. Do you recall his asking the Court to make an order? A. No, I do not. 9152

Q. Now, in this conversation around the table, Mr. Katzenbach, you were sorting over these letters when this occurred, separating the letters? A. I was separating the letters at the time the conversation commenced.

Q. You were sorting the letters when the conversation ended? A. No, I was not, I had ceased.

Q. You had not taken up any other papers to separate? A. No, sir, I had prior to that taken up other papers.

Q. And during this conversation, during the making of these remarks between Mr. Button, yourself and Mr. Laffey, and leading up to Mr. Abbott saying as you have stated, he had no objection to that going in, it was the letters you were then engaged in separating? A. I was actually engaged in sorting the letters but the conversation I have referred to, the word "letters" was not used in the conversation. 9153

Q. I was asking you about letters, the thing being done was sorting? A. I was sorting the Waddell letters.

9154 *John P. Laffey—Recalled—Direct*
William H. Button—Recalled—Direct

JOHN P. LAFFEY, recalled.

Direct examination by Mr. McCarter:

Q. Mr. Laffey, I show you exhibit P-3 and ask you when you first saw that paper? A. Within the last ten days, I can fix the date more accurately if——

Q. Did you prior to that time know of its existence? A. I did not.

9155 Not cross examined.

WILLIAM H. BUTTON, recalled.

Direct examination by Mr. McCarter:

Q. I show you and ask you to look at Exhibit P-3 and ask you when you first saw it? A. Within the last few days.

Q. Did you hear of its existence or its preparation by Mr. Katzenbach as described by him in his evidence? A. I never heard of it or saw it.

9156

RICHARD SATTERTHWAITE, a witness produced on behalf of the plaintiff, being duly sworn according to law, testified as follows:

Direct examination by Mr. Satterthwaite:

Q. You are one of the jurors who tried the case of the Buckeye Powder Company vs. E. I. du Pont de Nemours Powder Company? A. Yes, sir.

Q. Do you remember after you had retired to the

jury room papers being brought to the room? A. Papers brought to the jury room?

Q. Yes. A. Yes, sir.

Q. And they were contained in what? A. They were contained in what?

Q. Yes. A. Just what do you mean, we had a box full of paper.

Q. Were they in red file envelopes? A. Like this, some of them, I think (indicating Exhibit P-4), they resembled this.

Q. Do you remember on the second day that you were out that the bailiff called and got some en- 9158
velopes and papers in them? A. I remember one of the officers coming there and asking for all the papers, I couldn't swear which ones they were and they took them out of the room.

Q. After the jury had retired and the papers in the envelopes had been brought in, what was done with the envelopes and their contents? A. When they were brought in?

Q. Before they were taken out? A. Before they were taken out, they were taken out of this and gone over by the jurors.

Q. You mean the envelope similar to P 4? A. Yes. 9159

Q. Do you know whether the papers which were taken out by the officer were among those which had been taken out of the envelopes by the jurors. A. The ones that were taken out were the ones that came out of these envelopes.

Q. Yes. A. I couldn't say whether they came out of the envelopes or not. I couldn't swear to that, but they were papers we had there and gone through and examined.

Q. P 2 is handed witness and he is asked if he had seen that? A. That looks to me like one we had out there, but it has been so long and we had so many of them.

9160 Q. You say that it looks like one that you had out there? A. That resembles one of them.

Q. P 3 is now handed to the witness and he is asked whether he recalls seeing that before? A. I don't know, by jove, it has been so long, I don't know whether I could swear I saw any special one out there or not. I remember reading papers that had the ninety-five cent price on, but whether this is one of them or not I couldn't say. It is a pretty hard matter for me to remember all these papers.

9161 Q. How generally were the papers examined by the jurors, Mr. Satterthwaite, by how many jurors, I mean, were the papers examined? A. By all of them as far as I could see, the papers there on the table were examined, all that were there in the court room, we supposed that was what they were there for. I don't think there was a paper there we didn't go through. So far as I know.

Cross examination by Mr. McCarter:

Q. I don't suppose that you say that you personally examined every paper that was in that

9162 room? A. No, I couldn't say that I did, not every single paper that was in the room, but I went over what I supposed was all of them, of course I couldn't swear that I examined every paper that was in the room, not every one of them, yet I might have done.

THYMAN O. ABBOTT, recalled in rebuttal:

Direct examination by Mr. Satterthwaite:

Q. Mr. Abbott, in the conversation which took place around the clerk's desk did you remark to

Mr. Button or any one else there that you had no objection to the papers on that desk going out? A. I never did remark that to either of these gentlemen or any one in substance, on the other hand, I said once at least, and I think I said twice that I did not want any papers to go out that had not been admitted as exhibits. 9163

Q. Did you state after the papers had been brought back that you had an agreement with Mr. Button? A. I don't remember whether I used the word "agreement." I stated that according to my recollection at this moment that I had told Mr. Button just what I said here, that I did not want any papers to go to the jury room that had not been admitted. I did not understand it had been in the nature of an agreement; I simply stated that to be a fact. I don't recall whether Mr. Button said I had not made that agreement or not as the others have testified that he did say. I know that Mr. Katzenbach said I had made an agreement but I denied that to him that I had made such an agreement. 9164

Q. Did you say to Judge Rellstab that you took no position in regard to the papers going out again? A. I didn't use the word "position," I said that I would take no responsibility in the matter and stated that I had separated the papers as best I could, but that I didn't care to assume any position, any responsibility in the matter. 9165

Q. Did you remark with reference to the exhibits in the green book, " if those exhibits all go out then I want these to go out too"? A. I said something about the exhibits in the green book going out, while we were talking about pasting them down, but just what that was I don't know, but I am sure I never coupled it with any statement that if certain other papers went out these were to go out.

9166 I wanted to have the exhibits go out and there was no particular objection that I discovered on the part of counsel on the other side, to my pasting them down, when that was suggested that was very readily acceded to, to my surprise.

Q. Were you present when Mr. Chevrier, Robert Chevrier, handed those envelopes containing the papers to Mr. Van Horne? A. I don't think I was. I am absolutely sure I was not present there when the desk was being cleared of the documents. I didn't see the papers being gathered up by the clerk
9167 and my recollection is that I heard some sort of remark made by Mr. Charles Chevrier to his brother, that he desired to put them up, but whether I remained until he came back or not, I couldn't say, and I was not there when the desk was being cleared.

Q. Is there anything further you wish to state, Mr. Abbott? A. Yes, I want to say this, that my attention was called to the matter of the possibility of those papers being taken out that had not been admitted first by my seeing Mr. Button over at the corner of the clerk's desk where there was a pile of these letters with his hands on them very much like
9168 this (illustrating) sort of picking up the bunch which caused me to make the remark which I did, and it was after that remark that he turned around to Mr. Laffey who was immediately behind him.

Cross examination by Mr. McCarter:

Q. Mr. Katzenbach was sitting down sorting some papers, wasn't he? A. I didn't see Mr. Katzenbach sorting some papers, he may have been, I wouldn't say that he was not. When I was talking to him about the green books he was standing up at the end of the desk and I was standing almost

opposite him, he may have been sitting; I wouldn't say that he was not, and he may have been sorting the papers! I didn't see him doing it.

At this point the hearing was adjourned until 5.30 P. M., at the office of Mr. Satterthwaite, in the American Mechanics Building.

HAROLD VAUGHN, a witness produced on the part of the plaintiff, being duly sworn according to law, 9170 testified as follows:

Direct examination by Mr. Satterthwaite:

Q. Mr. Vaughn, what is you employment or office? A. Personal secretary to Judge John Rellstab of the United States District Court.

Q. Do you remember on the 25th day of February that some papers in envelopes were brought from the jury room in the Buckeye Powder Company case by the bailiff, Mr. Van Horne? A. Yes, sir.

Q. Into whose room were they brought? A. Into the outer room of the judicial chambers, the first 9171 room.

Q. Where were they deposited when they were brought there? A. I couldn't say as to where they were first placed, my first recollection of them is when they were on my desk.

Q. Do you know how many envelopes there were? A. I should say about four or five large flexible envelopes.

Q. Did you see Mr. Abbott and Mr. Katzenbach and Mr. Button in there subsequent to their being brought in? A. Yes, sir.

9172 *Willard U. Taylor—Direct*

Q. Did you hear any conversation between Mr. Abbott and Mr. Katzenbach? A. Yes, sir.

Q. Did you hear any conversation between Mr. Abbott, Mr. Button and Mr. Laffey? A. I don't recall. I simply recall hearing some conversation between Mr. Abbott and Mr. Katzenbach at that time.

Q. Did you hear Mr. Laffey or Mr. Button make any such remark to Mr. Abbott as what he said wasn't true or anything to that effect?

9173 Mr. McCarter: That is objected to as leading.

Question withdrawn.

Q. Did you hear Mr. Laffey or Mr. Button make any remark to Mr. Abbott? A. I don't recall hearing Mr. Button or Mr. Laffey say anything.

Q. Do you remember a conversation between Mr. Katzenbach and Mr. Abbott at any time? A. Yes, sir.

Not cross examined.

9174 WILLARD U. TAYLOR, a witness produced on the part of the plaintiff, being duly sworn according to law, testified as follows:

Direct examination by Mr. Satterthwaite:

Q. Mr. Taylor, you were one of the counsel for the plaintiff in the Buckeye Powder Company vs. E. I. du Pont de Nemours Powder Company? A. Yes.

Q. Were you present in the court room after the Judge's charge and the jury retired? A. I was.

Q. Who else was there? A. Why, all the counsel that appeared for the plaintiff or the defendant, and the defendants both of them, I think, I don't remember whether Mr. Graham was there or not, but I think the rest of them were.

Q. Where were they standing? A. You mean after the Judge had left the bench, after the jury had retired.

Q. After the jury had retired. A. After the jury had retired, as I recollect it, the Judge stayed on the bench for a few moments and there was some talk between the court and the various counsel as 9176
to sending out the exhibits as I recall it, it started by Mr. Button; I recollect him standing over by a bunch of letters and he had his hand on them and he asked the Court if the letters could go out, and the Judge said all exhibits should go together.

Q. And then what, do you remember Mr. Abbott saying anything? A. There was some conversation I think between Mr. Katzenbach, the Court and Mr. Abbott on the point raised by Mr. Abbott as to the manner in which the exhibits which were in the printed volume should go before the jury. The Court stated that counsel should agree and Mr. Abbott stated that it would be impossible for coun- 9177
sel to agree on anything, that brought up the subject of exhibits and the Court said the exhibits must be separated from the other matters or something to that effect.

Q. What next took place, if you recall? A. I know we went out and pasted up those sections of the book which were not admitted in evidence and as soon as we finished that we brought them in to the clerk, that is the printed volume of the Government case I refer to. That took some time, I guess it took a couple of hours.

Q. Were you there when Robert Chevrier came

in with some red file envelopes? A. That is the brother of the clerk, I don't know their given names. Yes, he passed by me as I stood there and I asked if he was busy, and he said yes, he was getting out these exhibits handed him by the attorneys for the jury; yes, that would keep him busy for some little time.

Q. Did you hear Mr. Abbott make any such remark as "I can see no objection to all these going in"?

Mr. McCarter: Objected to as leading.

9179 A. No, I was standing by Mr. Abbott and was with Mr. Abbott from the time the case went to the jury until, I don't think we were parted, may be for a few moments, we went out to lunch and during the time I was very apt to hear what was said with regard to these exhibits, I was very much interested in the matter, he made no such remark.

Q. Did you hear all that Mr. Abbott said or any one else that stood there? A. I heard every word Mr. Abbott said, everything Mr. Abbott said until we left the court room.

Q. Did you hear anything said to Mr. Abbott in the nature of consenting to anything going out that
9180 was not an exhibit? A. No, if he made such consent I would have objected to it.

Mr. McCarter: I move that that be stricken out.

Q. Is there anything, Mr. Taylor, that you wish to state? A. Well, I don't wish to state anything.

Q. Anything overlooked, I mean? A. No, I haven't given this matter any thought at all, I have been so busy with other things.

Cross examination by Mr. McCarter:

Q. Was Judge Rellstab on the bench during all this talk that you overheard, Mr. Taylor? A. As I

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say, he remained on the bench for a few minutes, and then he left the bench and the various attorneys for the defendant were around the clerk's table where the exhibits had been, and Mr. Abbott, Mr. Bartnett and myself stood near the table that we had used.

Q. How near to Mr. Bartnett did you stand? A. Mr. Bartnett came around to the end of the table and stood near Mr. Abbott and I was on the right side of Mr. Abbott, all three right together.

Q. The table you speak of is the counsel table occupied by plaintiff's counsel during the case? A. Yes, sir.

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Q. Where did Mr. Graham and Mr. McCarter stand? A. I don't remember Mr. Graham. I think I remember his being there that morning, but I wouldn't be positive he was there at the time the Judge left the bench. I don't know whether he was or wasn't, I remember him there that morning and Mr. McCarter, he was, I remember seeing him near the clerk's table, standing.

Q. Where was Mr. Katzenbach? A. Mr. Katzenbach was near the end of the table, I recollect him standing at the end of the table.

Q. Where was Mr. Laffey? A. Mr. Laffey and Mr. Button were standing on the platform where the clerk usually sits, at his table, a small table.

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Q. Where was Mr. Charles Chevrier? A. I think he was—is he the clerk?

Q. Yes. A. Well, now I don't know whether he was there with them, probably he was; I think he must have been, too.

Q. Was Mr. Robert Chevrier there? A. I think he may have been also, I don't remember; I think the clerk was there with Mr. Button and Mr. Laffey.

Q. And how near to the counsel's table were Mr.

9184 Bartnett, Mr. Abbott and yourself at the time that you have been describing? A. Within a foot or two, we were all gathered together, each could hear plainly what the other said.

Q. I understood you to say that you saw Mr. Chevrier, that you remember the envelopes, something like this P 4 which I show you going to the jury room? A. No, he is a brother to the clerk.

Q. Yes. A. Yes, this was afterwards when we came in with the book pasted up, I think.

Q. That was after the intervening space of an hour and a half or two hours, may be a little longer.

9185 A. I am not absolutely sure about that, I remember seeing the man with a book in his hands and just as a joke, I made the remark to him and by him to me, not of any consequence.

Redirect examination by Mr. Satterthwaite:

Q. Did you, Mr. Taylor, yourself consent to any papers going out that were not exhibits? A. No, I remember having talked with Mr. Abbott at that time, when the Judge asked—

Mr. McCarter: We object to the conversa-

9186 tion between Mr. Taylor and Mr. Abbott.

Q. You may answer, Mr. Taylor.

Mr. McCarter: I don't suppose that counsel for the defendant heard this conversation, Mr. Taylor?

A. I don't know, Mr. Katzenbach was right opposite us, he could hardly help hearing it. And the Judge suggested that counsel agree on the matter of sending out these books and I remember Mr. Abbott stating that we couldn't agree with those gen-

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tlemen in forty years, if he sat down here and took them exhibit by exhibit, as the manner in which these books should go. I remember he made that remark. I told him the only thing we could do, then, was to go outside and paste them all up and I remember saying that, that there might be some objection to some sides of the pages of the exhibits.

Q. You have reference now to the green book exhibits? A. To the green books, yes.

Q. Mr. Taylor, I hand you what is marked P 2 and P 3; do you know whether you had any knowledge of those going out to the jury room? P 2 is a demand for the Bill of Particulars. A. Well, I 9188
don't know that I have seen this identical paper before, if it is an exhibit, all I know about it is the back.

Q. Exhibit in this proceeding, in this matter of the taking of the depositions, not an exhibit in the case, the question is have you any knowledge of those two going out? A. What is P 3?

Q. That is marked P 3 in these proceedings here. A. I asked you what it is. P 3 I don't have any knowledge of at all; I don't think I ever saw it before, and I have no knowledge of the other paper being introduced in evidence as an exhibit or consenting in any way that it be used as an exhibit. 9189

FRANK S. KATZENBACH, Jr., recalled in rebuttal.

Direct examination by Mr. McCarter:

Q. You have heard the testimony of Mr. Taylor? A. I have.

Q. Did you hear any such remark as he testified to have made or having been made between you and

9190 *Robert H. McCarter—Direct*

Mr. Abbott in regard to the length of time it would take to agree about exhibits? A. I did not.

Q. Was any such remark made in your presence or your hearing? A. Not in my hearing, and I don't believe in my presence.

Mr. Satterthwaite: I move to strike out the latter part of the answer.

9191 ROBERT H. McCARTER, being duly sworn on the part of the defendants in rebuttal, testified as follows:

I didn't expect to be sworn in this matter because I know very little about it, but I think in view of Mr. Taylor's evidence I should state the following: After the jury was discharged into the outer room Mr. Graham and I stood one side, and I overheard some conversation between the Judge and the counsel with regard to the Rice contracts. My recollection is that at that time Mr. Abbott stood down right with Mr. Bartnett and Mr. Taylor at the counsel's desk. After that my recollection is very
9192 clear that with Mr. Graham and myself still standing on one side, getting on our overcoats, Mr. Graham was going to take a train and Mr. Bartnett, and Mr. Taylor remained down at the counsel's table, and Mr. Abbott joined Mr. Laffey, Mr. Katzenbach and Mr. Button and Mr. Chevrier at the desk on which the exhibits had been previously. I continued in the room until Mr. Abbott later left the room with the green books in his hand and then walked out with Mr. Graham immediately preceding my associates, and I feel very sure that while I didn't overhear the conversation that occurred around the table of Mr. Chevrier, this desk on which

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the exhibits lay, I feel very sure that a considerable time elapsed during which time Mr. Abbott was there, that those gentlemen at that table engaged in some conversation and that Mr. Taylor and Mr. Bartnett remained down at the counsel's table or near it.

Cross examination by Mr. Satterthwaite:

How far would you think Mr. Bartnett and Mr. Taylor were from Mr. Abbott when he stood up with the others, as you say?

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Mr. McCarter: My recollection is somewhat southwest of Mr. Bartnett and Mr. Taylor stood right by their own counsel table and the picture in my mind is that Mr. Bartnett came around from his side of the table and stood by the side of Mr. Taylor, who was standing about where he was accustomed to sit. I wouldn't undertake to measure the distance between that side and this other side of the table; we are all familiar with it.

Q. About how many feet would you think Mr. Abbott was from Mr. Taylor at that time; I don't mean a guess; I mean your best judgment? A. I would say I believe it is several feet, possibly seven or eight feet, if not more, perhaps ten feet. I have

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a mental picture of Mr. Bartnett and Mr. Taylor standing there at that regular counsel table where they sat and Mr. Graham and I stood off there and Mr. Graham had his coat and hat; they were looking at a time table and this group of gentlemen stood around the table.

Q. You and Mr. Graham intended taking your departure? A. I stayed and took lunch with the gentlemen and Mr. Graham was going; I wasn't intent on doing anything except that I was waiting to say good bye to Mr. Graham. I was not paying any attention to this conversation around the table,

9196 *Twyman O. Abbott—Recalled—Direct*

but I am quite clear that Mr. Abbott left the counsel table and came up to the exhibit table and was with this group of gentlemen, but what occurred there I could not say.

Q. Did Mr. Abbott remain there or move about? A. They all stood around that table; I have no recollection of Mr. Abbott making any move at all; he started with the green book in his hand to go out in the other room, and I think I said good bye to him as we both walked out together.

9197 ———

TWYMAN O. ABBOTT, recalled for plaintiff in rebuttal.

Direct examination by Mr. Satterthwaite:

Q. Is there any statement you want to make? A. My statement is this: That since hearing Mr. McCarter's statement I wish to say that I did not stand all the time in one place, but I went back and forth between the corner of the clerk's desk and Mr. Taylor's desk, and I held conversation with him at the former's table and he came up to me while
9198 I was standing talking to Mr. Katzenbach once or twice and cautioned me not to make any agreement concerning those exhibits except such as would be clearly to protect our rights. I did make the statement to him that he said I did, which was that I had in mind when I said to the Court that I didn't think we would be able to agree because we hadn't had very good success in agreeing with each other in matters outside of the court; I felt as if it was going to be a hopeless task.

Mr. McCarter: Motion is now made to strike out all of Mr. Abbott's last answer upon the ground that it is private conversa-

tion between Mr. Taylor and himself which was not overheard by counsel on the other side.

WILLARD U. TAYLOR, recalled for plaintiffs in rebuttal.

Direct examination by Mr. Satterthwaite:

Q. Mr. Taylor, did you hear the conversation that took place at the clerk's desk between Mr. Abbott and Mr. Button? A. As I stated, I overheard 9200
every word that Mr. Abbott said there to the court or other counsel, and I remember distinctly stepping away from the position described by Mr. McCarter which is correct and taking two or three steps over behind Mr. Abbott when he was over at the corner with these gentlemen.

Cross examination by Mr. McCarter:

Q. What did you overhear while you were standing as you say two or three feet away, can you recollect? A. What did I overhear?

Q. Yes; if anything, what remarks made by anybody? A. Well, now, Mr. McCarter, this has not been in my mind five minutes since that day, the 9201
general subject was the agreement of counsel about the book, what was in the book; I know Mr. Laffey had said something to Mr. Button; I couldn't hear, and I went over near where Mr. Abbott stood there to see what was being done about the different exhibits, and I think one of the gentlemen spoke to Mr. Abbott and said that Mr. Turner had arranged them very nicely, they could be easily dealt with; I don't remember anything special. When I came from the table Mr. Abbott told us that, both Mr. Bartnett and myself.

BOTH SIDES CLOSED.

9202 **Plaintiff's Exhibit 2.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY, a Corporation,
Plaintiffs,

vs.

E. I. DU PONT DE NEMOURS POWDER COMPANY, EASTERN DYNAMITE COMPANY, INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY,
9203 Defendants.

Demand for Bill of Particulars.

To the Buckeye Company, Plaintiff; Twyman O. Abbott and Walter J. Bartnett, Esquires, Counsel, and McFarland, Taylor and Costello, Esquires, Attorneys for Plaintiff.

Dear Sirs:—

9204 Please take notice that the defendants in the above stated cause, the E. I du Pont de Nemours Powder Company, the Eastern Dynamite Company, and the International Smokeless Powder and Chemical Company, demand a bill of particulars of the claim of the plaintiff as set forth in the amended declaration of the plaintiff, with respect to the following matters, namely:

(1) The dates of the agreement referred to in the fourth line of Section Four of the amended declaration; the names of the parties thereto, and so much of th substance thereof as will enable the defendants to identify the same, if made.

(2) The date of the making of the alleged conspiracy of the defendants and co-conspirators, to all withdraw, excepting the defendant, E. I du Pont de Nemours Powder Company, from the Peoria field and leave the said defendant, the E. I. du Pont de Nemours Powder Company, to carry on a war of extermination against the plaintiff and drive it out of business, as set forth in Section Seven of the amended declaration.

(3) The date of the appointment of the committee (known and designated as the Peoria Committee), and the names of the persons constituting said committee. 9206

(4) The names of the defendants or alleged co-conspirators who withdrew their agents from the City of Peoria, the date of such withdrawal, and the names of the agents of said defendants or alleged co-conspirators who were withdrawn from the City of Peoria.

(5) Names and addresses of consumers induced by the defendants not to purchase powder of the plaintiff. 9207

(6) Names and addresses of customers of the plaintiff induced by the defendants or alleged co-conspirators or any of them to abandon the purchase of powder from the plaintiff.

(7) Names and addresses of the creditors of plaintiff among whom the defendants or alleged co-conspirators or any of them circulated false and malicious rumors regarding the solvency of the plaintiff.

(8) Names and addresses of the parties among

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whom the defendants or alleged co-conspirators or any of them circulated false and malicious statements regarding the quality of powder manufactured by the plaintiff.

(9) The names and addresses of the miners and operators between whom the defendants or alleged co-conspirators or any of them stirred up strife to induce said miners to refuse to use the powder manufactured by the plaintiff.

9209 (10) The names and addresses of the miners who refused through any acts of the defendants or alleged co-conspirators, or any of them, to use the powder manufactured by the plaintiff.

(11) The names of the emissaries and spies sent by the defendants or alleged co-conspirators, or any of them, into the mills and plant of the plaintiff to learn the secrets of its business and to tamper with the processes of the plaintiff.

(12) What processes of the plaintiff were tampered with by any emissary and spy of the defendants or their alleged co-conspirators or any of them.

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(13) The names and addresses of the agents of transportation companies and the names of the transportation companies engaged (or that they tried to engage) by the defendants, the alleged co-conspirators, or any of them, to furnish information of the consignments of powder from the mills of the plaintiff, and the names and addresses of the consignees of the plaintiff.

(14) The names and addsesses of the consignees induced by the defendants, the alleged co-conspirators, or any of them, to reject the plain-

tiff's consignments of powder by offering to furnish said consignees black blasting powder below the price contracted with the plaintiff, and below any price which plaintiff might see fit to offer, and below the actual cost of said powder, as set forth in the concluding lines of section eight of the amended declaration.

(15) The names and addresses of the evilly-disposed persons employed by the defendants, the alleged co-conspirators, or any of them, to enter the mines of operators who had made purchases of 9212
black blasting powder of the plaintiff for the purpose of stirring up discontentment among the miners and of instilling into the minds of said miners prejudice against said powder and to cause them to refuse the same for the purpose of inducing the purchaser to reject said powder.

(16) The names and addresses of the operators whose mines were entered by said evilly-disposed persons.

(17) Name of the boycotts by miners against the powder manufactured by the plaintiff which the 9213
defendants or their alleged co-conspirators, or any of them, succeeded in producing, and the places at which the said boycotts occurred.

(18) The dates, names and addresses of consignees rejecting and returning consignments of powder from plaintiff's mills.

(19) The names and addresses of the persons employed by the defendant, the E. I. du Pont de Nemours Powder Company, to travel from place to place and mingle with the miners of various coal

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mines to induce them to reject the powder manufactured by the plaintiff.

(20) The names and location of the mines visited by the persons referred to in the last preceding paragraph.

(21) The names and addresses of the influential miners employed by the defendant, E. I. du Pont de Nemours Powder Company, or any other of the defendants or alleged co-conspirators, to induce their fellow-workmen to boycott the powder
9215 manufactured by the plaintiff.

(22) The names of the mines where intoxicating liquors, clothing and household articles were distributed and cash paid to miners by the defendant, E. I. du Pont de Nemours Powder Company, to obtain their co-operation and influence in the boycotting of the powder manufactured by the plaintiff.

(23) Names and addresses of those to whom intoxicating liquors, clothing and household articles were distributed or cash paid by the defend-
9216 ant, E. I. du Pont de Nemours Powder Company, to obtain their co-operation an influence to boycott the powder manufactured by the plaintiff.

(24) The names and addresses of the operators who yielded to the demands of their employees and refused to make further purchases of the powder manufactured by the plaintiff.

(25) Names and addresse of the various persons the defendant, E. I. du Pont de Nemours Powder Company, caused to seek employment with the plaintiff for the purposes alleged in the tenth sec-

tion of the plaintiff's amended declaration, other than the one mentioned in said section.

(26) The names and addresses of the employees whose services were enlisted by the defendant, E. I. du Pont de Nemours Powder Company, to furnish reports of the plaintiff's shipments of powder from its mills as alleged in section ten of the amended declaration.

(27) The names and addresses of the customers of the plaintiff referred to in Section Ten who were 9218
induced to reject shipments of plaintiff's powder and to abandon the purchase of powder from the plaintiff.

(28) Names of the customers of the defendant, E. I. du Pont de Nemours Powder Company, referred to in Section Eleven, with whom secret contracts were made for said customers' exclusive trade for a term of from one to five years.

(29) Names and addresses of customers who entered into contracts with the defendant, E. I. du Pont de Nemours Powder Company, through threats to deprive said consumers of the right to 9219
purchase other grades of powder and explosives not manufactured by the plaintiff.

(30) Names and addresses of consumers who entered into contracts with said defendant, E. I. du Pont de Nemours Powder Company, through misrepresentation by the said defendant of the capacity of the plaintiff's mill and plant.

(31) Names and addresses of consumers entering into contracts with the defendant, E. I. du Pont de Nemours Powder Company, by reason of defend-

9220 *Demand for Bill of Particulars*

ant's circulating false and damaging statements through its agents concerning accidents at the mills of the plaintiff.

(32) Names and addresses of consumers with whom the defendant, E. I. du Pont de Nemours Powder Company, secured contracts through false and malicious statements concerning the quality of the powder manufactured by the plaintiff.

(33) Names and addresses of consumers with
9221 whom the said defendant, E. I. du Pont de Nemours Powder Company, obtained contracts through offers of financial assistance to said consumers.

(34) Names and addresses of customers receiving from the defendant, E. I. du Pont de Nemours Powder Company, the secret rebates based upon the schedule set forth in the Eleventh Section of the plaintiff's amended declaration on pages 22 and 23.

(35) Names and addresses of the customers of the defendant, E. I. du Pont de Nemours Powder
9222 Company, receiving a "special cut price."

(36) Names and addresses of the customers of the defendant, E. I. du Pont de Nemours Powder Company, receiving increased secret rebates.

(37) Names of the agents of the defendant, E. I. du Pont de Nemours Powder Company, who caused to be printed and distributed exaggerated reports of the extent of the damage from an explosion at plaintiff's mill.

(38) Names and addresses of the customers of

the plaintiff, among whom said exaggerated reports of said explosion were circulated.

(39) Names and addresses of the manufacturers of powder making machinery with whom the defendant, E. I. du Pont de Nemours Powder Company, conspired for the exclusive use and control of powder making machinery as alleged in the fourteenth section of said amended declaration.

(40) Names and addresses of manufacturers of powder making machinery, other than those set 9224
forth in Section Fourteen of the amended declaration, who declined to supply thep laintiff with machinery at the behest of the defendant, E.. I. du Pont de Nemours Powder Company.

(41) Names and addresses of the persons or corporations wrom whom the plaintiff purchased its powder making machinery.

(42) The names and addresses of the manufacturers and vendors of powder, referred to in the fifteenth paragraph of the amended declaration, against whom the defendants, the alleged co-conspirators, or any of them, improperly operated. 9225

Respectfully fours,

E. I. du Pont de Nemours Powder Company,
Eastern Dynamite Company,
International Smokeless Powder and Chemical Company,

By FRANK S. KATZENBACH,
Attorney.

9226 **Plaintiff's Exhibit 3.**

(Apr. 6/1914, E. W. M.)

What Buckeye customers appearing on the Brewster list were taken over by the defendant, if any, after the 95-cent rate was issued.

ANSWER.

Plaintiff's Exhibit 1437 (so-called Brewster Report, made about May 1st, 1905), shows the following names to whom the du Pont company subsequently authorized a price of 95 cents.

9227
1. C. G. Brechnitz.
2. Willia C. & Mng. Co.
3. Donk Bros. C. & C. Co.
4. Marrissa Coal & Mng. Co.
5. T. M. Meek Coal Co.
6. New York Coal Co.
7. Globe Iron Co.
8. Nelsonville Sewer Pipe Co.
9. Black Diamond Coal Co.
10. C. F. Keeler Coal Co.
11. Cloverland Coal & Mng. Co.
12. Indiana Bit. Coal Co.
13. Dering Coal Co.

9228
14. Capital Coal Co.
15. Hart and Page.

Each of these cases is treated from the record separately according to the attached notes.

Note: There appears to be no customer of the Buckeye Company taken by the du Pont Company by virtue of the 95 cent price, as shown by the attached statements taken from the evidence in this case.

1. C. G. BRECHNITZ.

R. S. Waddell testified on page 2098 that his prices to Brechnitz ranged from $1.15 to 92 cents.

Plaintiff's Exhibit 3 9229

The last sale to Brechnitz by the Buckeye Powder Co. was on Oct. 4th, 1905, of 800 kegs at 92 cents.

The 95 cents authorization to Brechnitz by the du Pont Company was April 11th, 1906, over six month after the last sale by the Buckeye Powder Company.

Mr. Brechnitz testified in this case (page 2679 *et seq.*):

On pages 2695 & 2696 Mr. Brechnitz stated that he could not get powder in time to serve his customers from the Buckeye Powder Company and 9230 was compelled to buy powder elsewhere. He said: After I found out I needed powder and couldn't get it at the proper time from the Buckeye I went to the du Pont Company. He called Mr. Spicer on the telephone and offered to pay 1.05 per keg for Powder and Mr. Spicer sold him some at this price.

Note: There has been considerable discussion throughout the case regarding the matter of the sales by the du Pont Company to Brechnitz.

2. WILLIS COAL & MNG. CO.

Authorization du Pont 95 cents May 5, 1905. 9231

At this time Buckeye was selling and continued to sell in large quantities, for example.

1625 kegs in May; 800 kegs in June; 800 kegs in July; 2400 kegs in Aug.; 1300 kegs in Oct.; 800 kegs in Nov.; 800 kegs in Jan., 1906; 1600 kegs in Feb., 1906; 800 kegs in April, 1906.

All at 1.00 per keg and until company went out of business.

3. DONK BROS. COAL & COKE CO.

95 cent authorization was made June 13, 1905.

Buckeye sold in July, '05, at 1.00; Aug., '05, at 1.00; Feb., '06, at 1.05.

9232 *Plaintiff's Exhibit 3*

Donk's testimony p. 8417 shows change to Egyptian.

4. MARISSA COAL & MINING CO.

While this concern appears upon the Brewster report as a customer of the Buckeye Powder Company, the books of the Buckeye Powder Company show that no sales were made by the Buckeye Powder Company to the Marissa Coal and Mining Company (see summaries of Buckeye Company
9233 sales from Nov. 1st, 1903, to Sept. 18, '05, Exhibit Number 1395, and Buckeye Sales from September 19, 1905, to September, 1908, Exhibit Number 1396).

While the Marissa Coal and Mining Company appears upon the defendants' answer to the bill of particulars as a customer of the Buckeye Powder Company, yet the books of the Buckeye Powder Company show that it was not a customer.

Exhibit Number 1361, known as the Coyne list of trade lost after 95 cent authorization, shows that the trade of the Marissa Coal and Mining Company was lost to the du Pont Company.

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5. T. M. MEEK COAL CO.

The du Pont Company made a 95 cent authorization to the T. M. Meek Coal Co. on May 31, 1905. Mr. Coyne's list (Exhibit 1359, showing trade that 95 cent authorization did not bring to the du Pont Company) contains the name of the T. M. Meek Coal Co., showing that the 95 cent authorization did not bring the trade of this company to the du Pont Company.

The books of the Buckeye Powder Company show a sale to the Meek Coal Co. under date of July 7,

9235

1905, of 100 kegs at 1.05 per keg delivered. This shows that the du Pont Company did not take the trade of this company.

6. NEW YORK COAL CO.

Buckeye last sale was Mar. 2, 1905.

du Pont 95 cent authorization was 6 mos. later on September 4, 1905.

Coyne's list shows trade did not come to du Pont 1359. Showing some other company had gotten it.

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7. GLOBE IRON CO.

Buckeye sold Oct., '04, 1.09; Nov., '04, 1.10; Dec., '04, 1.09.

No sales made after December '04, by Buckeye.

Authorization of 95 cent was not made until August 13, '06.

Coyne's list shows trade retained.

NO. 1360.

In same month price of 95 cents was quoted, Buckeye was selling below price. For example Springfield Collieries Co. at 92 cents.

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8. NELSONVILLE SEWER PIPE CO.

Buckeye last sale was Feb. 28, 1905, at 1.05.

du Pont authorization not until Oct. 11, 1905.

Trade had passed from Buckeye 8 months before quotation was made.

9. BLACK DIAMOND COAL CO.

Last sale of Buckeye July 7, 1905. 95 cent quotation made July 2, 1906, by du Pont. Buckeye at date of July 2, 1906, was selling at 95 cents delivered, for example, Joseph Turigliatto under date of March 7, 1906 (sales book 268).

Mr. Coyne's list shows that trade was retained

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Ex. 1360. No evidence that trade was taken from Buckeye at a cut price.

George W. Solomon, page 8163-8166.

Some of it was returned on account of not being right grade.

The miners refused to use it.

10. CHARLES F. KEELER COAL CO.

du Pont 95 cent authorization was July 20, 1905.

Buckeye sold Oct. 12, 1905, at 1.00 delivered.

9239 Coyne's list shows trade did not come to du Pont (No. 1359).

Keeler's testimony (p. 2375) shows no cut by du Pont.

11. CLOVERLAND COAL AND MINING COMPANY, CLOVERLAND IND.

The books of the Buckeye Powder Company show two sales to the Cloverland Coal and Mining Company, as follows:

Nov. 28, 1903, 400 kegs, at 1.17 delivered; March 5, 1904, 800 kegs, at 1.16 delivered.

9240 The du Pont company made an authorization of 95 cents to the Cloverland Coal and Mining Company on May 18, 1905. This was fourteen months after the last sale of the Buckeye Powder Company to the Cloverland Coal and Mining Company.

Exhibit 1361 (showing list of trade lost after 95 cent authorization) shows that the du Pont Company lost the trade of the Cloverland Coal and Mining Company.

Note: The location of the Cloverland Coal and Mining Company as shown on the books of the Buckeye Powder Company was Terre Haute, In-

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diana. This was in the immediate vicinity of the United States Powder Company's new plant and probably that company obtained the trade.

12. INDIANA BITUMINOUS COAL CO.

Authorization May 18, 1905, at 95 cents.

Buckeye last sale to Ind. Bit. was made May 9, 1905, at 1.05 delivered.

Authorization did not bring trade (1359).

Some other, probably U. S. Co. got it.

See testimony of R. S. Ternnant—p. 2494.

13. DERING COAL CO.

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95 cent authorization was made May 15, 1905.

Buckeye sold on Oct. 10, 1905, 1.00 delivered; Jan. 18, 1906, 1.00 delivered; March, 1906, 1.10 delivered.

du Pont lost trade on Coyne's list.

Testimony of Waddell shows—p. 4051.

Admits that Equitable got some of trade.

As du Pont lost trade other companies must have gotten it.

14. CAPITAL COAL CO.

95 cent authorization on July 18, 1906.

Buckeye had not sold since Feb. 16, 1905, when Buckeye books show sale of 50 kegs of which 39 were returned.

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Deposition—See Book 51—page 8159.

Coyne's list (Ex. 1360) shows trade retained.

Page 8160. Would not shoot coal.

15. HART AND PAGE.

Authorization was Feb. 2, 1906.

Coyne's list shows that trade was retained at this price.

Buckeye sold before authorization and also after authorization.

Shows trade was divided.

9244 **Opinion of the Court.**

The Court: This matter has received considerable of my attention before the argument begun. I had to consider it when the application was made to me for the rule to show cause and I am prepared to dispose of the matter now.

Naturally, the first question to inquire in a matter of this kind is whether there were any papers that got to the jury improperly. Secondly, whether they got there by design of any of the parties or their counsel, and the reason for that is because the rule to be applied is different.

9245 It is against the policy of the law to permit anyone who is guilty of a wilful wrongdoing to appropriate the benefit of that misconduct, so that if a document has been designedly put in the Jury's hands, which had no business there, the question whether it had any influence upon the Juror's verdict is of no moment; the verdict will be set aside as a matter of punishment to the guilty party, and the reasons for that are so obvious it is not necessary to dwell upon them.

In this case there is no evidence at all that would warrant even the suggestion that any of the counsel in this case were guilty of deliberately putting
9246 in the hands of the Jury documents that were not admitted in evidence. There may have been a misunderstanding as to what should have gone to the Jury, but that would not be design. It would not be a deliberate purpose to place in the hands of the Jury that which should not go there.

Design of wilful misconduct being out of the way, the next question is, what is the rule to be applied where the papers have gone to the Jury inadvertently,—the element of misconduct being eliminated, misconduct in the sense of wrongdoing?

In this case design being eliminated, the question is controlled, in my judgment, by two grounds,

which do not require an examination into the kind and character of documents to determine whether they were harmful or harmless. They do not even require a consideration of the question whether the Court has power to ascertain whether the Jury, as a fact, ever considered the challenged document, but before I state those grounds I think an observation might properly be made as to the character of the documents that it is said went to the Jury improperly.

We have first the Fay Exhibits, and second, the correspondence between Mr. Waddell and some of 9248
his superiors. Third, the Demand for a Bill of Particulars, and fourth, the document which was made by Mr. Katzenbach bearing upon the 95c. rate, and its relationship to certain customers. Now, it can't be as matter of law that because some things have gone to the Jury without design, therefore, the verdict should be set aside. There are certain presumptions that arise under certain conditions, and these may be conclusive or not, depending upon circumstances.

Where a cause has been tried and the Jury have reached a verdict, that should settle the facts unless something has intervened of such startling or con- 9249
trolling character, which presumptively has caused injustice.

Rights having been established by a Jury are not to be overturned without very good cause, and it seems to me, therefore, that where the cause assigned is attributed to inadvertence we should endeavor to ascertain whether the challenged document could have had any influence upon the verdict. If such document made for the verdict and it should not have been introduced a presumption arises that without it the verdict would not have been rendered. This however is not necessarily conclusive, but unless overcome it will control, and

the verdict will be set aside; but if the paper itself is harmless or of a character not supporting the verdict it would be absurd to hold that the verdict should be set aside simply because that paper got before the Jury. It seems to me that the demand for a Bill of Particulars comes within that class. I don't see how anyone can say that because a demand was made upon the pleader to either amplify his pleading or to limit it in its scope, or to make it more precise that its admission should raise a presumption that it was harmful. In some juris-
9251 dictions, and if I am not mistaken in our own State, a demand is not considered a part of the pleading. It is pretty hard to understand how that originated, because a Bill of Particulars in causes of this character, limits the pleading. It is not like a demand which, under the rules of practices, has for its purpose the eliciting of evidence, as the filing of interrogatories or something of that character, but it is intended to give the adverse party a more concise statement, or a more comprehensive or intelligent statement of what the pleader has set out in his pleadings, and so, in this case, this demand for a Bill of Particulars was limited to the declara-
9252 tion and it spent itself with reference to the declaration. Now, it is not improper to submit the declaration to the Jury, and I fail to see how its submission can be held harmful. I felt it my duty, throughout my charge, because of the very lenghtiness of the declaration and the number of things that were being asserted there, to constantly call attention to the Jury that this was allegation, and not proof. So, I can't see how, on any thoery, certainly not on anything that would lead to practical results, it could be said that the Demand for a Bill of Particulars was harmful. It is contrary to my conception of duty in exercising a sound discretion in an attempt to disturb the verdict, to say

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that as a matter of law the introduction of such demand is a ground for the setting aside of the verdict.

Now, the Fay Exhibits,—they were excluded. The Lent Exhibits were admitted. A long and strenuous struggle was made by the Plaintiff in the case to introduce the Fay Exhibits. Over and over again they popped up, the Plaintiff thinking that since the last ruling other conditions had been presented which might persuade the Court to allow them to go in. The attitude of the Plaintiff with reference to the Fay Exhibits was one that indicated that he

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considered them of vital importance to his contention, that they would make strongly for the determining of the contention in his behalf. Now, can it be said, that because such evidence as that was improperly, using the word "improperly" in the sense of inadvertence, permitted to go to the Jury and the verdict of the Jury was against the Plaintiff, that that should be considered harmful? It isn't an academic question, it is a practical question. It seemed to have been a very important part of the Plaintiff's contention. It related, like the Lent Exhibits, and some other evidence, to matters pertaining to the Association, its operation, its

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membership, the binding force of the Trade Association rules, and its practices upon the Defendant. As I understood it, it was intended to carry down those practices and to bind the Defendant at a later period than that which was fixed by the Lent Exhibits. The purpose of that was to establish an attempt to monopolize on the part of the Defendant. The Court charged in its instructions to the Jury that the fruits of the Association were carried home to the Defendant, and that they were of that character as to make them guilty of an attempt to monopolize. Now, as the Fay Exhibits made for the

9256 *Opinion of the Court*

Plaintiff's contention in that behalf their admission could not be harmful to it. They might have been harmful to the Defendant unless it was bound by their introduction, if the verdict had been for the Plaintiff, but they were not harmful to the Plaintiff in view of the verdict reached. The Fay Exhibits can not be treated as harmful.

Now, when you come to the letters, it looks very much as if those letters were in evidence, although only marked for identification. I must say that the record which was read by Mr. McCarter indicates
9257 that so far as these papers are within the class that was then being dealt with, and made the basis of a long colloquy between counsel and the Court, that they were in evidence.

Mr. Abbott: If your Honor will permit me right there, I neglected to refer to that, the papers themselves show that they were introduced by the defendants, they are defendants' exhibits, not ours.

The Court: I don't say what source they come from, I simply say that if they are part of the letters then being offered they must be considered as in evidence, but aside from that question, if they were not in evidence, then thy, as well as the Kat-
9258 zenbach document, are to be treated as in a class by themselves.

Now, the Katzenbach document is beyond question a paper that should not have gone to the Jury, and if Mr. Abbott's contention is right, the Waddell letters should not have gone to the Jury. Neither are within the class of the Fay Exhibits, and they do not belong to the class that the Demand for the Bill of Particulars belongs to. The Court is compelled to presume that they were read and considered by the Jury because the Courts will presume that the Jurors will perform their duties in an intelligent and conscientious manner, and,

therefore, that all the evidence was considered by them. There has been nothing shown that those letters and the Katzenbach document were harmful, but so far as the Katzenbach document is concerned, it is of a character that may or may not have been influential in reaching the verdict and the Court will not speculate as to the direction or the extent they were influential. Mr. Abbott, when referring to the letters, said that they were of the same purport and effect as a hundred or more of others written by Mr. Waddell, and yet I am asked to hold that these additional letters would have had 9260
such a controlling effect upon the Jurors' minds or at least upon some of them, that the present verdict would not have been reached save for the presence of these added letters. Now, that is a little bit too much for me. As I said to counsel during his argument, of course, we could see if there was but one document or but one witness testifying to a given subject that that wouldn't have the same effect as a large number of witnesses testifying similarly, or a large number of similar documents. But we cannot apply that doctrine to a case where a fact has already been established by one hundred witnesses and say that because another hundred witnesses 9261
testify to the same fact, that therefore the conclusion was reached by the Jury only because of the additional hundred witnesses. The same rule applies where you have one hundred documents tending to establish one state of mind and another one hundred documents tending to the same condition or state of mind. So that there is a distinction to be made even between those letters and the Katzenbach document, but as I said at the outset, and I have only disgressed to voice my assent to much of what Defendants' counsel have said as to the effect of the admission of some of such documents, and I

9262 *Opinion of the Court*

come back now to the two grounds which in my judgment are absolutely controlling in this matter, they eliminate the necessity of determining whether any of these documents are of that character as to prevent the Court from endeavoring to ascertain whether they had any weight and what weight, upon the Jury's finding. They also eliminate the question of determining whether there was an agreement between the Plaintiff's counsel and those of the Defendant that these documents should go in.

9263 Those two grounds are first, that the Court, after the Jury had retired, placed the duty upon counsel to see that no documents and no writtten evidence went into the Jury room except those which were admitted in the case. Now, counsel are officers of the Court. In the stress of the conduct of a trial and while under the control of the spirit of advocacy, counsel sometimes lose sight of that fact entirely, and judges readily understand how counsel are often lead to forget that relationship. As I recall during the trial I called attention to the fact that they were first and above all officers of the Court, and secondly and subordinately, ad-

9264 vocates of a client's interests, so that when the Court laid upon counsel the duty of seeing that no exhibits, identifications now being called exhibits, should go to the Jury room unless they had been admitted, that duty was placed upon all counsel to see that was done. That duty was placed upon counsel, as I recall it, after I had referred to the Rice Exhibit and to the other exhibits found in the green books, and after Mr. Chevrier stepped up and called my attention to the need of making such an admonition. I was led myself to make the other two suggestions, because in my consideration of the testimony in preparing the charge, I had be-

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fore me a copy of the Rice Exhibit. I had no copy of the other exhibits which were contained in the green books, and which I had admitted. On the copy of the Rice Exhibits which I had, I had put a number of memoranda, and as I recall it now, some red memoranda had been made on it before I got it. I got it as a matter of convenience instead of being compelled to turn over the leaves of the green books. At the conclusion of the charge realizing the wisdom of having the exhibits that were contained in the printed books placed in some shape before the Jury, without actually sending in the books to them, I asked whether a copy had been made of the exhibits in the green books, and the statement was made that a copy of the Rice Exhibit had been made but the others were too lengthy and none had been made, and that the time was not sufficient now to make a copy. Then I asked whether they could not be torn out of the books (the first suggestion came from me in that regard), and some objection was made to mutilating the books and there was some little discussion before I went off the bench as to how those pages of the green books could be utilized without disclosing to the Jury the remainder of the books, and it was suggested by somebody, whom I am not clear now, whether the other pages could not be sealed or pasted, and I said yes, and I remember I said to be careful to paste over the first page and the last page and the last page if the first and last pages didn't relate to the Rice Exhibit, and then it was that Mr. Chevrier came up, as I remember it, with some trepidation, stating that it was impossible for him to tell what had been admitted and what had not, and then I recall making the statement, "Yes, counsel will have to ascertain from this mass of exhibits, identifications, what were admitted and should go to the Jury." Now, with that duty placed upon

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9268 counsel the Court left, went and attended to other matters. It was not objected by any of the counsel that that was a duty that ought not be placed on counsel, that it was too burdensome to be performed by them, and no objection was interposed to the placing of that duty upon counsel. It was said by Mr. Abbott that he doubted whether they could agree and I have a faint recollection, somewhat stirred up by what has been said to-day, that Mr. Abbott said that his experience during the trial led him to the conviction that they couldn't agree, and
9269 I made the remark, "very well, gentlemen, if you can't agree, I will be at my chambers and may be called upon if you can't agree as to what are properly exhibits to go to the Jury." Now, I say this, that in the presence of that charge to the counsel, and no objection being made and the only suggestion being made of the possibility or probability that you wouldn't be able to agree, the Court had a right to assume that that duty would be performed. Now, it wasn't performed. Shall the party who didn't perform it now make that a ground for setting aside the verdict? Understand, I am not suggesting, because it is foreign to my mind,
9270 that that duty was not performed purposely. I haven't any such thought in mind. I think it is very likely that from what transpired and over which there is no conflict, that counsel thought they could, in spirit, comply with that order, for that is what it was, without actually covering every piece of paper that bore an identification mark. Counsel for the Plaintiff seemed to think that if he looked after his own exhibits that that was all he was required to do, and if the Defendants looked after their exhibits, why, then both sides would have performed their duty as they understood it. That would not be a performance, however. That

would almost be an idle performance, because while the Plaintiff may be satisfied that a certain line of exhibits should go in, unless the Defendants did so there would not be an agreement, and in that way evidence could go into the Jury room which should never have gone in, and also if the Defendant should do that on his own volition. That duty required the counsel to get together. The matter of what should go to the Jury was a matter for counsel, but that duty could not be performed unless counsel looked over each others selection of exhibits which they thought ought to go to the Jury. If that had 9272
been done, none of those papers would have gone to the Jury. It wasn't done. Inadvertently that duty wasn't performed,—surely not designedly.

Now, that being the case, that puts the situation on a basis different from any that is referred to in any of the cases that counsel have referred to. If the case was as in Hughes against Warburgh, I should be constrained to follow that case. If it was within the other cases of this judicial district, I should be constrained to follow them, but this case stands in that particular as unique as it has stood in many other features, and no case has been cited, and perhaps none will be found where this 9273
specific duty was pointedly and emphatically placed by the Court upon counsel.

Now, there was a reason for it in this case. This case is unique in the fact, not only that it took a long time to try, but because of the large number of documents that were identified, the large number that were admitted and the large number that were excluded, and the relationship of all the admitted documents to the oral testimony. Difficult indeed would it be for the Court not to say anything about the Clerk, to attempt to go through the large mass of documentary exhibits, as there was in this case, and not make a mistake as to what

should go to the Jury and what should not. Many of the documents admitted were simply identified and not marked again as admissions in the case. And therefore it was a case peculiarly requiring just that kind of an order of the Court, and counsel were neglectful in the matter and because of that neglect, we are now confronted with this unfortunate situation. The duty of the Court is plain. The general policy in the administration of justice must control, not the specific upon any given case. Can it be that it is within the power of counsel either
9275 to maintain or set aside a verdict? Unscrupulous counsel would have an excellent opportunity for speculating upon the results by not performing such a duty when cast upon him. There are no such counsel in this case, I am thankful to say, and when I refer to unscrupulous counsel, I do it merely to show you the danger of permitting such a thing to interfere in the administration of justice. Shall neglectful counsel be clothed with such power? Shall it lie in the mouth of neglectful counsel to say afterwards, because he didn't perform this duty that was required of him, that he has the right to make that the ground for the setting aside of his
9276 verdict? Now, that is just what it means. It can't be that in our system of jurisprudence the product of ages of endeavor to ascertain the best way of finding the facts and to safeguard the conclusion of the Jury, that a verdict may be set aside because counsel had not performed their full duty. It is not always easy for the Court to determine whether a counsel did a thing designedly or inadvertently, but as far as this cause is concerned it doesn't make any difference. The fact that it wasn't done controls. The Court is not required to examine whether it was done with a view of speculation and as throwing an anchor to windward if the verdict didn't go

as expected. Neither counsel in the case will be permitted to make their neglect to segregate the documents a ground for a motion for a new trial. On that ground alone the rule to show cause must be discharged, but the second one I have in mind is that the error here, to the extent that it was an error, was learned by counsel before the verdict was rendered. In that respect the case stands differently from any of those cited, namely that the error was discovered before the rendition of the verdict. Counsel learned it while the Jury was yet deliberating and promptly and properly called it 9278
to the attention of the Court. There was opportunity therefore,—the verdict not yet having been rendered,—to do one of two things. First, after ascertaining that such documents had been improperly admitted to the Jury room, to ask that the Jury be discharged from any further consideration of the matter; that would have placed squarely on the Court the responsibility of determining whether there was sufficient in the case to warrant that drastic course, or whether it was of such a nature that the error could be cured by proper instructions; the second one was for counsel, after having eliminated the improper documents, to ask the 9279
Court for specific instructions to the Jury, couched in such language that they would have been compelled to renew their consideration of the matter submitted them and make it a matter de novo, having their attention specifically called to the fact that there were some documents that had been inadvertently left to their consideraion, it being within the power of counsel to ask the Court to take up every one of these documents, if thought advisable, and tell the Jury pointedly, "If you have considered this paper, it must be eliminated." The Court could have been required to do as to such

matter as is frequently required during the proceeding of a trial or at the end, to rule out some questions or a particular document in the case. If either of these courses had been pursued the Court would have had the responsibility placed upon it, and upon the action of the Court error could have been assigned.

Now, as I say, counsel called attention to the Court and the Court immediately after summoning the counsel on the other side ordered the bailiff to bring in the papers. Upon a question being asked
9281 by someone the Court said, "It is not necessary to bring in the books." That placed upon the bailiff the duty, and the statements were made in the presence of counsel, to bring everything else in. He brought in a number of packages of papers. The question now raised I presume, although not very strenuously, is that some may have been left out in the Jury room. It is possible. It is not, perhaps, a matter that has been as I recall it specifically referred to.

Mr. Abbott: There is testimony upon that.

The Court: I mean in the argument. Yes, I think that is where I got the idea. Very well, now,
9282 the papers were brought in and counsel were given the opportunity to examine them and counsel did examine them and segregated them and a number of documents were withdrawn and the rest were returned to the Jury. Now, if the Demand for the Bill Particulars and the Katzenbach document were not brought back from the Jury room when counsel examined the papers, the question there was whether counsel were not required to specifically ask, and if necessary, have the Court direct the bailiff to return to the Jury room to ascertain whether there were any other documents that had not been brought from the Jury room. With an order by the

9283

Court upon the bailiff to bring in all the documents except the books, the presumption must be that in the performance of that order he fully performed it, and in the absence of any objection, or any suggestion that possibly there were other documents, there being such a large number in the case, the Court would be justified in the presumption that the Demand for the Bill of Particulars and the Katzenbach document were among those which counsel examined, and if they were, then if they were returned to the Jury room they were returned through the inadvertence of the examining coun- 9284
sel. If they were not there but were without, in view of the fact that counsel could have ascertained to a certainty whether they were there, the fact that they were in the Jury room, furnishes no ground to set aside the verdict.

So, I say, as I view this matter upon either of these two grounds, there is no justification for a disturbance of this verdict, and the verdict must stand and the rule is discharged. Now, I will hear you.

Mr. Abbott: All I want to say is that I think what your Honor has said about the so-called Katzenbach document is something of a reflection, although 9285
your Honor may not have intended it, but the evidence shows I had no knowledge at all of that paper.

The Court: I was assuming that. You are not chargeable with knowledge that the Demand for the Bill of Particulars, and this Katzenbach document were before the Jury, for, you didn't know that the Katzenbach document was in existence, but the point I am making is that after the papers were withdrawn from the Jury for examination and you had ascertained that a number of documents had improperly gone to the Jury, that it would seem as if the natural inquiry would be in view of the

9286 *Opinion of the Court*

large number of exhibits, are there any others. Upon such an inquiry the Court would then extend a further inquiry directed to the Jury room to ascertain whether there were any others, and if there were any others and they had been brought in, these two documents would have been found in case they were not among those already withdrawn. I am absolving you from any wilful wrongdoing. I am not dealing with it as if there was such culpability, but I am dealing with it as an act of negligence, not indefensible perhaps under all the circumstances, but yet of such a character as to prevent
9287 its furnishing a basis to disturb the verdict.

Mr. Abbott: I would like to take an exception, if your Honor please, to your ruling.

Exception allowed.

Mr. Abbott: May I have these papers put under seal again?

The Court: Yes.

UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY.

Present: HON. JOHN RELLSTAB, *Judge*.

9288

BUCKEYE POWDER COMPANY,
vs.
E. I. DU PONT DE NEMOURS POWDER CO., *et al.*

Minutes of the Court of April 10, 1914.

Argument on Return of Rule to Show Cause why new trial should not be granted. Linton Satterthwaite, Esq., and Twyman O. Abbott, Esq., heard for the motion. Robert H. McCarter, Esq., opposed. Twyman O. Abbott, Esq., closed.

Motion denied. Rule discharged.

Certificate to Bill of Exceptions. 9289

And forasmuch as the facts aforesaid set forth on pages 24 to 3096, inclusive, do not appear fully of record, the plaintiff prays that this, its Bill of Exceptions, may be allowed.

So ordered, this day of , 1914.

....., Judge.

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9292 **Order Extending Time for Filing Bill of Exceptions. Entered April 6, 1914.**

This cause having come on to be heard this day before the Honorable John Rellstab, Judge of the above-entitled Court, upon the application of plaintiff, by its counsel, Twyman O. Abbott, for an extension of the time for settling the bill of exceptions herein, it is hereby

ORDERED that the time for settling the Bill of Exceptions be, and the same hereby is, extended until
9293 the 16th day of April, 1914.

JOHN RELLSTAB, Judge.

Order Extending Time for Filing Bill of Exceptions. Entered April 16, 1914.

This cause having come on to be heard this day before the Honorable John Rellstab, Judge of the above-entitled Court, upon the application of plaintiff, by its counsel, Twyman O. Abbott, for an ex-
9294 tension of the time for settling the bill of exceptions herein, it is hereby

ORDERED that the time for settling the Bill of Exceptions be, and the same hereby is, extended until the 16th day of May, 1914.

JOHN RELLSTAB, Judge.

Order Extending Time for Filing Bill of Exceptions. Entered May 14, 1914. 9295

This cause having come on to be heard this day before the Honorable John Rellstab, Judge of the above-entitled Court, upon the application of plaintiff, by its counsel, Twyman O. Abbott, for an extension of the time for settling the bill of exceptions herein, it is hereby

ORDERED that the time for settling the Bill of Exceptions be, and the same hereby is, extended until the 30th day of May, 1914. 9296

JOHN RELLSTAB, Judge.

Order Extending Time for Filing Exceptions. Entered Sept. 3, 1914.

Application having been made on behalf of the plaintiff for an order extending the time for fiiing the bill of exceptions in the above stated cause;

It is, on this third day of September, nineteen hundred and fourteen, on motion of McFarland, Taylor & Costello, of counsel for the plaintiff, ordered that the time for filing the bill of exceptions in said cause be extended to the twenty-eighth day of September, nineteen hundred and fourteen. 9297

JOHN RELLSTAB, Judge.

9298 **Order Extending Time for Filing Exceptions. Entered Sept. 3, 1914.**

Application having been made on behalf of the plaintiff for an order extending the time for filing the bill of exceptions in the above stated cause;

It is, on this 3rd day of September, nineteen hundred and fourteen, on motion of McFarland, Taylor & Costello, of counsel for the plaintiff, ordered that the time for filing the bill of exceptions in said cause be extended to the twenty-eighth day of September, nineteen hundred and fourteen.

JOHN RELLSTAB, Judge.

Filed September 3, 1914.

9299

Notice of Settlement of Bill of Exceptions, Filed Sept. 17, 1914.

(Title of Court and Cause.)

To the above named defendants and to Frank S. Katzenbach, Jr., Robert H. McCarter, J. P. Laffey, William H. Button and George S. Graham:

PLEASE TAKE NOTICE that the plaintiff in the above entitled cause will apply to the Hon. John Rellstab, Judge of the above entitled court, on the 28th day of September, 1914, at his Chambers in Trenton, N. J., at the hour of 10:30 o'clock of said

9300 day or as soon thereafter as the matter may be heard, to sign the bill of exceptions in said cause; and a copy of said bill of exceptions as the same will be presented to said Judge at said time for his signature is herewith served upon you.

MACFARLAND, TAYLOR & COSTELLO,
WILLARD U. TAYLOR,
TWYMAN O. ABBOTT,
Attorneys for Plaintiff,
63 Wall Street,
Borough of Manhattan,
City of New York.

Filed Sept. 17, 1914.

Order Extending Time for Filing Exceptions. Entered Sept. 28, 1914. 9301

Application having been made on behalf of the plaintiff for an order extending the time for filing the bill of exceptions in the above stated cause;

It is, on this 28th day of September, nineteen hundred and fourteen, on motion of MacFarland, Taylor & Costello, of counsel for the plaintiff, Ordered that the time for filing the bill of exceptions in said cause be extended to the 17th day of October, nineteen hundred and fourteen.

JOHN RELLSTAB, 9302
Judge.

Filed Sept. 28, 1914.

9303

9304 DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY, *a Corporation*, Plaintiff, against E. I. DU PONT DE NEMOURS POWDER COMPANY (a Corporation of New Jersey), EASTERN DYNAMITE COMPANY (a Corporation of New Jersey), INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY (a Corporation of New Jersey, Defendants.	Assignment of Errors.

9305

Now, on this 5th day of October, 1914, comes the plaintiff, by MacFarland, Taylor & Costello, Willard U. Taylor, Twyman O. Abbott and Walter J. Bartnett, its attorneys, and says that the judgment entered in this case on the 20th day of April, 1914, is erroneous and against plaintiff's just rights, and that in the proceedings in the above entitled case, error was committed as follows, to wit:

9306

1. In instructing the jury as follows:

"The suit is brought by the Buckeye Powder Company and has proceeded to trial against three defendants. The evidence, however, fails to support any participation by the Eastern Dynamite Company and the International Smokeless Powder

9307

and Chemical Company, and my instructions to you are that you return a verdict of no cause of action in their favor."

3. In making an order requiring the plaintiff to make an election to rely solely upon the proof of acts declared to be unlawful by Sec. 1 of the Act of Congress of July 2, 1890, commonly known as the Sherman Act, or to rely solely upon acts declared to be unlawful by Sec. 2 of said act.

4. In instructing the jury as follows:

9308

"The plaintiff's grievance is, that the defendant has violated the second section of the Anti-Trust Act and which, as already noted, makes the monopolizing "or attempt to monopolize" any part of the trade among the several States unlawful; and, that in consequence thereof it has been injured in both its business and its property."

5. In refusing to admit the decree of the United States District Court for the District of Delaware in the case of United States of America, Petitioner v. E. I. du Pont de Nemours & Company, *et al.*, No. 280 in equity in said court, and entered therein on the 21st day of June, 1911, which said decree is as follows:

9309

INTERLOCUTORY DECREE.

"This cause coming on to be heard before the three Circuit Judges of the Third Judicial Circuit in the Circuit Court of the United States for the District of Delaware, under the provisions of the expediting act of February 11, 1903, in the presence of George W. Wickersham, Attorney General of the United States; William S. Kenyon, Assistant to said Attorney General, and James Scarlet and William A. Glasgow, Jr., special assistants to said Attorney General, and Frederic Ullmann, for the

9310 *Assignment of Error No. 5*

defendants the American Powder Mills, the Miami Powder Company, and the Aetna Powder Company, M. B. & H. H. Johnson, for the defendant, the Austin Powder Company; Frederick Seymour, for the defendant the Equitable Powder Manufacturing Company; David T. Marvel and David T. Watson, for the defendant Henry A. du Pont, Burton B. Tuttle, for the defendant the King Powder Company, and John C. Spooner, James M. Townsend, George S. Graham, William S. Hilles, and William H. Button, for the remaining defendants, and the court having read the pleadings and proofs and heard the argument of counsel, and duly considered
9311 the same; and it appearing to the court that the petitioner, the United States of America, is entitled to the relief hereinafter mentioned:

"It is thereupon, on the 21st day fo June, A. D. 1911, ordered, adjudged and decreed, and this court, by virtue of the power and authority duly conferred on it by law, does hereby order, adjudge and decree as follows, to wit:

"1. That the petition be dismissed as to the following defendants, namely: Aetna Powder Company, Miami Powder Company, American Powder Mills, Equitable Powder Manufacturing Company, Austin Powder Company, King Powder Company, Anthony Powder Company, Limited, American E. C. & Schultze Gunpowder Company, Peyton Chemical Company, Henry A. du Pont, Henry F. Bald-
9312 win, California Powder Works, Conemaugh Powder Company, Metropolitan Powder Company, and E. I. du Pont Company of August 1, 1903.

"2. That the remaining 28 defendants, namely, Hazard Powder Company, Laflin & Rand Powder Company, Eastern Dynamite Company, Fairmont Powder Company, International Smokeless Powder & Chemical Company, Judson Dynamite & Powder Company, Delaware Securities Company, Delaware Investment Company, California Investment Company, E. I. du Pont de Nemours & Co., of Pennsylvania, du Pont International Powder Company, E. I. du Pont de Nemours Powder Company, E. I. du Pont de Nemours & Co., Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E.

du Pont, Henry F. du Pont, Irenne du Pont, Francis I. du Pont, Victor du Pont, Jr., Jonathan A. Haskell, Arthur J. Moxham, Hamilton M. Harksdale, Edmond G. Buckner, and Frank L. Connable, are maintaining a combination in restraint of interstate commerce in powder and other explosives in violation of section 1 of the act entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, that they have attempted to monopolize and have monopolized a part of such commerce in violation of section 2 of that act, that they shall be enjoined from continuing said combination, and that the combination shall be dissolved. 9314

"3. That this Court, in order to obtain such further information as shall enable it to frame a final decree which shall give effective force to its adjudication, will hear the petitioner and the defendants on the 16th day of October next as to the nature of the injunction which shall be granted herein and as to any plan for dissolving said combination which shall be submitted by the petitioner and the defendants, or any of them, to the end that this court may ascertain and determine upon a plan or method for such dissolution which will not deprive the defendants of the opportunity to re-create, out of the elements now composing said combination, a new condition which shall be honestly in harmony with and not repugnant to the law. 9315

"4. That both parties have leave to take such additional proofs as they may deem proper to be used at the hearing aforesaid.

"5. That, until the entry of final decree herein, said 28 defendants hereinabove last named are, and each of them is, and the agents and servants of them are jointly and severally hereby enjoined from doing any acts or act which shall in any wise further extend or enlarge the field of operations or the power of the aforesaid combination.

(Signed) GEO. GRAY,
JOS. BUFFINGTON,
W. M. LANNING,
Circuit Judges of the Third Judicial Circuit."

9316 *Assignment of Error No. 6*

6. In refusing to admit the decree of the United States District Court for the District of Delaware in the case of United States of America, Petitioner *v.* E. I. Du Pont de Nemours & Company, *et al.*, No. 280 in equity in said court, and entered therein on the 13th day of June, 1912, which said decree is as follows:

"FINAL DECREE.

"This cause coming on to be heard for final decree in accordance with the interlocutory decree
9317 entered herein on the 21st day of June, A. D., 1911, before the three Circuit Judges of the Third Judicial Circuit, in the District Court of the United States for the District of Delaware, in the presence of George W. Wickersham, Attorney-General of the United States, and James Scarlet, William A. Glasgow, Jr., and Victor N. Roadstrum, special assistants to said Attorney-General, and Ullmann & Hoag, for the defendants, the American Powder Mills, the Miami Powder Company and the Aetna Powder Company; M. B. & H. H. Johnson, for the defendant, the Austin Powder Company; Frederick Seymour, for the defendant, the Equitable Powder Manufacturing Company; David T. Marvel and David T. Watson, for the defendant, Henry A. du
9318 Pont; Burton B. Tuttle, for the defendant, the King Powder Company, and John C. Spooner, James M. Townsend, George S. Graham, William S. Hilles, Frank S. Katzenbach, Jr., and William H. Button, for the remaining defendants, and this Court by said interlocutory decree having consented to hear the petitioner and the defendants herein as to the nature of the injunction which shall be granted herein and as to a plan for dissolving the combination found herein by said Court to exist, to the end that this Court may ascertain and determine upon a plan or method for such dissolution which will not deprive the defendants of the opportunity to recreate out of the elements now composing said combination a new condition

which shall be honestly in harmony with and not repugnant to the law, and the Court having heard argument of counsel herein and having duly considered the matter, and it appearing to the Court that the petitioner, the United States of America, is entitled to the relief hereinafter mentioned.

"It is thereupon, on this 13th day of June, A. D. 1912, ORDERED, ADJUDGED AND DECREED as follows, to wit:

1. That the petition be dismissed as to the following defendants, namely: Aetna Powder Company, Miami Powder Company, American Powder Mills, Equitable Powder Manufacturing Company, Austin Powder Company, King Powder Company, 9320
Anthony Powder Company, Limited; American E. C. & Schultze Gunpowder Company, Peyton Chemical Company, Henry A. du Pont, Henry F. Baldwin, California Powder Works, Conemaugh Powder Company, Metropolitan Powder Company, E. I. du Pont Company of August 1, 1903, and International Smokeless Powder and Chemical Company.

"2. That the remaining twenty-seven defendants, namely: Hazard Powder Company, Laflin & Rand Powder Company, Eastern Dynamite Company, Fairmont Powder Company, Judson Dynamite & Powder Company, Delaware Securities Company, Delaware Investment Company, California Investment Company, E. I. du Pont de
Nemours & Company of Pennsylvania, du Pont 9321
International Powder Company, E. I. du Pont de Nemours Powder Company, E. I. du Pont de Nemours & Company, Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenne du Pont, Francis I. du Pont, Victor du Pont, Jr., Jonathan A. Haskell, Arthur J. Moxham, Hamilton M. Barksdale, Edmund G. Buckner, and Frank L. Connable, are maintaining a combination in restraint of interstate commerce in powder and other explosives in violation of Section 1 of an act entitled 'An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," approved July 2,

9322 *Assignment of Error No. 6*

1890, and have attempted to monopolize and have monopolized a part of such commerce in violation of Section 2 of said Act.

WHEREFORE, IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the twenty-seven (27) defendants above mentioned, and each of them be enjoined from continuing said combination and monopoly, and that said combination and monopoly be dissolved.

"3. That the petitioner having availed itself of the permission granted in said interlocutory decree and having presented a certain plan for the dissolution of said combination and the dissolution
9323 of said monopoly, so far as the present situation of the parties and the properties involved will permit, to which said plan the said twenty-seven (27) defendants do not object, which said plan is as follows:

"FIRST. Dissolve the defendant corporation E. I. du Pont de Nemours & Company (1902 Delaware corporation)and distribute its property among its stockholders.

"SECOND. Dissolve the defendant corporation Hazard Powder Company and distribute its property among its stockholders.

"THIRD. Dissolve the defendant corporation Delaware Securities Company and distribute its property among its stockholders.

"FOURTH. Dissolve the defendant corporation
9324 Delaware Investment Company and distribute its property among its stockholders.

"FIFTH. Dissolve the defendant corporation Eastern Dynamite Company and distribute its property among its stockholders.

"SIXTH. Dissolve the defendant corporations California Investment Company and Judson Dynamite and Powder Company, and distribute their property among their stockholders.

"SEVENTH. Organize two corporations in addition to E. I. du Pont de Nemours Powder Company (1903, New Jersey Corporation), which shall be capitalized as hereinafter provided, or reorganize the Laflin & Rand Powder Company and the Eastern Dynamite Company, or either of them, to

be used instead of one or both of said two corporations, and in case the said Eastern Dynamite Company is so selected, then it need not be dissolved as hereinafter provided. In case the Laflin & Rand Powder Company is not used under this paragraph, dissolve said Company and distribute its property among its stockholders.

To the first of said corporations transfer the following plants:

"*For the Manufacture of Dynamite:*

Plant at Kenville, New Jersey,
Plant at Marquette, Michigan,
Plant at Pinole, California.

"*For the Manufacture of Black Blasting Powder:* 9326
Plant at Rosendale, New York,
Two (2) plants at Ringtown, Pennsylvania,
Plant at Youngstown, Ohio,
Plant at Pleasant Prairie, Wisconsin,
Plant at Turck, Kansas,
Plant at Santa Cruz, California.

"*For the Manufacture of Black Sporting Powder:*
Plant at Hazardville, Connecticut,
Plant at Schaghticoke, New York.

"To the second of said corporations transfer the following plants:

"*For the Manufacture of Dynamite:*
Plant at Hopatcong, New Jersey,
Plant at Senter, Michigan,
Plant at Atlas, Missouri, 9327
Plant at Vigorit, California.

"*For the Manufacture of Black Blasting Powder:*
Plant at Riker, Pennsylvania,
Plant at Shenandoah, Pennsylvania,
Plant at Ooltewah, Tennessee,
Plant at Belleville, Illinois,
Plant at Pittsburg, Kansas.

"And permit the said defendant E. I. du Pont de Nemours Powder Company to retain the following plants:

"*For the Manufacture of Dynamite:*
Plant at Ashburn, Missouri,
Plant at Barkdale, Wisconsin,
Plant at du Pont, Washington,

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Plant at Emporium, Pennsylvania,
Plant at Hartford City, Indiana,
Plant at Louviers, Colorado,
Plant at Gibbstown, New Jersey,
Plant at Lewisburg, Alabama.

"*For the Manufacture of Black Blasting Powder:*
Plant at Augusta, Colorado,
Plant at Connable, Alabama,
Plant at Oliphant Furnace, Pennsylvania,
Plant at Mooar, Iowa,
Plant at Nemours, West Virginia,
Plant at Patterson, Oklahoma,
Plant at Wilpen, Minnesota.

9329 "*For the Manufacture of Black Sporting Powder:*
Plant at Brandywine, Delaware,
Plant at Wayne, New Jersey.

"*For the Manufacture of Smokeless Sporting Powder:*
Plant at Carney's Point, New Jersey,
Plant at Haskell, New Jersey.

"*For the Manufacture of Government Smokeless Powder:*
Plant at Carney's Point, New Jersey,
Plant at Haskell, New Jersey.

"EIGHTH. Transfer to or furnish the first of said two corporations with a plant for the manufacture of smokeless sporting powder and the brands now or heretofore owned by the Laflin & Rand Powder Company. Such plant to be located at Ken-
9330 ville, New Jersey, or some other suitable Eastern point, and to be of a capacity sufficient to manufac 950,000 pounds per annum of smokeless sporting powder of the brands to be assigned to the first of said corporations.

"NINTH. Furnish said two corporations respectively with sufficient working capital and the necessary cash and facilities to enable them to efficiently carry on the business which will attend the properties so to be transferred to them.

"TENTH. Transfer said properties to said two corporations respectively upon a valuation thereof based on the last inventory of said properties, to include a fair valuation for brands and good-will,

and issue to said E. I. du Pont de Nemours Powder Company in payment therefor securities of said two corporations respectively at par value as follows: Fifty per cent. (50%) of said purchase price in bonds not secured by mortgage, which shall bear interest at the rate of six per cent. (6%) per annum, payable if earned by the company during said year, or to the extent thereof earned, but not otherwise not cumulative, payable not less than ten years from date; the form of said bonds to be approved by the Attorney-General or the Court, which bonds shall be subject to call at one hundred and two (102), and the other fifty per cent. (50%) of said purchase price in the stock of said two corporations respectively, which for the time being shall be their entire stock issues. Upon the receipt of said stock and bonds by E. I. du Pont de Nemours Powder Company, distribute the said stock and one-half of said bonds or the proceeds of the sale of said bonds among the stockholders of E. I. du Pont de Nemours Powder Company. In the organization or reorganization of said two corporations to which said properties are to be transferred, provide two issues of stock in said two corporations respectively, one of which shall have voting power and the other of which shall have no voting power. So distribute said stock among the stockholders of E. I. du Pont de Nemours Powder Company that any amounts thereof which upon said distribution shall go to any one of the twenty-seven defendants hereinbefore mentioned shall consist one-half of said stock with voting power and one-half of said stock without voting power, and provide that upon the transfer through death or by will from any one of said twenty-seven defendants of any stock which has no voting power, to some person or persons other than one of said twenty-seven defendants herein, or upon the sale by any one of said twenty-seven defendants of any stock which has no voting power, to some person or persons other than one of said twenty-seven defendants herein, or their respective wives or children, said stock so sold or transferred may be exchanged for stock with voting power.

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9334 *Assignment of Error No. 6*

"ELEVENTH. Transfer to said two corporations, respectively, so far as practicable, a fair proportion of the business in explosives now controlled by E. I. du Pont de Nemours Powder Company under time contracts.

"TWELFTH. During a period of at least five years furnish each of said two corporations respectively, under such arrangement as may be reasonable, such information from the records of the Trade Bureau maintained by E. I. du Pont de Nemours Powder Company as may be desired.

"THIRTEENTH. During a period of at least five years furnish to each of said two corporations
9335 such facilities, information, and use of organization, as E. I. du Pont de Nemours Powder Comppany may operate or possess in reference to purchase of materials, experimentation, development of the art and scientific research, as said two corporations may desire from time to time, in the interests of their business, and upon some reasonable terms as to the cost thereof to said two corporations.

"AND SAID PLAN having been duly considered by the Court, it is ORDERED, ADJUDGED AND DECREED that the said defendants are respectively directed to proceed forthwith to carry said plan into effect, and it is further

ORDERED, ADJUDGED AND DECREED, that if said defendants shall not have carried said plans into op-
9336 eration and effected the same on or before the 15th day of December, 1912, then and in that event an injunction shall issue out of this Court restraining the said defendants in paragraph two of this decree mentioned and each of them, and their agents and servants from thereafter in any manner whatsoever placing the products of any of the factories owned by said defendants or said combination into the channels of interstate commerce, or such other relief shall be granted by the appointment of a receiver or otherwise as this Court may determine.

"4. That should the defendants find it impossible to perfect the details of said plan on or before the said 1st day of December, 1912, they may

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have leave to apply to the Court for further time to carry out said plan.

"5. That until said plan is carried into operation and effect, the said twenty-seven defendants hereinbefore named in paragraph two of this decree, are, and each of them is, and the agents and servants of them are jointly and severally hereby enjoined from doing any acts or act which shall in any wise further extend or enlarge the field of operations, or the power of the aforesaid combination.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the said twenty-seven (27) defendants, their officers, directors, servants, agents and employees

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be and they are hereby severally enjoined and restrained as follows:

From continuing or carrying into further effect after said 1st day of December, 1912, the combination adjudged illegal in this suit, and from entering into or forming among themselves or with others any like combination or conspiracy by any method or device whatsoever, the effect of which is or will be to restrain intersetate commerce in explosives or to renew the unlawful monopoly of such commerce obtained and possessed by the defendants as adjudged herein, in violation of an 'Act to protect trade and commerce against unlawful Restraints and Monopolies," approved July 2, 1890; and especially:

"1. By causing the conveyance of the factories,

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plants, brands or business of etheir of said two new corporations to the other corporations or to E. I. du Pont de Nemours Powder Company or *vice versa* after the segregation of the properties among said corporations shall have taken place as herein provided; by placing the stocks of either of said corporations in the hands of voting trustees or controlling the voting power of such stocks by any device;

"2. By making any express or implied agreement or arrangement with one another or with others relative to the control or management of either of said corporations, or the price or terms of purchase, or of sale of explosives or relative to

9340 *Assignment of Error No. 6*

the purchase, sale, manufacture, or transportation of explosives which will have the effect of restraining interstate commerce; or by making any agreement or arrangement of any kind between said corporations under which trade or business is apportioned between said corporations in respect either to customers or localities.

"3. By offering or causing to be offered or making or causing to be made more favorable prices or terms of sale for the products manufactured by them or either of them to the customers of any rival manufacturer or manufacturers than they at the same time offer to make to their established
9341 trade, where the purpose is to unfairly cripple or drive out of business such rival manufacturer or manufacturers or otherwise unlawfully to restrain the trade and commerce of the United States in any of said products; provided, that no defendant is enjoined or restrained from making any price or prices in the sale of said products, or any thereof, to meet or to compete with prices made by any other defendant, or by any rival manufacturer; and provided further, that nothing in this decree shall be taken in any respect to enjoin or restrain fair, free and open competition.

"4. By either of said corporations retaining or employing the same clerical force or organization, or keeping the same office or offices as any other of said corporations.

9342 "5. By either of said corporations doing business directly or indirectly under any other than its own corporate name or the name of a subsidiary corporation controlled by it, provided, however, that in case of a subsidiary corporation, the controlling corporation shall cause the products of such subsidiary corporation which are sold in the United States and bear the name of the manufacturer to bear also a statement indicating the fact of such control.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED tht said defendants cancel and annul:

"*a.* Agreement of October 2, 1902, between William Barclaly Parsons, of the City of New York, and the Delaware Securities Company. Petitioner's Record, Exhibits, Volume 4, page 1984.

"*b*. Agreement of October 6, 1902, between H. deB. Parsons, of the City of New York, and Delaware Securities Company. Petitioner's Record, Exhibits, Volume 4, page 1986.

"*c*. Agreement of the second day of October, 1902, between Schuyler L. Parsons, of the City of New York, and Delaware Securities Company. Petitioner's Record, Exhits, Volume 4, page 1988.

"*d*. A like and identical agreement made about the same date between J. A. Haskell and the Delaware Securities Company, described in Petitioner's Testimony, Volume 2, page 1012.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that during a period of five years from the date 9344
hereof each of said corporations, the E. I. du Pont de Nemours Powder Company and said two other corporations, their officers, directors, agents, servants and employees, be hereby enjoined and restrained as follows:

"1. None of said corporations shall have any officer or director who is also an officer or director in any other of said corporations.

"2. None of said corporations shall employ the same agent or agents for the sale in interstate commerce of explosives which might be sold in competition with each other; provided that any one of said corporations may sell its products on commission through a merchant or dealer who is similarly employed by either or both of said other corporations. 9345

"3. None of said corporations shall directly or indirectly acquire any stock in another of said corporations or purchase or acquire any of the factories, plants, brands or business of such other corporation.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each and all of the individual defendants by this decree adjudged to be engaged in said combination while holding stock in said two corporations and E. I. du Pont de Nemours Powder Company or any two thereof, be enjoined and restrained from at any time within three years from the date hereof acquiring, owning or holding, directly or indirectly, any stock of any legal or equitable in-

9346 *Assignment of Error No. 6*

terest in any stock in either of said two corporations to which said properties shall be transferred in excess of the amount to which he may be entitled under the provisions of the plan herein mentioned when the same shall have been carried out as proposed; provided, however, that any of said individual defendants may, notwithstanding this prohibition, acquire from any other or others of said defendants, or in case of death, from their estates, any of the stock held by such other defendant or defendants in said corporations and may acquire their proportions of any increase of stock.

9347 "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any new company or companies organized for the purpose of taking property under the provisions of this decree or otherwise, necessary to the carrying out of this plan, shall, after their formation and by appropriate proceedings, be made parties to this cause, and subject to the provisions of this decree and bound by the injunctions herein granted.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any party hereto may make application to this court for such orders and directions as may be necessary or proper in relation to the carrying out of such plant and the provisions of this decree.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED
9348 that the twenty-seven (27) defendants hereinabove mentioned, do pay to the United States Governmen its costs in this cause.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that jurisdictionn of this cause is retained by this court, for the purpose of making such other and further orders and decrees, if any, as may become necessary for carrying out the plan herein set forth.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that after the plan hereinabove mentioned shall have been carried into effect a report shall be made to this court for its approval, setting out the manner in which said plan shall have been carried out.

(Signed) GEORGE GRAY,
JOSEPH BUFFINGTON,
JOHN B. McPHERSON.
Circuit Judges.

9349

7. In refusing to permit plaintiff's witness Thomas Coleman du Pont to answer the following question—said witness having already been permitted to testify that he knew that the Circuit Court of the United States had decided that the legal effect of the various steps taken by him and his associates to take over certain properties and certain companies and in the organization of the E. I. du Pont de Nemours Powder Company, was that said organization was a monopoly:

"Q. Well, but did you know what steps the court took with reference to that matter after it reached that decision?" 9350

8. In instructing the jury as follows:

"The fact that the status of the defendant was such, however, that under a direct attack by the Government it would be dissolved as an unlawful combination in restraint of trade and an attempt to monopolize, would not alone make it liable in an action for damages. Such a suit can be maintained only for injuries sustained by reason of such attempted monopolization, so that in a suit for damages the defendant is entitled to more defenses than would be available in a suit brought by the Government for dissolution, and the plaintiff in such a suit has more to prove than is necessary to obtain a decree in the Government suit. It becomes important, therefore, to inquire into the relationship which the defendant bore to the powder trade generally at the time when the plaintiff asserts its promotor first declared his intent to engage in the powder business and its subsequent relationship toward such trade generally, and to the plaintiff in particular, during the years 1903 to 1908, within which period the plaintiff claims it was being injured by reason of the acts of the defendant and which it alleges were unlawful and within the operation of the Anti-Trust Act, as attempts to monopolize the powder trade. 9351

9352 *Assignment of Errors Nos. 9-11*

"The mere fact that the defendant owes much of its growth and power in the trade to unlawful acts of the past, and that it continued to enjoy the fruits of some of such unlawful acts, does not make it liable in damages in a suit of this character."

9. In refusing to instruct the jury as requested by the plaintiff in its fourth request, as follows:

"You are hereby instructed that it is not material what the degree of the restraint of trade was which the defendants exerted. It is sufficient if their acts only tended to restrain trade."

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10. In instructing the jury as follows:

"Furthermore, the evidence negatives the plaintiff's contention that as a result of the alleged overt acts the defendant succeeded in absorbing more than 95 per cent. of the powder trade. The fact is that the defendant's percentage of both its capacity of production and the trade actually supplied by it was less at the time the plaintiff sold its plant than when the latter began to do business, and that the percentages of both sales and capacity of production of the other manufacturers correspondingly increased during said period."

9354 11. In refusing to instruct the jury as requested by the plaintiff in its seventh request, as follows:

"It is no excuse that the members of a conspiracy did not intend to violate the Anti-Trust Act. It is the effect of the acts of the defendants and their co-conspirators that you must consider and not the intent or motive which they may have had in performing said acts. It is not, therefore, relevant to the issues in this case whether or not the defendants intended to injure the plaintiff, but the question is whether the plaintiff has been injured by the unlawful acts of the defendants. Intent may be inferred. The acquiring or taking over of the fruits of an unlawful conspiracy is of itself

prima facie evidence of the intent of those who have acquired those fruits to continue their conspiracy."

12. In refusing to instruct the jury as requested by plaintiff in its thirteenth request, as follows:

"You have a right to consider the evidence not only with reference to acts which relate directly to the plaintiff but also in order to ascertain the general policy of the defendants and to make that policy clear to your minds, you have a right to consider similar acts of the defendants in connection with other persons besides the plaintiff, which may 9356
show a general intent or policy on the part of the defendants to restrain trade and create a monopoly."

13. In refusing to instruct the jury as requested by the plaintiff in its fourteenth request, as follows:

"You are instructed that it is not necessary that the acts which injured the plaintiff and from which it suffered damage were aimed specifically at the plaintiff. The question is whether injuries resulted as the natural and proximate consequence of the unlawful acts of the defendants or any of their co-
conspirators. It is enough if such acts were pro- 9357
hibited or made unlawful by the Sherman Act. Any injury which resulted to the plaintiff by means of anything forbidden or declared to be unlawful by that act should be compensated for by you even though it should appear that the plaintiff was not in contemplation by the defendants at all."

14. In refusing to instruct the jury as requested by the plaintiff in its ninth request, as follows:

"This being a civil action, the rules which require that you should be convinced of the responsibility or liability of the defendants either on account of their unlawful acts or on account of the injury which the plaintiff may have suffered be-

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yond a reasonable doubt do not apply. A fair preponderance of the evidence is sufficient in actions of this character."

15. In instructing the jury as follows:

"In order to maintain this suit, the plaintiff must prove by a preponderance of the evidence that the defendant has been guilty of an attempt to monopolize, within the prohibition of the Anti-Trust Act, and also that in or by such attempt the plaintiff was actually injured in its business or property."

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16. In instructing the jury as follows:

"What the plaintiff fails to prove by a preponderance of evidence must be resolved in favor of the defendant, so that not only do you find for the defendant in case the weight of evidence should preponderate in its favor, but also in every case where there is a balancing of the evidence; so that, as far as these allegations of overt acts are concerned, the defendant is entitled to your verdict in every case where the preponderating weight is not in favor of the plaintiff's contention."

17. In instructing the jury as follows:

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"In conclusion, let me reiterate what I said at the beginning, that before the plaintiff can recover it must prove by a clear preponderance of the weight of the evidence, first, that there was an attempt on the part of the defendant to monopolize the trade, and that by reason thereof the plaintiff was injured; and, secondly, what was the kind and amount of the damage that it thus sustained."

18. In refusing to instruct the jury as requested by the plaintiff in its fifth request, as follows:

"You may also consider in ascertaining the policy of the defendants, the acts of their associates;

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whether they are made parties to this suit or not, and you may consider the dealings and agreements existing between the defendants and their associates as brought out in evidence. It is not necessary that a person be mentioned in the complaint as a defendant in order to make him a co-conspirator. It is possible that the names of all co-conspirators may not be ascertained, but that fact would not change the situation, and if you find that other persons not mentioned in the complaint were co-conspirators with these defendants in connection with their acts towards the plaintiff, you may also consider the acts of those co-conspirators not named in the complaint in an attempt to ascertain the general policy of the defendants."

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19. In instructing the jury as follows:

"No one who enters into a competitive field is guaranteed that he will get any particular share or even a share of the business at a profit, nor does the mere fact that the largest competitor is able to prevent a smaller one from getting a profitable share of the business make it liable in damages to such other. Competition, as it exists under the laws at this date, has within it the element of fight. It permtis fighting so long as it is fair and it permits the fair fighter to go away with the spoils, even though some one in that fight has been injured, and perhaps irretrievably injured in consequence; so that it is not the mere fact that a competitor suffers injury through severe competition that makes the other competitor who may have come out of the fray successfully liable to compensate for the losses sustained by the injured party."

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20. In refusing to instruct the jury as requested by the plaintiff in its twelfth request, as follows:

"You are instructed that it is the policy of the law to encourage men to engage in business for themselves and that business or trade combinations

9364 *Assignment of Errors Nos. 21-23*

which may temporarily or even permanently reduce the price of an article traded in or manufactured, by reducing the expenses inseparable from the running of many different companies for the same purpose, are not thereby excused or to be absolved from the condemnation of the anti-trust laws. Trade or commerce in those circumstances may nevertheless be badly and unfortunately restrained by driving out of business the small dealers and worthy men whose lives have been spent therein and who might be unable to readjust themselves to their altered surroundings. Mere reduction of price of the commodity dealt in might be
9365 dearly paid for by the ruin of such owners and the absorption or control over one commodity by an all-powerful combination of capital."

21. In instructing the jury as requested by the defendants in their fortieth request, as follows:

"There is no evidence showing that any of the defendants knew or had anything whatever to do with the purchase of the Buckeye Powder Plant and property by Mr. Olin and his associates, and therefore you must not consider the fact of such purchase as tending to establish any combination or conspiracy or other conduct prohibited by the Sherman Act."

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22. In instructing the jury as requested by the defendants in their forty-first request as follows:

"There is no evidence in the case to show that the defendants or any of them at any time exercised any control of any kind over the United States Powder Company or the Egyptian Powder Company, and therefore you must not consider any claim to the effect that they had exercised such control."

23. In instructing the jury as requested by the defendants in their forty-second request, as follows:

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"There is no evidence to the effect that the defendants or any of them exercised any control at any time over the affairs of the Equitable Powder Company or the Austin Powder Company by virtue of any stock that they have held in those corporations, and therefore you must not consider any claim to the effect that they had exercised such control."

24. In refusing to instruct the jury as requested by plaintiff in its twentieth request as follows:

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"You are instructed that an employee of a corporation or person who is engaged in an unlawful combination to restrain trade and commerce is not a co-conspirator unless he acts independently and beyond the scope of authority which is conferred upon him by his employers. If, therefore, you find that R. S. Waddell was at any time acting as an employee of one of the defendants or any of their co-conspirators, during the period while they were engaged in the performance of any unlawful act, you are not thereby to conclude that the said Waddell was a co-conspirator in the performance of any of said acts."

25. In refusing to instruct the jury as requested by plaintiff in its twenty-first request, as follows:

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"You are instructed that the acts done by these defendants must be judged irrespective of any acts which may have been done by the plaintiff or any officer or person connected therewith. The right of an individual to enter into business is nowhere restricted by the law. And you are further instructed that R. S. Waddell had a right to go out and build up an independent business of his own. The question involved in this case is whether the defendants themselves have violated the anti-trust laws of the United States. And if you find that they have violated said laws then they cannot excuse themselves because it may appear that some other person or corporation against whom their

9370 acts were directed may have been guilty of the same unlawful acts. The anti-trust act has its own penalties for violations of its provisions. It contains nothing that sanctions the argument that an offender against it shall be deprived of redress from a civil injury on the plea that he has been guilty of an infraction of that act. The act gives a remedy to any person injured in his business or property by virtue of any of the things prohibited by the act and does not suggest that such person make invoke unlawful acts of others as a defense to its liability. You may disregard all statements by witnesses or counsel in this case with reference
9371 to any violations of the anti-trust act by the plaintiff or by Mr. Waddell in determining the guilt of the defendants and should not allow any such evidence or statements to in any wise influence your judgment in considering the responsibility of the defendants to the plaintiff."

26. In refusing to instruct the jury as requested by the plaintiff in the twenty-second request, as follows:

"If you find that R. S. Waddell, previous to the time when he organized the plaintiff, was shadowed by detectives you may consider all the facts and circumstances surrounding the employment of such
9372 detectives and what the purpose was; and if you find the purpose of the employment of such detectives was to interfere with the said Waddell in securing a location for the erection of a plant for manufacturing explosives, and that such purpose was a part of the plant of the defendants to prevent the entrance of an independent competitor into the powder trade, then you are instructed that such purpose was an unlawful and wrongful purpose on the part of the defendants, to injure the plaintiff. Shadowing by detectives may be suggestive of criminality and it may be fatal to public esteem and productive of public contempt and ridicule and may be actionable in itself. The effect of shadowing by detectives may be directly to

harrass the person shadowed and to embarrass him in his business. The injury to the plaintiff by reason of the employment of detectives may not have been direct, it may have been indirect, and one of the elements of the general scheme employed by the defendants to carry out their purpose to control and monopolize the powder trade."

27. In refusing to permit plaintiff's witness, R. S. Waddell, on redirect examination, to answer the following question:

"Q. Upon your cross-examination you were asked if you told your attorneys the facts recited in the complaint with reference to the purpose which the du Ponts had in view in putting detectives on your track. Now I would like to have you state how you arrived at your conclusion, that that was the purpose of defendants in putting detectives on your track." 9374

28. In refusing to receive in evidence a letter, offered by the plaintiff, reading as follows:

Chicago, Feb. 13, 1903.

H. A. Koach, Esq.,
c/o Stratford Hotel, 9375
Cincinnati, Ohio:

Dear Sir—This will be handed to you by Capt. H. R. Saville of the Philadelphia Agency, who has been engaged in shadowing the party I wired to you about in cipher, as follows:

"Wire immediately if R. S. Waddell of Wilmington, Delaware, is now in Cincinnati; think can be found South East corner Third and Broadway. Want to place shadow; therefore, inquire carefully."

and to which you replied as follows:

"Mail at party's office Union Trust Building in-

9376 *Assignment of Errors Nos. 29-30*

dicates he will arrive tomorrow. He has home and family in this city."

Will you kindly assist him as much as possible in locating the party, and just as soon as he locates him, he is to wire to Chicago for assistance.

Yours truly,

(Signed) J. H. Schumacher,
Sup't.

29. In instructing the jury as follows:

9377 "There is no evidence whatever which would justify you in finding that the defendant hired detectives to track Mr. Waddell for the purpose of forestalling him in the purchase of a site, and to create opposition among the people to the location of plaintiff's plant in any place by instilling fear or otherwise, or by bidding up the price of any property plaintiff might have desired to acquire so as to prevent the entry of a competitor into the black powder business. The fact, however, that detectives were employed by the defendant to shadow Mr. Waddell after he had severed his connection with the defendant, and after his declaration to embark in a competitive business, is a circumstance to be considered by you in connection
9378 with the other testimony in the case upon the alternative questions whether it shows a hostile purpose upon the part of the defendant against Mr. Waddell's contemplated enterprise with the view of suppressing competition, or whether it was but a step taken by the defendant in the protection of its legitimate interests, namely, to prevent their employees from being taken from them by this prospective competitor, which latter is the explanation offered on behalf of the defendants."

30. In instructing the jury as follows:

"This suit is unique in many respects. The plaintiff, as a corporation and as a competitor in

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the powder business, is due to the efforts of R. S. Waddell, its chief witness in the suit. He organized it shortly after he separated himself from his employment with the defendant with which and its predecessors he had been identified for about twenty years. His services, while in the employment of the du Pont interests, brought him in touch with their business policies and operations in the vending of powder. He knew of the existence of the trade associations and of such of the restraints and limitations put upon its members as related to the apportionment of the trade and the fixing of prices. The compartive size of the defendant's capacity for output in relation to other powder manufacturers, and its influence as a factor in the trade generally, were known to him where he severed his connection and when he conceived and began to carry out his purpose of entering into such powder field as a competitor. The plaintiff does not occupy the same position as a competitor in existence during the period that this influence was being developed and who may have been, during the course of such development, as well as after it had reached the height of its power, injured in its business or property by reason thereof, but is here as one entering the competitive field when such growth and influence have been established. To it, this influence and power of the defendant, when it, the plaintiff was launched into the powder field, is not in itself actionable, even though that status is due in part to methods which are prohibited by the Anti-Trust Act, and before the plaintiff can recover it must establish that the defendant used its power in the trade oppressively, not necessarily against the plaintiff alone, but at least in the conduct of its business generally; that is, that it used such methods as, backed by its influential position, tended to the suppression of open competition and to obstruct the free flow of commerce—the trade conditions sought to be secured and protected by the prohibitions of the Anti-Trust Act, and that it, the plaintiff, was injured by reason thereof."

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9382 *Assignment of Errors Nos. 31-32*

31. In instructing the jury as follows:

"Mr. Waddell, as already stated, was well advised when he promoted the plaintiff company, of the defendant's business, capacity and policies. He had been its agent for a long period during which several severe competitive struggles took place, and he knew the outcome thereof, and which was, generally speaking, the taking over in one form and another of such new comers, and at least in one instance—that of the Indiana—at a considerable profit to the owners of that company.

"Of course Mr. Waddell, or the company which
9383 he formed had a right to go into business, and the motive for entering into such business is of little moment so far as their rights were concerned; but if he was actuated by the belief that his company would meet with a like experience after some competitive struggles, it may have a bearing upon the question whether the plaintiff was sufficiently capitalized to engage in the struggle for the market already occupied. Of course, if you find that it was sufficiently capitalized, or that it had sufficient financial backing to weather a struggle carried on under normal or lawful competitive conditions, that is a sufficient answer, and it would make no difference whether it was or was not sufficiently capitalized to meet a competition forced upon it
9384 by uunlawful means."

32. In instructing the jury as follows:

"There is no evidence, gentlemen, that would sustain the allegations made by the plaintiff that the defendant spread broadcast any of the information of facts or rumors which it obtained through the trade reports of its agents in such places or among the trade where it would result to the damage of any of its competitors, or that the defendant sought to destroy or injure the plaintiff's credit, or that it did anything to create distrust among the plaintiff's creditors, or that it circulated or fathered false rumors of the plaintiff's

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solvency or that of any of the other competitors, or that it tampered with the plaintiff's processes of manufacture, or that it misrepresented the capacity of plaintiff's mills, or that it circulated false and damaging statements of accidents that occurred at the plaintiff's mills, or that it circulated false and malicious statements concerning the quality of plaintiff's powder, or that cash, intoxicating liquors, household goods and clothing were distributed among miners to secure their influence with their fellow workmen to effect boycotts, or that it employed persons to enter plaintiff's mills to ascertain its business secrets, or that it made offers of financial assistance to consumers 9386
of powder to secure their orders or business, or that it sold its product below actual cost, or that there was any arrangement between defendant and the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company or any of the alleged co-conspirators whereby they would reimburse the defendant for the losses sustained by it in selling its powder below cost; and my instructions to you are, as to these particular allegations, that they have not been established, and you will therefore disregard them entirely in your further consideration of the issue here being tried."

33. In refusing to instruct the jury as requested 9387
by the plaintiff in its twenty-third request, as follows:

"You are instructed that the employment of miners or other persons to circulate among the users of black blasting powder in coal mining operations to cause them to become dissatisfied with or to object to the use of powder manufactured by the plaintiff and to make protests and complaints to their employers against the use in their mining operations of powder manufactured by the plaintiff, is evidence of the purpose and policy of the defendants to drive the plaintiff out of business."

9388 *Assignment of Error No. 34*

34. In refusing to permit the plaintiff to read to the jury certain questions and answers as set forth in the deposition of William J. Thrush, a witness for the plaintiff, said questions and answers being as follows, to wit:

"Q. State how it came about that you came to be employed by Mr. Moffatt to represent the Dooley Brothers at Hanna City. A. He wrote me a letter; he was personally acquainted with me, and he wrote me a letter and told me to come to town; and I accepted the letter and came down to see
9389 him. I met him here at Smith Hotel. He said, 'Get in the buggy and we will go down home.' We went down on Western Avenue—that's where he lived at that time. He said, 'I got a proposition to make to you'; he said, 'If you will get this powder installed out there in place of the Buckeye powder, I will pay you a commission on it.'

"Q. Now what did you say in response to his proposition? A. I told Mr. Moffatt, I said, 'All right, I will go out there and do the best I can for you.'

"Q. Was there any agreement made between you at that time as to what compensation you were to receive for your services? A. Yes, sir.

"Q. What was that? A. Five cents a keg.

"Q. For how long was that agreement to con-
9390 tinue? A. As long as they used—now, when we made that agreement, it was as long as they used that powder, but it didn't continue that long.

"Q. How long did it continue? A. I believe it continued about a year and a half or two years.

"Q. During this time, did you receive any compensation for your services, in pursuance of the arrangement which you have just testified you made with Mr. Moffatt? A. Yes.

"Q. State, as near as you can recall, how much compensation you did receive from that source. A. I wouldn't state positively how much, but something like $100.

"Q. From whom did you receive that money as it came due? A. From Mr. Moffatt.

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"Q. Where was the money paid to you? A. At different places.

"Q. State the places, as near as you can recall. A. Generally at Dooley Brothers' office, where I could see him; he was most always there.

"Q. Was the money paid to you over the counter? A. No, sir.

"Q. From whose hand did you receive it? A. Mr. Moffatt's.

"Q. Describe the circumstances under which you received the money from Mr. Moffatt; where and just how it was paid to you. A. It was paid to me in different shapes, sometimes.

"Q. You have testified you received some money 9392
from him at the office of Dooley Brothers; describe the circumstances and the manner in which that was paid to you. A. I always went in the back room, and Moffatt would come in the front room in the office part, and he would come to me this way, walking over to me and touching my arm, and he would drop the money in my hand, and I would put it in my pocket and get out.

"Q. Describe any other locations or places where you received money from him. You stated you received it from him from different places. A. At one time I come in there, and he said, 'I want to see you'; 'All right; come down and have a drink.' I told him I wasn't drinking, and he said, 'Come down and have a cigar'; and we went down to that
middle saloon right around the corner from his 9393
building.

"Q. Around the corner from the Dooley Brothers? A. Yes; and when we got there, we sat at a table, and he gave me the money over the table.

"Q. Now, did you state how long this arrangement with Mr. Moffatt and Dooley Brothers continued? A. Dooley Brothers had nothing to do with it.

"Q. You made your arrangement with Mr. Moffatt? A. Yes, sir.

"Q. How long did this arrangement continue? You have answered that question already, but I want to refresh my mind. A. It continued very near two years.

9394 "Q. It began in 1907—what part of the year? A. I couldn't just recall it."

"Q. After the Western powder became installed in the mines, did you continue to receive any further payments from Mr. Moffatt? A. No, sir.

"Q. I wish you would state in a general way, in your own way, just how you went about performing your duties under your arrangement with Mr. Moffatt, for the purpose of keeping Buckeye powder out of the mine and securing the use of du Pont powder. A. The grounds that I worked on was the commission I was getting out of it, and I used my influence the best I could to get that

9395 powder in.

"Q. Tell some of the things you did; some of the ways you used your influence. A. I was an expert miner in that coal, and worked in it so long, and I used to get out considerable coal, as much as any of them, and more than most of them there, and I said, 'Why don't you use the same kind of powder; why don't you use some good powder,'; I said, 'Look at my bulletins; I don't use as much powder as you do, and I am getting out more coal.' They said, 'What are you going to do; they send in this keg to me?' and I said, 'Exchange it; they will take it back.'

"Q. State whether or not, in your experience as a miner, and also as a member of the Miner's Union and a member of the Miner's Committee, how the

9396 members of the Pit Committee are regarded by the miners as a body.

"A. They are regarded as a refuge for to go to them for to get advice and to get difficulties adjusted.

"Q. State whether or not, as a rule, and in your experience, the men who are selected upon the Pit Committee are men with experience and who have the confidence and respect of their associates.

"A. They are picked as men with ability to know."

35. In refusing to permit the plaintiff to read to the jury certain questions and answers as set

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forth in the deposition of William J. Flanaus, a witness for the plaintiff, said questions and answers being as follows, to wit.:

"A. I will state that being the secretary of the Local and when they had a meeting, when any objections came up in regard to powder they were using, quite a number of the miners stated that they were getting inferior powder, and that their contract called for $1.75 for their keg, and they were getting powder that wasn't up to the standard; they were getting inferior powder, they said, and they ought to get a good standard powder; and we had quite an argument in the Local that night, and I was secretary of the meeting this night when the objection came up in regard to the powder; and we had quite an argument that night, and the Local officials were instructed to take it up with the company and see if something was wrong, or something could be done.

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"Q. What was the result of the instruction which was given to you by the Local; what steps, if any, did you take? A. I went with the president, and we took it up with Mr. Eden; we went together, and we took it up with him and Mr. Eden told me he was surprised to learn there was any kick coming on the powder; that they had to change contracts in recent years, and he said they had made a new contract some few months prior to this, and he didn't know why all the powder shouldn't be the same, and he seemed to leave the impression that the men just wanted to kick; but it kept getting worse, and they had a devil of a time, and they didn't get as much tons of coal as they used to do. So we reported that to the men; that was about all we could do; and he said he would take it up with the powder company immediately and see if they were not sending powder according to agreement. It went on for a week, and the miners got me on a foot car, and we called an indignation meeting, and we took the powder question up, and they stated that no other man should buy a keg of that powder; and we run for about five days,

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9400 and we didn't get out much tonnage; nobody was shooting much. Finally we took the case up with the State officials, and they came down, and they failed to do anything, and he ordered a strike on us; prior to that we were fooling around there. I was coming up the street one evening, and while I was there, one fellow came up the street and hollered, 'Hey, Flossy, I want to see you'—that's what they used to call me, some of the fellows, 'Flossy'; and he said a fellow over in the saloon wanted to see me and the officers of the Local. I goes over to the Palace saloon, and I met a large gentleman named McCollie, and he introduced himself, this
9401 fellow did, and we got familiar, and we called him 'Mack.' So he got newsy, and he wanted to know my position in the Local, and I told him the secretary; and he said, 'I want you to get some of your officers and practical miners together, and I want to have a talk with them. You are making a fight upon our powder.' Of course, I didn't care a damn

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"*By Mr. Katzenbach*:

"Q. This was Miami powder? A. Yes; and I said 'All right.' I went out and counted up nine or ten or fifteen of the boys, and we set around a nice big table and he out with a row of bills, and he said, 'Give these boys something to drink.' Well, we wasn't going to let that go by, and we sat there until the saloon closed, talking powder. And he
9402 showed us a lot of samples, and showed us that it was impossible for that powder to be wrong; and he said he had all grades of powder from 'C,' 'F,' all the way along, and some was as big as marbles; and he gave me bottles of powder to show to the miners; and he said that I could keep it in my desk and display it to the miners.

"Q. Who gave you this powder? A. Mr. McCollie, he gave it to me; I took it up and showed it to the boys, and they all swore that wasn't the powder that was in their kegs. We didn't know what was up the tree, and we wanted to be on the right side, so they fetched in some that was in their kegs; and all the mines that were in the one local, they had 1,100 members, and one man was using

King's, and another was using Du Pont, and we told these boys to fetch in samples and we would see what was doing. When they fetched in from the other mines, we didn't get any King's; I believe they said they were out; we didn't get any King's, they were borrowing powder. You see one mine would be using King's and another mine using Du Pont's, and we didn't get any King's; they said they were out, and they were borrowing Du Pont's; they were out of King's at that time. We got some Du Pont's from Forester's, and we put them alongside of the samples Mr. McCollie gave us, and you couldn't tell the difference in the powders; but not one of them fetched the powder that our boys was using; there was quite a difference. 9403 9404

"*By Mr. Abbott*:

"Q. Now, state more clearly what you mean—I will ask you what you did, if anything, after you had these samples and made these comparisons which you have indicated. A. Yes, sir, we took the samples down to Mr. McCollie, and in the meantime, Mr. Sharp; he claimed he was the representative of the Illinois country, and he was helping Mac demonstrate this powder, and Mr. McCollie said, 'There does appear a little difference, and in order to give it a start, I will order a dozen kegs or so sent out from our office, and I want you to pick good men and let them try it'; that's what he said, and I said 'All right'; he said, 'They'll get a free keg of powder, and you won't have any trouble selecting your men.' Well, that powder worked fine; for about a week we would meet him over in our headquarters—it was in the saloon; and we kept notifying other miners, and inviting them in; finally, it got to be a pretty nice thing, that powder man being there treating them nights. On Saturday evening Mr. McCollie said that he was told that you couldn't get a drink here on Sunday; I said, 'That's all right,' and he said, 'I'll tell you what I want'; I said, 'All right, anything that's legitimate is all right.' He said, 'We want to demonstrate to you that our powder is all right,' he said, 'Mr. Sharp and myself worked among the miners while Mr. White is sales agent—he does 9405

9406 the selling, but we are attending to the miners' troubles, and we want them to decide to use our powder.' He said, 'Get as many of the boys for a nice time to-morrow.' He said he was told they couldn't get a drink, but that would be all right. He said, 'Do you know where we could get a good hall?' and the bartender said, 'Yes; I know a place and a fellow who's running a barber shop up there, and they have a club room there,' and he said, 'They have cards and things, and you could have a few drinks, and I could get that for you'; and he said, 'You get it, and I will pay whatever is right'; and he said, 'It falls between you to fix
9407 up a list of what is good, and we want to have a hell of a blow-out'; and I said, 'All right, how many do you want?' and he said, 'Any miners you want to ask up'; and I asked the bunch, and he jacked out this big roll, and gives me in the neighborhood of forty-five or fifty dollars—I can't recollect now the exact amount—and he said if that wasn't enough, that he wasn't broke, that I should draw on him for more. And I gets a lot of chickens and gets in with the young lady to fry them up, and I ordered ten or fifteen kegs of beer, and then I invited the boys to the blow-out; he told me to do that, and that he wanted to meet the miners and do become more friendly, and he said that he didn't want us kicking on the powder; if there was anything wrong, he wanted to know it. And we had a
9408 damned jolly time all day Sunday, and Mr. McCollie was a fun-maker for us, and he sung and made speeches, and we had a splendid time, and there was about half of the committee up there; the rest of them were average miners.

Q. What committee? A. The powder committee.

"Q. A regular or a special committee? A. A special committee.

"Q. Who were the members of that? A. Jim Cross, George Armstrong, and I can't think of all of them at this time.

"Q. What were the powers of this special committee? A. They were appointed to meet with the operators and also the representative of this powder, and see if they couldn't get an adjustment of the reason why this power was inferior as it was.

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"Did they afterwards meet with the powder men? A. Yes, sir.

"Q. Tell what steps were taken, if any, after that, to determine the matter of the quality of the powder. A. After Mr. McCollie had sent for these sample kegs, he said, 'They come out of the magazine, and the car is loaded in the same manner.' That showed up pretty good, and we called upon Mr. Eden and bought the powder again. He said, 'I can give you du Pont powder,' and I said, 'No, under instructions from the Local, we don't want nothing but "Double F" Miami powder.'

"Q. Had you made any test or trial in which Du Pont powder figured? A. In the same thing, not a quarter of a mile away——

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"Q. At this time? A. We made the test later on.

"Q. Then, go on with your story. A. So Mr. Eden got awful mad at me; they called me 'wind jammer' or something. It didn't make any difference to me which powder they used, one was about as costly as the other; and that's what he said, and I said the boys didn't want Du Pont, they wanted 'F. F.' Miami; and we got in a wrangle.

"Q. What was the result of the notice or demand which you gave to him? A. The boys came out on strike; they wanted that powder, and we didn't care, we had our nice time; and so the boys, they came out on strike.

"Q. Why? A. Because Mr. Eden then wouldn't make use of Miami powder; so we came out on strike and sent for the State officers, and they came down there, and he came down there, and I believe he used these words—he said, 'Boys, I believe you have played behind the curtain long enough, it's time to raise it; you come out until the company gets you the powder you think you can do the work with.' We were out on strike for several weeks, and I kept getting commissaries from the State.

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"Q. By 'commissaries' what do you mean? A. You know when you are ordered on strike by the State officials, they pay the miners so much a week.

"Q. I wish you would state, if you know, what was the result of this strike which was called; how

9412 long did it last? A. Well, it lasted several weeks. In the meantime, while the strike was going on, we discharged some of them off the committee; one of the committee wanted Du Pont powder, and they told him he wasn't right, and one of them got him. Mr. McCollie had promised them a box of shells to go hunting with, and he hadn't got them; and we kept getting commissaries, and it run away up into the thousands; and it come time then for the convention at Peoria.

"Q. The convention of what? A. The miners.

"Q. What convention is that technically known as? A. The United Mine Workers' convention at
9413 Peoria. And so we selected a couple of delegates to go up there, and knowing that we were still on the commissary list, I got a letter stating we were off the commissary list; and they sent our delegates back to tell them there had been some fraud about the thing—that the powder men had bought some of us local officials. So our delegates went back to the convention, and the miners got back together again, and they decided to have a test between the Du Pont and Miami powders; and the miners were to select a miner, and the company was to select a miner, and the miners was to put a man on top to count the tonnage, per cent. of screening and the lump coal.

"Q. Was that test held or not? A. Yes, sir.

"Q. What was the result of that test, if you
9414 know? A. We got a notice from the convention that we should go to work, and that we would have that test. When I got the communication, I called a special meeting of the miners and protested against any such decision; so they sent a committee to the convention to serve notice that if we didn't get to work and take up the test, we would be fined ten dollars; se we had a test, and we tested Miami so many days and Du Pont so many days, and there was such a little difference in the test of the powder, and the difference was nothing much—and we returned to work.

"Q. You did return to work? A. Yes, sir, after we had been out several weeks, I guess. Counting wages and the money we derived from the State funds, amounted to over seven thousand dollars.

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"Q. What powder did you use after the test? A. Miami.

"Q. How many members of your Local Union were there at the time of this difficulty that you have testified to? A. The time we had the powder strike?

"Q. Yes. A. Well, the membership of the Local was between ten and eleven hundred; all the men affected by the strike was in the neighborhood of six or seven hundred.

"Q. Now, do you know of your own knowledge, what was the action of the convention at Peoria with reference to the owner of the mine concerning that strike? A. I know that the operators made 9416
a demand that they be reimbursed.

"Q. Do you know whether he was reimbursed or not? A. I do not.

"Q. Do you know, of your own knowledge, whether any money was paid by either the powder representatives that you have testified regarding, to any other person than yourself at that time? A. I will only state in regard to the money transaction, all I knew is what I got.

"Q. Do you know who was the representative of the du Pont Company that was there at that time?

"Q. I will ask you whether or not there was a representative of the du Pont Company there at the time of this disturbance? A. During the strike there was a man met me in the saloon there, and introduced himself, but what his name was, I don't 9417
know; I had one drink with him, and I don't remember his name. I told him to stay away.

"Q. Can you describe him? A. Yes; he was about forty years old, forty years of age, and about my height, and somewhat slimmer than I am.

"Q. Do you know where he came from? A. No.

"Q. Don't you know where he came from? A. No; I know he was a man in the saloon.

"Q. Did he give you his name at all? A. Yes; and said he was representing the du Pont Company.

"*Cross-examination by Mr. Katzenbach*:

"Q. What was the date of this occurrence that you have been talking about? A. Along in the neighborhood of 1907 or the early spring of 1908."

9418 *Assignment of Error No. 36*

36. In instructing the jury as follows:

"One of the instances relied upon by the plaintiff as proof that certain improper influence was exerted against the plaintiff's powder is what has been frequently called in this case the "Thrush Incident," and which occurred at the Hanna City mines of Appellate & Lewis. That is in Illinois. At this mine there was considerable contention and strife over the use of both the plaintiff's and defendant's powders. Before the advent of the plaintiff the du Pont powder had been used for a number of years at these mines, but for a few months preceding the
9419 contest here referred to the Buckeye powder had been in use more or less. It was to the interest of the owners of the mines, if the plaintiff's powder was as satisfactory as the defendant's, to use the plaintiff's powder, as the mines were within four miles of the plaintiff's mill and they would not be required to purchase as many kegs at a time as was required in the handling of the defendant's powder. Mr. Lewis, one of the owners of such mines, and their superintendent, Mr. Robert Morton, testified that they had had good results with the plaintiff's powder. As per their testimony, they had less screenings in the use of such powder than theretofore, and it was to the pecuniary advantage of the operators to have as little screenings as possible, that result induced them to adopt plaintiff's
9420 powder. For a time both the plaintiff's and defendant's powders were used, each having its particular advocates among the miners. The contest among the miners over these powders reached such a stage, however, that the owners had considerable difficulty in their purpose of having the plaintiff's powder used at their mines, a number of the miners protesting against its use. This resulted in a test being ordered by the miners' union. While this test was going on each of the powders had a paid representative among the working miners, one acting in the interest of the plaintiff's powder and the other in the interest of the defendant's. Alec Thrush, representing the plaintiff's powder, received $1.00 a day for a period of time. The period

is in dispute between Mr. Thrush and Mr. Waddell. William J. Thrush, a relative of Alec Thrush (I understand he was a relative, although he may have been a distant one), working in the interest of the du Pont powder, received five cents for each keg of such powder that was used there. Both of these Thrushes were membrs of th Pit Committee and therefore in an influential position. Robert Morton, the superintendent, testified to the character of the test which proceeded for some days, and his evidence tends to show that the test was not fairly conducted on the part of the representatives of the du Pont interests, they aiding the effects produced by the defendant's powder by undercutting the coal in the solid. The result was that the test was discontinued on the order of Mr. Morton and the owners abandoned their attempt to keep the plaintiff's powder in their mines and the du Pont powder took its place." 9422

37. In permitting R. S. Waddell, Jr., a witness for the plaintiff, while on cross-examination, to testify as follows:

"Q. Then in making the calculations of cost of the powder, of this ingredient, nitrate of soda, you did not enter the cost at what you were paying at the time under your contract of nitrate of soda, but at what you took from the newspapers or other data as the prevailing price of nitrate of soda, is that correct? A. No, sir. I would like to explain if I may just how we arrived at that." 9423

38. In refusing to permit R. S. Waddell, a witness for the plaintiff, while on direct examination, to answer the following question—he having been permitted to testify that he had applied to purchase powder manufacturing machinery, for the use of the plaintiff, to Prox-Brinkman Manufacturing Co. and to I. & E. Greenwald & Co., to Pusey & Jones, and to Olin Scott and to Allentown Foundry & Machinery Co. (each of whom were makers of pow-

9424 der manufacturing machinery) and had been refused by each of them, and the court having refused to permit him to state what were the reasons for such refusal:

"Q. Now I will ask you to answer the general question whether the reasons that were given to you by each one of these parties were of a similiar character or not."

39. In instructing the jury as follows:

9425 "As to the forestalling plaintiff in securing powder-making machinery. The only evidence on this head is the deposition of Jacob E. Schoemel, agent of Prox-Brinkman Mfg. Co., which shows that that company had a contract with the Indiana Powder Company whereby such manufacturer of machinery agreed not to make machinery for any one but the Indiana Powder Company and one other manufacturer named and in consideration of which the Indiana Powder Company agreed to take $5,000 worth in repairs to or new construction of machinery a year for a period of five years, or to pay such manufacturer twenty per cent., as profit, for any part of said $5,000 worth of work a year which they should not take. At the time this contract was made, June 3, 1902, as well as when Waddell first
9426 sought to obtain machinery for his plant, the Indiana Powder Company was owned by the defendant."

40. In refusing to instruct the jury as requested by the plaintiff in its twenty-fourth request, as follows:

"You are instructed that efforts to employ railroad agents or employees to divulge information concerning consignments which might from time to time be made by the plaintiff to its various customers is evidence of the purpose and policy of the defendants to drive the plaintiff out of business

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and is therefore an act prohibited by the Anti-Trust Act."

41. In instructing the jury as follows:

"As to the charge that the defendant employed railroad employees to make telegraphic reports or other kind of reports of the plaintiff's shipments, and which information was used to get consignees to reject plaintiff's shipments, there is no proof that the defendant was able to have the consignments of plaintiff's powder cancelled by reason of any information obtained from railroad employees concerning such consignments, or that they ever 9428
succeeded in getting such information from such employees, but there is evidence in the case that one named Piatt, who was an agent of the defndant, sought to hire Harry Paige, commercial agent of the C. B. & Q. Railway, to give him (Piatt) information concerning the shipments of the plaintiff's powder, offering to pay for such information at a named rate—$5.00 a letter, as I recall it. This was peremptorily refused by such agent, and as I recall it it is the only proof of any attempt to secure such information. This, of course, was a reprehensible act. What does such an act, in the light of all the circumstances surrounding it, and keeping in mind other facts in the case bearing upon the keen competition that took place between
the defendant's and plaintiff's powders in that dis- 9429
trict, indicate? The plaintiff was a newcomer in a field already occupied. Except as to new business, it is inevitable that in order for the plaintiff to place its output it would draw some of the custom that theretofore had been flowing to the defendant or some other competitor. All of them had a right to compete for such business. None of them had the right, however, to use any but lawful methods. To retain one's own customers obtained by lawful means or to secure new ones is lawful, provided no unlawful means are used. The mere ascertaining to what person or place a competitor's product is being shipped is a legitimate means of keeping tab on the trade, and if a par-

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ticular competitor has been making inroads upon the established trade of another, such other may properly keep a surveillance over the conduct of such new competitor; but, while this is lawful, it may be readily noted that an unlawful use of such information may be made."

42. In refusing to permit R. S. Waddell, a witness for the plaintiff, while on direct examination, to state what it was that caused him, as president of the plaintiff, to make an investigation for the purpose of ascertaining how it was that advices were received by him from persons to whom consignments of black blasting powder had been shipped from the shipment office of the Buckeye Powder Company—giving the definite car number of the car in which shipment was made and all the details of the shipment—before notice of that shipment had been received at the business office of that company.

9431

43. In refusing to permit John G. Miller, a witness for the plaintiff, while on direct examination, to answer the following question—he having already been permitted to testify that while he was selling the product of the Buckeye Powder Company he received information concerning the business of the Buckeye Powder Company from sources other than that company, and that one of the sources of that information was a customer named Steve Bailey, of Fraser, Iowa..

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"Q. What information did you obtain from Steve Bailey?"

44. In refusing to permit John G. Miller, a witness for the plaintiff, while on direct examination, to answer the following question—he having already been permitted to testify that he called the

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attention of the Burlington Railway Company officials to the situation relative to information concerning the shipments made by Buckeye Powder Company to its customers coming to him from sources other than the Buckeye Powder Company, and that said officials made an investigation:

"Q. Now, do you know what the result of that investigation was?"

45. In refusing to receive in evidence on behalf of the plaintiff certain letters written by J. H. Somers & Company to the Buckeye Powder Company, 9434
reading as follows, to wit:

"J. H. Somers & Co.
Cleveland, Sept. 10, 1904.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:

Your Mr. R. S. Waddell was here the 5th and promised to send me some samples of your powder. One or two other large users of powder with their offices in this city have been in to see me in regard to your powder. I have asked them to defer their orders or any changes they would make until after these samples had arrived and we had made a thorough investigation of your ability to turn out the kind of powder we require. 9435

The samples Mr. Waddell had with him were beyond question in regard to quality, etc. Some of these other companies I speak of have no contract for powder, consequently you could start to doing business with them at once. It is a little different with us; we are tied up with a contract for the next few months but expect to make some change if we are not taken care of a little better than we have been.

Please forward these samples at once, and oblige,

Yours truly,
J. H. Somers & Co.,
Wm. D. Somers, Pur. Agt."

9436 *Assignment of Error No. 45*

"J. H. Somers & Co.
Cleveland, January 31, 1905.

Buckeye Powder Company,
Peoria, Ill.

Gentlemen:

We have yours of the 28th inst., and in reply will state our present contract does not expire until March. It might be well for you to take this matter up with us at that time.

Your statement that your powder is "excelled by none" must be correct, as we have heard several parties speak well of your product, and we have a set of your samples, which also speak well for
9437 themselves.

We use very little Single F powder. In Michigan we use only FF. Our three mines in this territory have used about 6 000 kegs of FF since October 1st. When Mr. Waddell was in Cleveland he stated your mill was either well supplied with F or FF, the writer does not remember which.

We have been informed that you have been very successful in your new enterprise, and we are very glad you have met with this success, which no doubt, is due you.

Yours very truly,
J. H. Somers & Co.,
Wm. D. Somers, Pur. Agt."

9438 "J. H. Somers & Co.
Cleveland, March 8, 1905.

The Buckeye Powder Company,
Peoria, Ill.

Gentlemen:

We have yours of the 3rd inst. with reference to furnishing powder for our Michigan properties, and note what you say in regard to Mr. Steven Corvin, as being your agent. You have failed to quote us prices on powder, and we would ask you to kindly take this matter up at once and give us your best price delivered, St. Charles, Mich.

We have purchased 7,200 kegs of FF powder since October 1st for these properties and you can tell by these figures about how much we will use

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per year, especially as the coal business in this particular district last winter was not very good.

We might say in conclusion that we expect to buy powder a little cheaper this year than last, and this business, no doubt, will be yours if you quote the right price.

Yours very truly,
J. H. Somers & Co.,
Wm. D. Somers, Pur. Agt."

"J. H. Somers & Co.
Cleveland, March, 25, 1905.
The Buckeye Powder Company,
Peoria, Ill.

9440

Gentlemen:

We have yours of the 23rd inst. with reference to furnishing powder for our Michigan mines. We are sorry to state that your price quoted several days ago did not meet favor, and as you said you can meet any price that is named we will wait until you make another quotation before we place this business.

We have a much better price than the one you have quoted and while we are very anxious to give our friend Mr. Corvin this business, yet we cannot see our way clear to pay a higher price for your powder than we would have to pay for the powder we have been using in the past.

Yours very truly,
J. H. Somers & Co.,
Wm. D. Somers, Pur. Agt."

9441

"J. H. Somers & Co.
Cleveland, April 15, 1905.
The Buckeye Powder Company,
Peoria, Ill.

Gentlemen:

We are a little late in acknowledging receipt of your quotation of March 31st, however, we have been thinking the matter over and have been in constant correspondence with our superintendent at St. Charles in regard to the matter.

In your letter you state if any Powder Company made us a better price than 1.05 delivered they were

9442 *Assignment of Errors Nos. 45-46*

entitled to the business. We have the better price all right—same being $1.02½, but we have not decided definitely in regard to the Michigan business. As we use a great deal of powder and have always been well taken care of we want to know positively if we can get powder promptly after we have placed our order for the same.

We have been signed up for sometime for our powder in Ohio, and have included the Michigan properties in this contract in a way that we can purchase powder from the same company we purchase our Ohio powder providing we do not give you the business.

9443 We cannot give you any definite information on this matter until our superintendent has time to render his decision.

Yours very truly,
J. H. Somers & Co.,
Wm. D. Somers, Pur. Agt."

"J. H. Somers & Co.
Cleveland, Aug. 23, 1905.

Buckeye Powder Company,
Peoria, Ill.

Gentlemen:

We herewith enclose our order #1248 for one carload of FF blasting powder, price to be $1.02-½ delivered as per your letter of Aug. 21st. You no doubt have been advised by Mr. Corvin that we are
9444 buying our powder for $1.00 per keg at the present time. We are willing to pay you 2-½ per keg on this order as we are anxious to give your powder a trial.

Yours truly,
J. H. Somers Coal Co.,
Wm. D. Somers, Pur. Agt."

46. In refusing to permit the plaintiff to read to the jury a certain letter written by Thomas Mackie to the Buckeye Powder Company, and dated at Kansas City, Mo., May 24, 1906, and reading as follows:

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"Kansas City, Mo., May 24, 1906.
"Buckeye Powder Co.,
Peoria, Ill.:

"Gentlemen—We will soon be ready to enter into a contract for our powder requirements for the ensuing year or for the next two or three years, and would be pleased to have you make us a proposition covering same.

"Kindly let us hear from you at your earliest convenience, and greatly oblige,

Yours truly,
Thomas Mackie,
Genl. Pur. Agt."

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47. In refusing to permit the plaintiff to read to the jury a certain letter written by Thomas Mackie to the Buckeye Powder Company, and dated at Kansas City, Mo., August 15, 1906, and reading as follows:

"Kansas City, Mo., August 15, 1906.
"Mr. R. S. Waddell,
Prest. Buckeye Powder Co.,
Peoria, Ill.:

"Dear Sir—Referring to your letter of May 26th quoting prices on powder delivered at our various camps for the ensuing year, beg to state that this matter has just been determined and I regret to advise that you were not the successful bidders.

9447

Yours truly,
Thomas Mackie,
Genl. Pur. Agent."

48. In refusing to permit the plaintiff to read to the jury a certain letter signed by the Waverly Coal & Mining Company, by J. W. Ferguson, President, and addressed to the Buckeye Powder Company, and dated at Kansas City, Kansas, February 17, 1906:

9448 *Assignment of Errors Nos. 48-49*

"Kansas City, Kansas, Feb. 17th, 1906.

"Buckeye Powder Co.,
Peoria, Ill.:

"Gentlemen—I wired you today cancelling car of CC Special Powder. I am somewhat tied up with the du Pont Company and I am obliged to do this. If you have invoiced this car and it is shipped, or if you consider that the powder belongs to us, ship it at once and date your invoice Feb. 16th. Ship by as slow freight as you please, as I do not care for it before the 1st of March, or even the 10th
9449 of March. I say this because I do not wish to pay for it until say 90 days. If you are willing to do this, ship it as directed, but don't give me away tothe du Pont powder people.

"I will be clear of them in a few months. Wire me what you do. Saying you had shipped Feb. 16.

Respectfully,
WAVERLY COAL & MINING CO.,
by J. W. Ferguson, Pres."

49. In refusing to instruct the jury as requested by the plaintiff in its tenth request, as follows:

"In determining the purpose of the defendants to monopolize or restrain the powder trade, you may
9450 consider the purpose of inducing consumers of explosives to enter into contracts for the purchase of explosives from the defendants. You should consider the nature of these contracts, the general scope and terms thereof, and whether the same constitute a general system. If you find that these contracts were sufficiently numerous to indicate a general purpose to induce consumers of explosives over a wide area to withdraw their trade from competition, then you should find that such contracts constitute an attempt to monopolize the powder trade by eliminating competition.

"If you find that numerous contracts were made with numerous consumers of explosives prior to the time of the organization of the defendants the E. I.

9451

du Pont de Nemours Powder Company, and that such contracts were acquired and taken over by said defendants after its organization, and that such contracts have been renewed from time to time as they were about to expire, you are entitled to consider such facts as evidence of a continuing conspiracy for the purpose of monopolizing the trade in explosives. It is for you to determine what was the purpose and effect of these contracts regardless of any interpretation that may have been put upon the making of said contracts by the defendants or any of the co-conspirators."

9452

50. In refusing to permit plaintiff's witness R. S. Waddell, while under redirect examination, to state what the information was which he gave to plaintiff's attorneys upon which the allegations set forth in paragraph 11 of the plaintiff's amended declaration were based—counsel for defendants on cross-examination having already been permitted to read the said paragraph to the said witness and thereupon to ask him whether he gave his attorneys the information upon which said allegations were based, to which the said witness replied that he did and would be glad to state them to the jury.

9453

51. In refusing to instruct the jury as requested by the plaintiff in its twenty-sixth request as follows:

"If you find that the defendants made prices which were applicable to certain districts where there was competition and which were different from prices which obtained in other districts in which no competition prevailed, you are instructed that this is strong evidence of the purpose of the defendants to restrain and monopolize the powder trade.

"You are further instructed that the policy of making prices which were applicable only in districts where competitive conditions prevailed is a

9154 *Assignment of Errors Nos. 52-53*

policy which it is difficult if not impossible to contend with and is regarded as one of the most effective weapons which can be used in the monopolizing of the trade within a given territory."

52. In permitting the plaintiff's witness Charles L. Patterson, while on cross-examination, to testify as follows—he having already been permitted to testify on redirect examination that the salesboard of the defendant E. I. du Pont de Nemours Powder Company made a price of 95 cents per keg for black blasting powder in certain districts dur-
9155 ing the years 1905 and 1906:

"Q. Who started the price cutting in those years? A. I could not answer that question, Mr. Button, definitely. I know what I think. My best recollection is that the Buckeye Company did it."

53. In refusing to allow John G. Miller, a witness for plaintiff, while on direct examination, to answer the following questions—he having already been permitted to testify that he had endeavored to sell Buckeye Powder to certain persons whom he knew to be under contract to purchase powder from the Laflin & Rand Powder Company, and that
9156 he failed to sell to such persons, and that they gave him reasons why they did not or would not purchase powder of him:

"Q. State what those reasons were as given by them.

"Q. Did any of those reasons which were given to you involve the question of these contracts which were in existence?

"Q. Did any of the reasons which were given to you by these parties or any of them involve the question of special prices that had been made to them by any other manufacturer of powder?

Assignment of Error No. 54

54. In permitting Olive Taylor, a witness for the defendants, to testify as follows: 9457

"Q. Now, Mrs. Taylor, in a suit instituted in the United States District Court for the District of New Jersey, by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company and two other companies, known as the International Smokeless Powder and Chemical Company and the Eastern Dynamite Company, the Buckeye Powder Company, in answer to a demand for the names of customers of the Buckeye Powder Company induced by the defendants, or by the other persons or corporations I will name to you, the 9458
Buckeye Powder Company has given the name of Howarth and Taylor as one of the customers of the Buckeye Powder Company which was induced by these defendants and persons which I will name to abandon the purchase of powder from the Buckeye Powder Company. The names of these persons are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry E. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmund G. Buckner, Frank L. Connable, Jonathan A. Haskell; and the following corporations: International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du 9459
Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin and Rand Powder Company, Fairmont Powder Company and Judson Dynamite and Powder Company. Will you now state whether or not any of the persons that I have mentioned here, or any of the corporations which I have mentioned in this question, or any agent or representative of those persons or corporations, ever induced you, as purchasing agent for your husband, Daniel Taylor, trading as Howarth and Taylor, not to purchase powder of the Buckeye Powder Company? A. No, sir."

9460 *Assignment of Errors Nos. 55-56*

55. In permitting the following named persons while testifying as witnesses for the defendants to testify substantially the same as the witness Olive Taylor, as set forth in the last preceding assignment of error: Daniel Taylor, Samuel P. Winters, Harvey L. Byers, George M. Boyd, Cassius C. Thomas, John Galbraith, Samuel F. Pascoe, Robert Woods, Oscar Boetticher, William A. Linn, Edward Shirkie, William M. Carter, Glen W. Traer, Gordon Buchanan, Isaac Waltling, Samuel V. Sholl, James D. Findley, David Z. Thrush, Warren Pye,
9461 Charles L. McCoy, Archibold T. McMaster, Herman Koeppel, Lawrence C. Higbee, Frank Jack, Jacob Glebelhausen, Patrick Martin, Walter B. Ballentine, Frederick C. Carter, James Prendergast, Henry Seffer, Stephen A. Drake, George A. Hibbard, George A. Marshall, Louis Hefeld, Benheart Heintzman, Edward Mohn, George W. Hatch, Louis Blank, Edward Marston, Albert E. Whitehead, James Dalton, George Westerby, Samuel Taylor, Will V. Willis, Alexander Hamilton, William Reidelberger, Jr., Thomas Meek, William Boehmer, Marion T. Raumberger, Frank W. Miles, William S. Scott, John J. Ward, Ivan B. Grant, John Alexander,
9462 Edmund C. Donk, George W. Soloman, Edward H. Buckley, Patrick Murphy, David A. Watson, Thomas Axford, Otto F. Lenz, Silas A. Shafer, August Reents, George C. Kanne, David T. Sanders, George R. Hess, Alexander Furst, Timothy E. Gapen, Fred G. Badger, Erasmus G. White, Thomas Simmons, John Gallaway, August F. Metzler, Henry Vonach, Frank O. Pittman, James F. McElwee.

56. In refusing to permit Pierre S. du Pont, a witness for the plaintiff, to answer the following question—he having already been permitted to testi-

Assignment of Errors Nos. 57-60 9463

fy that a detailed written appraisal of the various properties acquired by defendant E. I. du Pont de Nemours Powder Company was made at the time when said properties were so acquired by said defendant:

"Q. Will you produce that appraisal?"

57. In refusing to require the defendants to produce the appraisal referred to in the last preceding assignment.

9464

58. In instructing the jury as follows:

"As to that part of the charge now being considered, namely, that the co-conspirators agreed with the defendant to reimburse it for any losses that it might incur while carrying on this alleged trade war against the plaintiff, it is my duty to say to you that there is no evidence whatever in this case that would justify such a finding.

"Of course, as to the Hazard and Laflin & Rand Companies, which at this time yet maintained their separate legal existence though their stocks were owned by the defendant, whatever losses would be sustained by the defendant (if any), as the result of the alleged fight for commercial supremacy in the Peoria district, would in a sense be made up by 9465
the Hazard and Laflin & Rand if these by reason of their withdrawal from this district were enabled to make a profit in other districts."

59. In instructing the jury as follows:

"Plaintiff claims thirty cents (30 cents) a keg profit, but there is no evidence in the case that would justify the conclusion that that was a fair profit."

60. In instructing the jury as follows:

9466 *Assignment of Errors Nos. 61-62*

"If the jury believe that the prices which plaintiff received for its powder, although lower than those that prevailed during the life of the trade associates, were the prevalent and normal prices at the time it was engaged in business, it cannot recover damages on that account."

61. In instructing the jury as follows:

"The plaintiff has no right to expect more profit on the powder sold than was derivable from the fair market value of its product during the years it was in business. It has no right to fix upon what
9467 Mr. Waddell deems a fair profit and claim compensation for the loss of that."

62. In instructing the jury as follows:

"In this case the statute of limitations pleaded by the defendant furnishes a line of demarkation between the two periods of the plaintiff's business. The 18th of September, 1905, fixes the dividing line and the plaintiff seeks to recover anticipated profits on the kegs of powder manufactured and sold for the three years since that date. The plaintiff claims that up to the 18th day of September, 1905, and covering a period of twenty-two months, it carried on its business profitably. The average profit per
9468 keg during such period, according to this claim, is 3 1-7 cents. This price per keg it figures from $6,470.61, which is the sum that the plaintiff claims its books show as the amount of the net profits made during the said twenty-two months and the number of kegs upon which the 3 1-7 cents per keg profit is based is 205,931. What I said to you concerning those books as evidence when dealing with the alleged cost of the plant is applicable here. It is only in case you find that these books have been so kept that you can ascertain therefrom with certainty that a profit was made during this period, and the amount of such profit, that you can use that profit as a basis for a comparison upon the question of profits during the subsequent period. If you can

9469

not ascertain what were the actual profits by resorting to such books, of course, the inquiry as to profits at all fails for the lack of proof, and no allowance of profits can be made. If, on the contrary, however, it can be ascertained from such books with certainty that profits were made, and what was the amount of them, then the next question arises whether this period of twenty-two months was sufficiently long in view of the trade conditions prevailing, whatever may have been the cause thereof, to establish with reasonable certainty what the anticipated profits for the period subsequent to this 18th day of September, 1905, would have been if normal trade conditions had prevailed. Now, ac- 9470
cording to one contention, normal trade conditions did not obtain during this twenty-two months end ing with the eighteenth day of September, 1905, while according to another contention that the conditions prevailing during that period, as well as during the period following, were normal; and that they were just such conditions as would be likely to follow the abandonment of the Trade Association, which you know finally was dissolved in June, 1904. Whether they be normal or abnormal, if it be a fact that during that period the plaintiff made profits, they furnish a sufficient basis for comparison with subsequent years for me to submit it to your consideration; but it will be for you to say whether as a fact that period was sufficiently long to furnish a basis for comparison with subsequent 9471
years. If you should find that it isn't sufficient to furnish such a basis, even though you should have found that during the twenty-two months the plaintiff made a profit, the further inquiry as to profits during the remaining years must end, and no profits can be allowed. If, however, you find that it does furnish a satisfactory basis, then you will allow as profits upon the kegs manufactured during such subsequent period all or so much of such 3 1-7 cents per keg as you shall find was the profit per keg on the 224,683 kegs as is shown were made during the three years following September 18, 1905.

"The defendant challenges the correctness of the

9472 *Assignment of Error No. 63*

sum alleged to have been made as profits during the twenty-two months referred to, claiming that the items of salary paid to the Waddells, and the loss sustained in the explosions, one of which I considered a short time ago, when dealing with the question of the book value of the plant, should have been charged to the running or working expense during those twenty-two months, instead of to construction, and that if they had been this amount would have been totally wiped out. If that is the fact, of course, there is no standard here upon which you can calculate profit for the 224,683 kegs which were made and sold; but if you should find that
9473 only a part of such salaries and explosion losses, and which were charged to the construction account, should have been charged to running expense, and after deducting from this sum total, namely, $6,470.61, such amount so found, there remains a profit, that profit will furnish the standard; and when you have ascertained the price per keg such profit represents that will be the profit per keg, and not the 3 1-7 cents per keg that has been allowed as the anticipated profits upon the kegs actually sold."

'63. In refusing to give to the jury the instruction requested by plaintiff in its seventeenth request:

9474

"Plaintiff claims damages on account of the loss of its business and good-will. You are instructed that good-will is the advantage of anything that is acquired beyond the mere value of the physical property, and, particularly, in consequence of the general public patronage and encouragement which the enterprise receives from constant or habitual customers or from other accidental circumstances. You are instructed that the value of the plaintiff's plant is not necessarily limited to what is actually invested in its physical properties, but in estimating the value of the plant you may consider its earning capacity; and the value of its good-will in valuing which you may take into consideration its earning capacity."

Assignment of Error No. 64 9475

64. In instructing the jury as follows:

"So far I have been dealing with the value of the plant simply as a tangible or physical property. A manufacturing plant, however, may have another and additional value, namely, its good-will; and as the plaintiff claims that it has suffered damages to its good-will, that phase will now be considered. Good-will may be defined for present purposes as 'the advantage or benefit which is acquired by an establishment beyond the mere value of the capital stock, funds or property employed therein in consequence of the general public patronage and encouragement which it receives from constant or 9476
habitual customers on account of its local position, or from celebrity or reputation for skill, or affluence or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices.' Establishment of a profitable business is the essential of the good-will. Where that does not exist there can be no good-will.

"The very contention of the plaintiff on another branch of the matter of damages is that from September 18, 1905, until the time that it ceased doing business, it was conducting an unprofitable business; and as the losses said to have been incurred during this period largely overcame the profits claimed to have been made for the twenty-two months preceding we have as the only basis for a 9477
good will, not that a pecuniary advantage or benefit was secured by the plaintiff during the time it was in business, but that it would have done so except for the wrongful acts of the defendant, and that for a part of such time it actually did make a profit.

"True, a person may be wrongfully prevented from acquiring a good-will; and ethically such a wrong is just as injurious as if an established good-will was injured by such wrong doing. The rule in allowing as well as estimating damages, however, is a practical, rather than an ethical standard, and this excludes all damages that are purely speculative and contingent. To attempt to create out of unknown quantities a good-will for the purpose of giving it a value when no past conditions

9478

establishing a good-will exist, would be but a pure speculation, and therefore not allowable. The claim of damages for good-will therefore must be disallowed."

65. In instructing the jury as follows:

"As the evidence does not furnish us with a legal basis upon which we can determine, as a matter of fact, that the plaintiff could have sold on a profitable basis any more powder than it actually sold, no allowance can be made for such unmade or unsold merchandise."

9479

66. In refusing to permit Edward L. Suffern, a witness for the plaintiff to answer the following question:

"Q. Assuming a manufacturing plant, constructed for the purpose of manufacturing black blasting powder, located near Edwards Station, about fourteen miles distant from Peoria, Illinois, said plant being located on the Chicago, Burlington and Quincy Railroad, the City of Peoria being served by twelve railroad companies, and said plant having secured from the railroad companies equal commodity rates with other manufacturers of black blasting powder, said plant being so located that
9480 shipments could be made to the Iowa, Missouri and Montana coal fields on an equal transportation basis with the Iowa mills, and assuming that the said plant was located in the center of the district where such powder was being consumed in increasing quantities from year to year in a district where there was a constant and increasing demand and assuming that said plant was constructed entirely new in the year 1903 and was kept in good repair and operation from the time of its construction up to September 19, 1908; and assuming that said plant was located on a tract of approximately 110 acres, which cost $5,450, and there had been expended in the construction of the buildings and machinery, including the cost of the real estate,

9481

$117,000; and assuming that there had been added betterments which brought up the cost of said plant, land and buildings to $129,000; and assuming that the machinery was of first-class construction and properly installed and in good order and condition; and assuming that said mills had a capacity of from 250,000 to 300,000 kegs per annum of black blasting powder, and that the Buckeye Powder Co., which operated said mills, had ample capacity, capital and facilities to manufacture conservatively 250,000 kegs of powder per year and that a fair and reasonable profit upon said powder, so manufactured, when sold, was the sum of .30 per keg. What, in your opinion, would you consider the reasonable and fair value of such a plant, business and good-will on September 19, 1908, operating under the conditions and in the manner above set forth?"

9482

67. In refusing to instruct the jury as requested by plaintiff in its fifteenth request as follows:

"You are instructed that it is your duty to ascertain and find the amount of actual damages which the plaintiff may have suffered. You have nothing to do with the matter of multiplication of such damages as required by the Seventh section of the Sherman Act. You are therefore instructed that you are not to be influenced in arriving at a determination of the amount of actual damages suffered by the plaintiff by the fact that such damages as you may return a verdict for are to be multiplied three-fold. The multiplication of the damages which may be returned by you as your verdict is a right which belongs to the plaintiff and is not to be abridged in any manner whatever."

9483

68. In refusing to grant plaintiff a new trial, for the reasons and causes therefor as shown by the plaintiff as follows:

"1. Because the verdict in favor of the E. I. du Pont Nemours Powder Company, returned herein on the 25th day of February, 1914, is against the clear weight of the evidence.

9484 *Assignment of Errors Nos. 68-69*

"2. Because the verdict for the Eastern Dynamite Co. and International Smokeless Powder and Chemical Co., returned herein on the 25th day of February, 1914, is against the clear weight of the evidence.

"3. Because said verdict rendered in favor of the E. I. du Pont Nemours Powder Company is against the law.

"4. Because said verdict in favor of the Eastern Dynamite Co. and International Smokeless Powder and Chemical Co. is against the law.

"5. Because the charge of the Court was erroneous in law.

9485 "6. Because of the failure of the Court to instruct the jury on material issues in its charge to the jury.

"7. Because of the refusal of the Court to instruct the jury on material issues as requested by the plaintiff in its charge to the jury.

"8. Because the jury while deliberating upon their verdict had before them a large number of letters, files, pleadings, and other papers that were not in evidence in said case and which they examined and inspected contrary to law."

69. In entering judgment against the plaintiff as follows:

"Judgment for defendants. Costs."

9486

WHEREFORE the plaintiff prays that said judgment may be reversed and the said Court be directed to grant a new trial of the issues in this action.

MACFARLAND, TAYLOR
& COSTELLO,
WILLARD U. TAYLOR,
TWYMAN O. ABBOTT,
WALTER J. BARTNETT,
Attorneys for Plaintiff,
Office & P. O. Address,
63 Wall Street,
Borough of Manhattan,
City of New York.

Notice of Motion to Extend Time for Hearing upon the Settlement of Bill of Exceptions. Filed Oct. 5, 1914. 9487

(Title of Court and Cause.)

To the above named plaintiff, and to MacFarland, Taylor and Costello, Willard U. Taylor, Twyman O. Abbott and Linton Satterthwaite, Esquires, Attorneys for Plaintiff:

Please take notice that the defendants in the above stated cause will apply to the Honorable John Rellstab, Judge of the above entitled court, 9488
on the fifth day of October, nineteen hundred and fourteen, at the Federal Building in Trenton, New Jersey, at the hour of ten-thirty o'clock of said day, or as soon thereafter as the matter may be heard, for an order extending the time for the hearing upon the settlement of the bill of exceptions in the above-entitled cause.

J. P. LAFFEY,
GEO. S. GRAHAM,
ROBT. H. McCARTER,
WM. H. BUTTON,
FRANK S. KATZENBACH, JR.,
Attorneys for Defendants. 9489

Filed Oct. 5, 1914.

9490 **Petition for Writ of Error.**

UNITED STATES CIRCUIT COURT,

DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY, a Corporation,
Plaintiff,

against

9491 E. I. DU PONT DE NEMOURS POWDER COMPANY (a Corporation of New Jersey), EASTERN DYNAMITE COMPANY (a Corporation of New Jersey), INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY (a Corporation of New Jersey),
Defendants.

To the Honorable Judges of the Circuit Court of Appeals of the Circuit Court of the United
9492 States for the Third Circuit:

Your petitioner, the Buckeye Powder Company, the plaintiff and appellant in the above entitled cause, respectfully represents and shows that in the above entitled cause pending in the United States District Court in and for the District of New Jersey, there was entered at the April term of said court, 1914, on the 20th day of April, 1914, a judgment against your petitioner; and your petitioner considers itself aggrieved by said judgment and represents that manifest error was committed, as set forth in the assignment of errors filed herewith, to the great injury of your petitioner.

Petition for Writ of Error 9493

Wherefore your petitioner hereby appeals to the United States Circuit Court of Appeals for the Fourth Circuit of the United States, and prays that said appeal may be allowed, and that your petitioner have an opportunity to show the errors complained of, and that a transcript of the record and proceeding, orders and papers upon which said judgment is founded, may be sent to the said United States Circuit Court of Appeals for the Third Circuit as provided by law.

Dated at Trenton, N. J., the fifth day of October, 1914. 9494

BUCKEYE POWDER COMPANY,
By
MacFarland, Taylor & Costello,
Willard U. Taylor,
Twyman O. Abbott,
Walter J. Bartnett,
Its Attorneys.

Endorsed: Filed October 6, 1914.

GEORGE T. CRANMER,
Clerk.

9495

9496 **Stipulation. In Duplicate.**

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF NEW JERSEY.

BUCKEYE POWDER COMPANY, a Corporation, Plaintiff, against 9497 E. I. DU PONT DE NEMOURS POWDER COMPANY, a Corporation, *et al.*, Defendants.	Action at Law.

It is hereby stipulated between counsel that the bill of exceptions in the above entitled cause may be settled and filed after the taking out and allowance of the writ of error, and that no objection will be made at any time by the defendants, or either of them, that the bill of exceptions has not been settled or filed before the date for taking an appeal
9498 has expired or before the date of allowance of writ of error herein, and that the bill of exceptions when settled may be signed and filed *nunc pro tunc* as of October fifth, nineteen hundred and fourteen.

And it is further agreed that the time for the defendants herein to propose amendments to said bill of exceptions is hereby extended to and including November fourth, nineteen hundred and fourteen.

It is also stipulated and agreed that the counsel for defendants will furnish the counsel for the plaintiff a copy of the defendants' record of the

trial herein, for use in comparison of such amendments as may be proposed by the defendants.

MACFARLAND, TAYLOR & COSTELLO,
TWYMAN O. ABBOTT,
Attorneys and Counsel for Plaintiff.
WM. H. BUTTON,
FRANK S. KATZENBACH,
Attorneys and Counsel for Defendants.

Endorsed: Filed October 6, 1914.
GEORGE T. CRANMER,
Clerk.

9500

UNITED STATES CIRCUIT COURT,
DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY, a Corporation,
Plaintiff,
against
E. I. DU PONT DE NEMOURS POWDER COMPANY (a Corporation of New Jersey), EASTERN DYNAMITE COMPANY (a Corporation of New Jersey), INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY (a Corporation of New Jersey),
Defendants.

9501

UNITED STATES OF AMERICA, ss.:

The President of the United States of America, To the Honorable Judges of the United States District Court for the District of New Jersey, Greeting:

Because, in the records and proceedings, as also

9502 *Writ of Error*

in the rendition of the judgment of a plea which is in the said District Court, before you, at the April Term, 1914, thereof, between Buckeye Powder Company, plaintiff, and E. I. du Pont de Nemours Powder Company (a corporation of New Jersey), Eastern Dynamite Company (a corporation of New Jersey), International Smokeless Powder and Chemical Company (a corporation of New Jersey), defendants, a manifest error hath happened, to the great damage of said Buckeye Powder Company, as by Buckeye Powder Company's
9503 complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Third Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the city of Philadelphia, and filed in the office of the clerk of the United States Circuit Court of Appeals, for the
9504 Third Circuit, on or before the fifth day of November, 1914, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 7th day of October, in the year of our Lord one thousand nine hundred and fourteen.

Bond for Damages and Costs

9505

Issued at the Clerk's Office in Trenton, New Jersey, with the seal of the
and dated as aforesaid.

GEORGE T .CRANMER,
[SEAL] Clerk of U. S. Dist. Ct. of N. J.
By Charles S. Chevrier,
Deputy.

Allowed by JOHN RELLSTAB, Judge.
Filed October 7, 1914.

GEORGE T. CRANMER,
Clerk.

9506

Bond for Damages and Costs.

UNITED STATES CIRCUIT COURT OF APPEALS—THIRD CIRCUIT.

BUCKEYE POWDER COMPANY,
Plaintiff-Appellant,
against

E. I. DU PONT DE NEMOURS POWDER COMPANY, EASTERN DYNAMITE COMPANY and INTERNATIONAL SMOKELESS POWDER & CHEMICAL COMPANY,
Defendants-Appellees.

9507

KNOW ALL MEN BY THESE PRESENTS, That the United States Fidelity and Guaranty Company, having an office and place of business at No. 47 Cedar Street, in the City of New York, County and State of New York, is held and firmly bound unto the above named E. I. du Pont de Nemours Powder Company, Eastern Dynamite Company and International Smokeless Powder & Chemical Company in the sum of Two hundred and fifty ($250.00) dollars, to be paid to the said E. I. du Pont de

9508 *Bond for Damages and Costs*

Nemours Powder Company, Eastern Dynamite Company and International Smokeless Powder & Chemical Company, for the payment of which, well and truly to be made, it binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with its seal, and dated the 6th day of October, 1914.

Whereas, the above named Buckeye Powder Company has prosecuted an appeal to the United States Circuit Court of Appeals for the Second Circuit,
9509 to reverse the judgment dated the 20th day of April, 1914, rendered in the above entitled suit, in the District Court of the United States for the Southern District of New York.

Now, therefore, the condition of this obligation is such, that if the above named Buckeye Powder Company shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

UNITED STATES FIDELITY AND GUARANTY COMPANY,

9510 By S. Frank Hedges,
Attorney-in-fact.

Attest: WILLIAM H. ESTWICK, Attorney-in-fact.

STATE AND COUNTY OF NEW YORK, ss.:

On this 6th day of October, 1914, before me personally came S. Frank Hedges, known to me to be the attorney-in-fact of the United States Fidelity and Guaranty Company, a corporation described in and which executed the annexed bond of the Buckeye Powder Company as surety thereon, who being by me duly sworn, deposes and says, that he resides in the City of New York, State of New York, and that he is the attorney-in-fact of the

said United States Fidelity and Guaranty Company, and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of Maryland; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Buckeye Powder Company is the corporate seal of the said United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the Board of Directors of said Company; and that he signed his name thereto by like order and authority as attorney-in-fact of said Company; and that he is acquainted with William H. Estwick and knows him to be the attorney-in-fact of said Company; and that the signature of said William H. Estwick subscribed to said bond is in the genuine handwriting of said William H. Estwick and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unincumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of two million dollars ($2,000,000.00).

S. FRANK HEDGES.

Sworn to, acknowledged before me, and subscribed in my presence this 23d day of September, 1914.

ALBERT J. ROWLAND,
Notary Public,
New York County No. 3318,
Register's No. 6115.

Certificate filed in King's Register's No. 6060; Bronx No. 10, Register's No. 632; Queens, Richmond, Westchester, Nassau, Putnam, Orange and Suffolk Counties. Term expires March 30, 1916.

Endorsed. Filed October 7, 1914.

GEORGE T. CRANMER, Clerk.

9514 **Citation on Appeal.**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY, a Corporation,
Plaintiff,

against

9515 E. I. DU PONT DE NEMOURS POWDER COMPANY (a Corporation of New Jersey), EASTERN DYNAMITE COMPANY (a Corporation of New Jersey), INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY (a Corporation of New Jersey),
Defendants.

UNITED STATES OF AMERICA, ss.:

9516 To E. I. du Pont de Nemours Powder Company (a corporation of New Jersey), Eastern Dynamite Company (a corporation of New Jersey), International Smokeless Powder and Chemical Company (a corporation of New Jersey), GREETING:

You and each of you are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Third Circuit, on the fifth day of November, 1914, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the District of New

9517

Jersey, wherein the Buckeye Powder Company is appellant, and the E. I. du Pont de Nemours Powder Company (a corporation of New Jersey), Eastern Dynamite Company (a corporation of New Jersey), International Smokeless Powder and Chemical Company (a corporation of New Jersey), are respondents, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not been done to the parties on that behalf.

9518

Given under my hand at Trenton, in the District of New Jersey, this 7th day of October, in the year of our Lord, One thousand nine hundred and fourteen.

JOHN RELLSTAB,
District Judge.

Service of the within citation upon last of the defendants therein named is hereby accepted on the 9th day of October, 1914.

FRANK S. KATZENBACH, JR.,
Atty. for Defendants, E. I. du Pont de Nemours Powder Co., Eastern Dynamite Powder Co., and International Smokeless Powder & Chemical Company.

9519

Filed October 14, 1914.

GEORGE T. CRANMER,
Clerk.

9520 **Order Extending Time for Filing Exceptions.**

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF NEW JERSEY.

BUCKEYE POWDER COMPANY,
Plaintiff,

against

} Action at Law.

9521 E. I. DU PONT DE NEMOURS POWDER COMPANY, *et al.*,
Defendants.

Application having been made on behalf of the plaintiff for an order extending the time for filing the bill of exceptions in the above stated cause;

It is, on this fourteenth day of October, nineteen hundred and fourteen, on motion of MacFarland, Taylor & Costello, of counsel for the plaintiff, ordered that the time for filing the bill of exceptions in said cause be extended to the twenty-third day
9532 of November, nineteen hundred and fourteen.

JOHN RELLSTAB,
Judge.

Filed October 14, 1914.

DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

9523

THE BUCKEYE POWDER COMPANY, a Corporation,
Plaintiff,

against

E. I. DU PONT DE NEMOURS POWDER COMPANY (a Corporation of New Jersey), and others,
Defendants.

9524

On motion of the plaintiff by its attorneys, MacFarland, Taylor & Costello and Twyman O. Abbott for an order extending the time within which the appellant shall file the record with the Clerk of the United States Circuit Court of Appeals for the Third Circuit, on the writ of error heretofore allowed to the said Circuit Court of Appeals from the judgment entered in the above entitled action on the 20th day of April, 1914, and for good cause shown therefor, the Court being advised, it is hereby

9525

ORDERED that the time for the filing of said record with the said Clerk of the said Circuit Court of Appeals be and the same is hereby extended to the 4th day of February, 1915.

JOHN RELLSTAB,
United States District Judge.

Filed Nov. 4, 1914.
GEORGE T. CRANMER,
Clerk.

9526 DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY, a Corporation,
Plaintiff,

against

E. I. DU PONT DE NEMOURS POWDER COMPANY (a Corporation of New Jersey), and others,
9527 Defendants.

On the 9th day of November, 1914, the application of the above entitled defendants for an extension of time within which to prepare and serve proposed amendments to the proposed bill of exceptions, having come on to be heard before me, and it appearing that heretofore, to wit, on the 4th day of October, 1914, the said defendants served a notice application of the above named defendants for an extension of time within which to prepare and serve proposed amendments to proposed bill of exceptions, and the court having granted an extension 9528 for such purpose to the 4th day of November, 1914, and it further appearing that on the 30th day of Octoboer, 1914, the said defendants served a notice on the plaintiff's counsel that application would be made on the 9th day of November, 1914, for a further extension of time, and the plaintiff being represented by its counsel, Twyman O. Abbott, and the defendants by their counsel, William H. Button and Frank S. Katzenbach, and the court having heard the argument of counsel, and being advised, it is

ORDERED, that the time within which the defend-

Order

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ants may prepare and serve proposed amendments to the proposed bill of exceptions filed herein, be and the same is hereby extended to the 9th day of December, 1914.

JOHN RELLSTAB,
District Judge.

Filed November 9, 1914.

UNITED STATES DISTRICT COURT,

FOR THE DISTRICT OF NEW JERSEY.

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BUCKEYE POWDER COMPANY,
Plaintiff,

against

E. I. DU PONT DE NEMOURS POWDER COMPANY, *et al.*,
Defendants.

} Notice.

To the above named defendants and to their attorneys, William H. Button and Frank J. Katzenbach, Jr.:

YOU WILL PLEASE TAKE NOTICE that the above named plaintiff will apply to the Honorable John Rellstab, Judge of the above entitled Court, on Monday, the 14th day of December, 1914, for the settlement of the proposed bill of exceptions heretofore filed herein. 9531

MACFARLAND, TAYLOR & COSTELLO,
TWYMAN O. ABBOTT,
Attorneys for Plaintiff.

Endorsed:
Filed December 12, 1914.
GEORGE T. CRANMER, Clerk.

9532 UNITED STATES DISTRICT COURT,

FOR THE DISTRICT OF NEW JERSEY.

BUCKEYE POWDER COMPANY, Plaintiff, against E. I. DU PONT DE NEMOURS POWDER COMPANY, *et al.*, Defendants.	Order.

9533 The above matter having come on to be heard this day before me at Trenton, for settlement of the bill of exceptions of the plaintiff upon the writ of error from the judgment entered herein on the 20th day of April, 1914, to the Circuit Court of Appeals for the Third Judicial Circuit of the United States, and the plaintiff being represented by its counsel, Twyman O. Abbott, and the defendant by its counsel, William H. Button and Frank S. Katzenbach, Jr., and it appearing to the Court that the testimony taken in said action at the trial thereof is so voluminous and involves so many questions, that it is impracticable to give the testimony of said wit-
9534 nesses in narrative form in said bill of exceptions, and that in order to present the issues upon said writ of error clearly it is necessary to give the testimony of said witnesses by question and answer;

Now, therefore, upon the application of the plaintiff, by its said attorney, for an order allowing the plaintiff to file its bill of exceptions by giving the testimony of the witnesses as taken at the trial thereof, by question and answer instead of in narrative form; and it appearing that the defendants, by their said attorneys, have agreed and consented thereto, it is hereby

Order 9535

ORDERED that the plaintiff is hereby authorized and permitted to prepare, serve and file its bill of exceptions upon the writ of error sued out herein, by question and answer and not in narrative form.

Dated at Trenton, this 13th day of January, 1915.

JOHN RELLSTAB,
District Judge.

Jan. 13, 1914.

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No objection and we consent to the above order.

WM. H. BUTTON,
FRANK S. KATZENBACH,
Attorneys for Defendants.

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS, 9538

FOR THE THIRD DISTRICT.

BUCKEYE POWDER COMPANY,
Plaintiff in Error,

vs.

E. I. DU PONT DE NEMOURS POWDER COMPANY, *et al.*,
Defendants in Error.

No. 1899.
March Term,
1915.

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And afterwards, to wit, on the twenty-second and twenty-third days of April, 1915, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs before the Hon. Joseph Buffington, Hon. John B. McPherson, and Hon. Victor B. Woolley, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the second day of July, 1915, come the parties aforesaid by their counsel aforesaid, and the Court now being fully advised in the premises, renders the following decision: 9540

9541 IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE THIRD CIRCUIT.

BUCKEYE POWDER COMPANY, Plaintiff Below, vs. E. I. DU PONT DE NEMOURS POWDER COMPANY, *et al.*,	No. 1899. March Term, 1915.

9542 Error to the District Court of the United States for the District of New Jersey.

Before BUFFINGTON, MCPHERSON, and WOOLLEY, Circuit Judge.

MCPHERSON, Circuit Judge:

In this action at law, which is brought under §7 of the Anti-Trust Act of 1890, the Buckeye Powder Company, an Ohio corporation, is the plaintiff, and three New Jersey corporations are defendants —the E. I. du Pont de Nemours Powder Company,
9543 the Eastern Dynamite Company, and the International Smokeless Powder and Chemical Company. In essence the declaration charged that the plaintiff's business— the manufacture of black blasting powder—had been greatly injured and finally destroyed by the defendant's unlawful conduct in violation of sections 1 and 2 of the Act. Treble damages were asked for amounting to nearly $4,000,000—altho this demand was much reduced at the end of the trial—and the dispute occupied the time of a court and jury during nearly all the working days between September 24, 1913, and February 25 of the following year. The case was submitted

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in a comprehensive charged marked by great ability and painstaking care, and the jury returned a verdict of "no cause of action as to all the defendants." So far as the Dynamite Company and the International Company are concerned, this was a directed verdict, the trial judge holding that the evidence did not establish their participation in any unlawful act; but the liability of the Du Pont Company was submitted to the jury and was passed on by that tribunal. Nearly 70 errors are assigned on the pending writ, but 20 of them are not pressed, and some that relate to the measure of damages 9545
are not now important. Those that still need attention can be considered more satisfactorily by taking up the subjects to which they relate than by taking them up seriatim. A short preliminary statement may be desirable in order to explain some of the questions that were presented to the court and jury.

First, the relevant dates. The Buckeye Company was incorporated in January, 1903; it began business the following September and abandoned the field 5 years later in September, 1908. The Du Pont Company was incorporated in May, 1903, succeeding a number of earlier enterprises; the 9546
other defendants are older, the Eastern Dynamite Company going back to 1895, and the International Company to some date we have not found in the record, but apparently several years at least before 1903. The defendants admitted their participation in an illegal trade association as late as June 30, 1904, but denied that such participation continued thereafter. In June, 1911, the three defendants in company with 25 other corporations and individuals, were adjudged to have violated the Anti-Trust Act: *U. S. v. Du Pont Company* (C. C., 3d Circ.), 188 Fed., 127. But, as the government's

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object in that suit was merely to dissolve an unlawful combination, we need hardly say that under the long established rules of evidence that were in force until a few months ago the Buckeye Company—a stranger to that proceeding—could not avail itself in the present suit either of the evidence then given, or of the decree. It is true that these rules have since been changed by §5 of the Act of October 15, 1914, which provides that:

> "A final judgment or decree *hereafter* rendered * * * in any suit or proceeding in equity
9548 brought by or on behalf of the United States under the anti-trust laws, to the effect that a defendant has violated said laws, shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto."

But, as this statute had not been passed when the trial took place, and moreover as the express terms of the section confine it to future judgments or decrees, the Buckeye Company was obliged to offer evidence to prove the affirmative
9549 of the issues in the present suit: (1) that the defendants had violated the Anti-Trust Act, and (2) that by such violation they had so injured the plaintiff that damages should be awarded. Voluminous evidence on these issues in many of their aspects was offered by both parties, and the verdict has settled numerous questions of fact in favor of the defendants.

We need not dwell upon the point that we have no power to determine (as we are asked to do) whether the verdict was in accord with the weight of the evidence, or to review the finding of the

jury on any disputed fact; our only business is to inquire whether the assignments of error that were properly taken disclose any material mistake in the trial. For this reason much of the plaintiff's argument must be laid aside as irrelevant; indeed, the brief contains so much that is nothing more than a conscious or unconscious attack on the verdict, that we have not always found it easy to disentangle the questions of law that lie within our province from the questions of fact that lie outside. 9550

In a few words, the situation below was this: The plaintiff charged, and attempted to prove; That an unlawful and extensive combination in several forms had existed for more than 30 years, the object of the evidence being to establish the fact that a more or less complete monopoly had been created of the trade in powder (especially in black blasting powder) and other explosives; that this attempted monopoly and consequent restraint of trade had been substantially successful, and was maintained from January, 1903, to the end of 1908, the whole period covered by the suit; that R. S. Waddell, a man with large experience in the trade, who had been employed by the defendants for more than 20 years, had undertaken to organize the plaintiff corporation for the purpose of making and selling black blasting powder; that the defendants thereupon began to interfere with his project in various unlawful ways; and that these attempts to injure the business continued after the Buckeye Company had been incorporated and after its plants had been built near Peoria, Illinois. Charges of oppressive conduct were set forth in great detail, some of such acts being directed specifically against the plaintiff, and other acts being directed against the plaintiff in company 9551 9552

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with other of the defendants' rivals. As a result the Buckeye Company alleged that its enterprise suffered injury from the beginning, and was finally sold out and abandoned at a serious loss.

The defendants denied these charges, and the plaintiff (having the burden of proof) undertook to prove some of them, but by no means all. Much conflicting evidence was taken, filling a record of several thousand pages. Among other matters the defendants contended that they had done nothing to bring about any abnormal conditions in the
9554 trade, and if the plaintiff had suffered loss from such conditions its misfortune should not be laid at their door. On the contrary, they insisted that the plaintiff's troubles were due to its own faults or blunders, such as improper organization, lack of capital, insufficient experience, inattention to business, misrepresentations to customers, inability to fill orders, and furnishing bad powder. A great deal of the record is devoted to this branch of the dispute, and many witnesses testified that the defendants did not interfere with the plaintiff's customers, or entice them away; when they left, it was because the plaintiff had not satisfied them.
9555 To refute the charge that the defendants had oppressively and illegally lowered prices, evidence was offered that during the period in question there was much independent competition, led by the plaintiff itself, and that this competition was the prevailing, if not the sole, factor in lowering prices. There was also evidence that the Du Pont Company's hold on the trade, and the volume of its business, continually diminished during the whole period of the suit.

Two distinct defenses were therefore set up: (1) a denial that the Anti-Trust Act had been violated by the defendants after June 30, 1904, and (2) an

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assertion that even if such violation had taken place the plaintiff had suffered no injury therefrom, but had met with loss and final failure because its equipment had not been adequate, and its management had not been competent. Each defense raised numerous questions of fact, and, as the verdict in favor of the Du Pont Company may have been founded as well upon one defense as upon the other, the legal rulings that are relevant to either defense are open to the plaintiff's attack. Let us turn to such of the legal questions as we think it necessary to notice.

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1. In our opinion, the direction to find a verdict in favor of the Dynamite Company and of the International Company was correct. Neither of these corporations manufactured or traded in black blasting powder—which was the particular business the defendants were charged with restraining or monopolizing—and their indirect connection with the alleged unlawful combination was rested almost wholly on the fact that a majority of the stock in each was owned or controlled by the Du Pont Company. Obviously, however, this fact alone did not prove their participation in a conspiracy, and as there was almost nothing else to support the allegation we need not take further time to discuss it. Moreover, only selected portions of the evidence are before us, and the district judge very properly called attention to this fact when he granted the exception now being considered, saying: "In my judgment this exception to be considered should have behind it the entire record, but it is allowed and signed that the plaintiff may have the benefit of it in case I am in error in that view."

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2. The plaintiff complains also, because the trial judge required it to elect whether it would in-

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sist before the jury on a violation of §1 of the Anti-Trust Act, or on a violation of §2. Manifestly the correctness of this ruling also can only be satisfactorily reviewed upon the whole record, and what we have just said applies to this assignment as well.

Moreover, we may take note of the fact that this subject had evidently been a source of contention from the beginning of the suit, as will appear from Judge Rellstab's opinion in 196 Fed., 514, where the original declaration is printed. The question of duplicity was thus raised at an early stage, and
9560 as a result of that decision an amended declaration was afterwards filed. But this also contained only one count, and, as Judge Lanning (sitting in the Circuit Court for the District of New Jersey) had already decided in *Rice* v. *Standard Oil Co.*, 134 Fed., 464, that a declaration in a similar suit under the same section was bad for duplicity because it combined two causes of action in one count, we think the trial judge was sufficiently justified in requiring the plaintiff to elect. But in any event we do not see how the ruling could have done harm; if the declaration did not support alternative charges, and if such charges were regarded as im-
9561 portant to the case, the easy remedy by amendment was at hand. It is not surprising, however, that the plaintiff did not ask to amend; for we cannot conceive it possible that any one could doubt, at the end of this five months' trial, that the plaintiff's case depended for success upon the truth of the charge (to which practically all the evidence was directed) that the defendants had unlawfully attempted to monopolize a large part of the trade in black powder. The case was certainly tried on the merits, and the ruling complained of was harmless, even if it were formally erroneous.

3. If we are to understand that the plaintiff is

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seriously insisting that the court erred in refusing leave to offer the decrees in evidence that were entered in the government's suit (188 Fed., 127), we shall only say in reply that we are not aware of any rule of evidence in force at the time of the trial that would have warranted the court in making a different decision. The parties in the two suits were different, the subject-matter was different; and the trial judge's ruling is so fully justified by the well-established law then existing that no supporting authority need be cited.

4. Some of the assignments are not the subject 9563
of a proper exception. At the close of the evidence the plaintiff submitted a series of 27 requests for instruction, and the trial judge did not answer them specifically, believing that he had substantially answered them in his general instructions, as, of course, he had a right to do. This is evident from what he said at the end of the charge:

> "As to the plaintiff's requests, as I recall it, I have touched upon every one of these requests, and I therefore will not charge them in the language requested, but counsel may take an exception, of course, to the fact that I do not specifically charge in the precise language re- 9564
> quested."

This of course invited counsel to point out which instructions, if any, they did not regard as sufficiently answered in the general charge. Many decisions declare that fairness to the court requires this to be done; but the plaintiff's counsel, instead of specifying errors or omissions or insufficient answers, asked for an exception in the most general language possible: "We also except to that portion of your Honor's charge which refuses to give our instructions except as charged." The Supreme Court has several times decided that such an ex-

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ception does not call the court's attention properly to what is objected to, and is therefore insufficient: *Beaver* v. *Taylor,* 93 U. S., 55; *Upton* v. *McLaughlin,* 105 U. S., 646; *Jones* v. *Railroad,* 157 U. S., 682; *Thiede* v. *Utah,* 159 U. S., 521. And, as the fourth request of the series is not sound, the action of the trial judge is also supported by *Moulor* v. *Insurance Co.*, 111 U. S., 337, and *Bogk* v. *Gassert,* 149 U. S., 26.

5. The plaintiff also complains of certain parts of the charge as erroneous on the ground that the
9566 court's language was:

> "* * * tantamount to saying that monopoly needs but to obtain a foothold, and thereafter competitors must enter the field at their peril. It was a virtual direction of a verdict for the defendants, because it was equivalent to saying that long continued violation of the law may ripen into privilege and may become a vested right. It is a most dangerous doctrine that monopoly can gain the right to perpetuate itself by prescription; that one who may venture into the field occupied by it must do so at his peril, and if he does so with knowledge of its existence, can claim no protection from its unlawful methods."

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It is almost needless to say that the instructions of the learned Judge carry no such meaning, and could have had no such effect. After a preliminary statement outlining the previous history of the powder trade, he told the jury distinctly that:

> "The defendant (the Du Pont Powder Company), therefore, at the time of the organization of the plaintiff company * * * and during the entire time the plaintiff carried on its business, was acting in violation of the Anti-Trust Act as attempting to monopolize the trade in powder, which subjected it to be dissolved as such

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by direct attack on the part of the United States Government."

He added, however, the qualification that was called for by the nature of the case on trial:

"The fact that the status of the defendant was such, however, that under a direct attack by the Government it would be dissolved as an unlawful combination in restraint of trade and an attempt to monopolize, would not alone make it liable in an action for damages. Such a suit can be maintained only for injuries sustained by reason of such attempted monopolization, so that 9569
in a suit for damages the defendant is entitled to more defenses than would be available in a suit brought by the Government for dissolution, and the plaintiff in such a suit has more to prove than is necessary to obtain a decree in the Government suit. It becomes important, therefore, to inquire into the relationship which the defendant bore to the powder trade generally at the time when the plaintiff asserts its promoter first declared his intent to engage in the powder business, and its subsequent relationship toward such trade generally, and to the plaintiff in particular, during the years 1903 to 1908, within which period the plaintiff claims it was being injured by reason of the acts of the defendant, and which it alleges were unlawful and 9570
within the operation of the Anti-Trust Act, as attempts to monopolize the powder trade."

He then summarized the foregoing paragraph, repeating that the *mere fact* that the defendant owed much of its growth and power in the trade to unlawful acts in the past, and that it continued to enjoy the fruits of some of such unlawful acts, did not make it liable in damages. Then follows immediately one of the passages attacked in the words already quoted from the plaintiff's brief:

"This suit is unique in many respects. The

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plaintiff, as a corporation and as a competitor in the powder business, is due to the efforts of R. S. Waddell, its chief witness in the suit. He organized it shortly after he separated himself from his employment with the defendant, with which and its predecessors he had been identified for about twenty years. His services, while in the employment of the Du Pont interests, brought him in touch with their business policies and operations in the vending of powder. He knew of the existence of the trade associations, and of such of the restraints and limitations put upon its members as related to the apportion-
9572 ment of the trade and the fixing of prices. The comparative size of the defendant's capacity for output in relation to other powder manufacturers, and its influence as a factor in the trade generally, were known to him when he severed his connection, and when he conceived and began to carry out his purpose of entering into such powder field as a competitor. The plaintiff does not occupy the same position as a competitor in existence during the period that this influence was being developed, and who may have been, during the course of such development, as well as after it had reached the height of its power, injured in its business or property by reason thereof, but is here as one entering the competitive field when such growth and influence have
9573 been established. To it (the plaintiff) this influence and power of the defendant when it, the plaintiff, was launched into the powder field, is not *in itself* actionable, even though that status is due in part to methods which are prohibited by the Anti-Trust Act; and before the plaintiff can recover it must establish that the defendant used its power in the trade oppressively, not necessarily against the plaintiff alone, but at least in the conduct of its business generally; that is, that it used such methods as, backed by its influential position, tended to the suppression of open competition and to obstruct the free flow of commerce—the trade conditions sought to be secured and protected by the prohibitions

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of the Anti-Trust Act—and that is, the plaintiff, was injured by reason thereof."

We confess our inability to see anything objectionable in this language. It states nothing but indisputable facts, and does not take on a harmful character even when it is bracketed with the second passage complained of. This is taken out of its place in another portion of the charge, where the learned judge was dealing with a wholly different subject, namely, with the question whether the plaintiff had been properly equipped and capitalized—this matter having a direct bearing on 9575
the defendants' allegation, that the Buckeye enterprise was organized merely to be sold out, and was not intended to be a *bona fide* factory at all:

"Mr. Waddell, as already stated, was well advised, when he promoted the plaintiff company, of the defendant's business, capacity and policies. He had been its agent for a long period during which several severe competitive struggles took place, and he knew the outcome thereof, and which was, generally speaking, the taking over in one form or another of such newcomers, and at least in one instance—that of the Indiana—at a considerable profit to the owners of that company. Of course, Mr. Waddell, or the 9576
company which he formed, had a right to go into business, and the motive for entering into such business is of little moment, so far as their rights were concerned; but if he was actuated by the belief that his company would meet with a like experience after some competitive struggles, it may have a bearing upon the question whether the plaintiff was sufficiently capitalized to engage in the struggle for the market already occupied. Of course, if you find that it was sufficiently capitalized, or that it had sufficient financial backing to weather a struggle carried on under normal or lawful competitive conditions, that is a sufficient answer, and it would make

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no difference whether it was or was not sufficiently capitalized to meet a competition forced upon it by unlawful means."

Certainly, as we think, no sound criticism can be made of these passages, either taken singly or placed side by side, and we shall make no further comment upon them.

6. With one exception, we do not think it necessary to take up separately any other subject embraced in the assignments of error. They have all been examined and considered, and in our opinion
9578 none of the rulings and instructions complained of could have been materially harmful, even if a minute scrutiny might disclose an occasional lapse from an ideal standard. No record could come unscathed thru such an ordeal after a five months' trial, and it is greatly to the credit of the district judge that so little of importance is now urged for reversal. Many of the assignments seem to be of very slight importance, indeed, and may be passed without discussion.

7. The only subject that may need a few words of separate consideration is the refusal to grant a new trial. The principal ground of complaint
9579 pressed upon us is the fact that while the jury were deliberating on their verdict they had in their possession two papers whose contents are said to have been of such a nature as to influence them improperly. This matter, however, has already been heard and decided by the district court, and we find nothing in the record to make the present situation exceptional. The facts are these: After the verdict was rendered a motion for a new trial was made and entertained. It assigned the usual general and formal reasons—that the verdict was against the law and against the weight of the evidence, and that the charge was erroneous both

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in what it said and in what it failed to say—and then added a special reason to the effect that the jury had had before it certain letters and other papers that were not in evidence. Manifestly, this reason required the taking of testimony, and accordingly a number of witnesses were examined. On April 10 the motion was fully argued before the court, and was refused after what was evidently a thorough consideration. The rule in the federal courts being well settled that such a refusal is a matter of discretion that will not be reviewer except for abuse, we shall only add that we 9581
have read and considered everything contained in the record on this subject and can see no sufficient ground for interfering with what was done by the court below. Indeed, we incline to think that the subject may perhaps have been brought before us under a misapprehension, for it was argued as if the district judge had refused to hear and entertain the motion at all except upon the special reason referred to above, altho (as we understand the record) the facts do not support such a position. On the contrary, the motion was made and was promptly entertained, the court made an order for the taking of testimony, wit- 9582
nesses were examined, argument was heard, and on April 10 the whole subject was disposed of by an order discharging the rule that had been granted and refusing the motion. We see nothing reviewable in such a proceeding.

On the whole case we are of opinion that the plaintiff had a fair and patient trial, and that whatever complaint he may have should be directed to the verdict rather than the action of the court.

The judgment is affirmed.

Endorsed: No. 1899.

Opinion of the Court by McPherson, J.

Received and filed July 2, 1915.

SAUNDERS LEWIS, JR., Clerk.

9583 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

BUCKEYE POWDER COMPANY, Plaintiff in Error, vs. E. I. DU PONT DE NEMOURS POWDER COMPANY, *et al.*, Defendants in Error.	No. 1899. March Term, 1915.

9584

In Error to the District Court of the United States, for the District of New Jersey.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby affirmed with costs.

9585 (Signed) JOHN B. McPHERSON,
Philadelphia, Circuit Judge.

July 2, 1915.
Endorsed:
No. 1899.

Order Affirming Judgment, Received and Filed, July 2, 1915.

SAUNDERS LEWIS, Jr.,
Clerk.

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UNITED STATES CIRCUIT COURT OF APPEALS

For the Third Circuit.

The Buckeye Powder Company, a Corporation, Plaintiff in Error, against E. I. Du Pont De Nemours Powder Company (a Corporation of New Jersey), Eastern Dynamite Company (a Corporation of New Jersey), International Smokeless Powder and Chemical Company (a Corporation of New Jersey), Defendants in Error.	Petition for Writ of Error.

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To the Honorable Judges of the United States Circuit Court of Appeals for the Third Circuit:

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Your petitioner, the Buckeye Powder Company, plaintiff in error in the above entitled case respectfully represents and shows that in the above entitled case pending in the United States Circuit Court of Appeals for the Third Circuit, a judgment was entered at the March term of said Court, 1915, on the Second day of July, 1915, against your petitioner affirming a judgment entered in the United States District Court in and for the District of New Jersey, on the 20th day of April, 1914, at the April Term of said Court, 1914; and your petitioner

9589 considers itself aggrieved by said judgment, and represents that manifest error was committed as set forth in the assignment of errors filed herewith, to the great injury of your petitioner.

Wherefore your petitioner prays that it have an opportunity to show the errors complained of in the Supreme Court of the United States, and that a transcript of the record and proceedings, orders and papers upon which said judgment is founded may be sent to the said Supreme Court of the United States as provided by law.

9590 Dated at Philadelphia the 2d day of September, 1915.

BUCKEYE POWDER COMPANY,
Petitioner.

TWYMAN O. ABBOTT,
WILLARD U. TAYLOR,
WALTER J. BARTNETT,
Attorneys for Petitioner.

Allowed,
(Signed) JOHN B. McPHERSON,
Judge.

9591 Endorsed:
No. 1899.

Petition for Writ of Error, Received and Filed, Sept. 2, 1915.

SAUNDERS LEWIS, Jr.,
Clerk.

Assignment of Errors. 9592

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE THIRD CIRCUIT.

THE BUCKEYE POWDER COMPANY (a Corporation), Plaintiff in Error,

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against

E. I. DU PONT DE NEMOURS POWDER COMPANY (a corporation of New Jersey), EASTERN DYNAMITE COMPANY (a corporation of New Jersey), INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY (a corporation of New Jersey), Defendant in Error.

Assignment of Errors.

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Now comes the Buckeye Powder Company, plaintiff in error, and makes and files this, its Assignments of Error:

The United States Circuit Court of Appeals for the Third Circuit erred—

1. In refusing to set aside the judgment of the United States District Court for the District of New Jersey entered against plaintiff in error, in

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the above entitled cause, on the 20th day of April, 1914, at the April Term of said Court, 1914.

2. In affirming the judgment of the District Court of the United States for the District of New Jersey, entered against plaintiff in error on the 20th day of April, 1914, at the April Term of said Court, 1914.

3. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

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"The suit is brought by the Buckeye Powder Company and has proceeded to trial against three defendants. The evidence, however, fails to support any participation by the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, and my instructions to you are that you return a verdict of no cause of action in their favor."

4. In refusing to correct the error of the District Court in making an order requiring the plaintiff in error to make an election whether under its declaration it would rely upon the first or second sections of the Act of Congress of July 2, 1890, commonly known as the Sherman Act.

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5. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

"This suit is unique in many respects. The plaintiff, as a corporation and as a competitor in the powder business, is due to the efforts of R. S. Waddell, its chief witness in the suit. He organized it shortly after he separated himself from his employment with the defendant with which and its predecessors he had been identified

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for about twenty years. His services, while in the employment of the Du Pont interests brought him in touch with their business policies and operations in the vending of powder. He knew of the existence of the trade associations and of such of the restraints and limitations put upon its members as related to the apportionment of the trade and the fixing of prices. The comparative size of the defendant's capacity for output in relation to other powder manufacturers, and its influence as a factor in the trade generally, were known to him when he severed his connection and when he conceived and began to carry out his purpose of entering into such powder field as a competitor. The plaintiff does not occupy the same position as a competitor in existence during the period that this influence was being developed and who may have been, during the course of such development, as well as after it had reached the height of its power, injured in its business or property by reason thereof, but is here as one entering the competitive field when such growth and influence have been established. To it, this influence and power of the defendant, when it, the plaintiff, was launched into the powder field, is not in itself actionable, even though that status is due in part to methods which are prohibited by the Anti-Trust Act, and before the plaintiff can recover it must establish that the defendant used its power in the trade oppressively, not necessarily against the plaintiff alone; but at least in the conduct of its business generally; that is, that it used such methods as, backed by its influential position, tended to the suppression of open competition and to obstruct the free flow of commerce—the trade conditions sought to be secured and protected by the prohibitions of the Anti-Trust Act, and that it, the plaintiff, was injured by reason thereof."

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6. In refusing to correct the error of the Dis-

9601 trict Court in instructing the jury as follows, to wit:

"Mr. Waddell, as already stated, was well advised when he promoted the plaintiff company of the defendant's business, capacity and policies. He had been its agent for a long period during which several severe competitive struggles took place, and he knew the outcome thereof, and which was, generally speaking, the taking over in one form and another of such new comers, and at least in one instance—that of the Indiana at a considerable profit to the owners of that company.

9602 "Of course, Mr. Waddell, or the company which he formed had a right to go into business, and the motive for entering into such business is of little moment so far as their rights were concerned; but if he was actuated by the belief that his company would meet with a like experience after some competitive struggles, it may have a bearing upon the question whether the plaintiff was sufficiently capitalized to engage in the struggle for the market already occupied. Of course, if you find that it was sufficiently capitalized, or that it had sufficient financial backing to weather a struggle carried on under normal or lawful competitive conditions, that is a sufficient answer, and it would make no differ-

9603 ence whether it was or was not sufficiently capitalized to meet a competition forced upon it by unlawful means."

7. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

"No one who enters into a competitive field is guaranteed that he will get any particular share or even a share of the business at a profit, nor does the mere fact that the largest competitor is able to prevent a smaller one from getting a profitable share of the business make it liable

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in damages to such other. Competition, as it exists under the laws at this date, has within it the element of fight. It permits fighting so long as it is fair and it permits the fair fighter to go away with the spoils, even though some one in that fight has been injured, and perhaps irretrievably injured in consequence; so that it is not the mere fact that a competitor suffers injury through severe competition that makes the other competitor who may have come out of the fray successfully, liable to compensate for the losses sustained by the injured party."

8. In refusing to correct the error of the District Court in instructing the jury as follows, to wit: 9605

"There is no evidence whatever which would justify you in finding that the defendant hired detectives to track Mr. Waddell for the purpose of forestalling him in the purchase of a site, and to create opposition among the people to the location of plaintiff's plant in any place by instilling fear or otherwise, or by bidding up the price of any property plaintiff might have desired to acquire so as to prevent the entry of a competitor into the black powder business. The fact, however, that detectives were employed by the defendant to shadow Mr. Waddell after he had severed his connection with the defendant, and 9606
after his declaration to embark in a competitive business, is a circumstance to be considered by you in connection with the other testimony in the case upon the alternative questions whether it shows a hostile purpose upon the part of the defendant against Mr. Waddell's contemplated enterprise with the view of suppressing competition, or whether it was but a step taken by the defendant in the protection of its legitimate interests, namely, to prevent their employees from being taken from them by this prospective competitor, which latter is the explanation offered on behalf of the defendants."

9607 *Assignment of Errors 9-10*

9. In refusing to correct the error of the District Court in refusing to receive in evidence a letter offered by the plaintiff, reading as follows:

"Chicago, Feb. 13, 1903.

H. A. Koach, Esq.,
c/o Stratford Hotel,
Cincinnati, Ohio:

Dear Sir—This will be handed to you by Capt. H. R. Saville of the Philadelphia Agency, who has been engaged in shadowing the party I wired
9608 to you about in cipher, as follows:

'Wire immediately if R. S. Waddell of Wilmington, Delaware, is now in Cincinnati; think can be found South East corner Third and Broadway. Want to place shadow; therefore, inquire carefully.'

and to which you replied as follows:

'Mail at party's office Union Trust Building indicates he will arrive tomorrow. He has home and family in this city.'

Will you kindly assist him as much as possible in locating the party, and just as soon as he locates him, he is to wire to Chicago for assistance.

Yours truly,

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(Signed) J. H. Schumacher,
Sup't."

10. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

"There is no evidence to the effect that the defendants or any of them exercised any control at any time over the affairs of the Equitable Powder Company or the Austin Powder Company by virtue of any stock that they have held in those corporations, and therefore you must not

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consider any claim to the effect that they had exercised such control."

11. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

"There is no evidence showing that any of the defendants knew or had anything whatever to do with the purchase of the Buckeye Powder Plant and property by Mr. Olin and his associates, and therefore you must not consider the fact of such purchase as tending to establish any combination or conspiracy or other conduct prohibited by the Sherman Act." 9611

12. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

"There is no evidence, gentlemen, that would sustain the allegations made by the plaintiff, that * * * cash, intoxicating liquors, household goods and clothing were distributed among miners to secure their influence with their fellow workmen to effect boycotts, * * * or that it (the defendant) sold its product below actual cost; * * * and my instructions to you are, as to these particular allegations, that they have not been established, and you will therefore disregard them entirely in your further consideration of the issue here being tried." 9612

13. In refusing to correct the error of the District Court in instructing the jury that at a test which was ordered by the Miners' Union to be made of the relative merits of the powder manufactured by plaintiff in error, and that manufactured by defendants in error at the mines of Applegate & Lewis at Hanna City, Illinois, "while this test was going on each of the powders had a paid

9613 representative among the working miners, one acting in the interest of the plaintiff's powder, and the other in the interest of the defendant's."

14. In refusing to correct the error of the District Court in refusing to permit R. S. Waddell, a witness for the plaintiff, while on direct examination, to state what it was that caused him, as president of the plaintiff, to make an investigation for the purpose of ascertaining how it was that advices were received by him from persons to whom consignments of black blasting powder had been
9614 shipped from the shipment office of the Buckeye Powder Company—giving the definite car number of the car in which shipment was made and all the details of the shipment—before notice of that shipment had been received at the business office of that company.

15. In refusing to correct the error of the District Court in refusing to permit John G. Miller, a witness for the plaintiff, while on direct examination, to answer the following question—he having already been permitted to testify that he called the attention of the Burlington Railway
9615 Company officials to the situation relative to information concerning the shipments made by Buckeye Powder Company to its customers coming to him from sources other than the Buckeye Powder Company, and that said officials made an investigation:

"Q. Now, do you know what the result of that investigation was?"

16. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

"As to the charge that the defendant employed railroad employees to make telegraphic reports or other kind of reports of the plaintiff's shipments, and which information was used to get consignees to reject plaintiff's shipments, there is no proof that the defendant was able to have the consignments of plaintiff's powder cancelled by reason of any information obtained from railroad employees concerning such consignments, or that they ever succeeded in geeting such information from such employees, but there is evidence in the case that one named Piatt, who was an agent of the defendant, sought to hire Harry Paige, commercial agent of the C. B. & Q. Railway, to give him (Piatt) information concerning the shipments of the plaintiff's powder, offering to pay for such information at a named rate —$5.00 a letter, as I recall it. This was peremptorily refused by such agent, and as I recall it it is the only proof of any attempt to secure such information. This, of course, was a reprehensible act. What does such an act, in the light of all the circumstances surrounding it, and keeping in mind other facts in the case bearing upon the keen competition that took place between the defendant's and plaintiff's powders in that district, indicate? The plaintiff was a newcomer in a field already occupied. Except as to new business, it is inevitable that in order for the plaintiff to place its output it would draw some of the custom that theretofore had been flowing to the defendant or some other competitor. All of them had a right to compete for such business. None of them had the right, however, to use any but lawful methods. To retain one's own customers obtained by lawful means or to secure new ones is lawful, provided no unlawful means are used. The mere ascertaining to what person or place a competitor's product is being shipped is a legitimate means of keeping tab on the trade, and if a particular competitor has been making inroads upon the established trade of another, such other may properly

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9619 *Assignment of Errors 17-18*

keep a surveillance over the conduct of such new competitor; but while this is lawful, it may be readily noted that an unlawful use of such information may be made."

17. In refusing to correct the error of the District Court in refusing to allow John G. Miller, a witness for plaintiff, while on direct examination, to answer the following questions—he having already been permitted to testify that he had endeavored to sell Buckeye Powder to certain persons whom he knew to be under contract to pur-
9620 chase powder from the Laflin & Rand Powder Company, and that he failed to sell to such persons, and that they gave him reasons why they did not or would not purchase powder of him:

"Q. State what those reasons were as given by them.

"Did any of those reasons which were given to you involve the question of these contracts which were in existence?

"Q. Did any of the reasons which were given to you by these parties or any of them involve the question of special prices that had been made to them by any other manufacturer of powder?"

9621 18. In refusing to correct the error of the District Court in refusing to permit the plaintiff to read to the jury a certain letter written by Thomas Mackie to the Buckeye Powder Company, and dated at Kansas City, Mo., May 24, 1906, and reading as follows:

"Kansas City, Mo., May 24, 1906.

"Buckeye Powder Co.,
Peoria, Ill.:

"Gentlemen—we will soon be ready to enter into a contract for our powder requirements for

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the ensuing year or for the next two or three years, and would be pleased to have you make us a proposition covering same.

"Kindly let us hear from you at your earliest convenience, and greatly oblige,

Yours truly,

Thomas Mackie,
Genl. Pur. Agt."

19. In refusing to correct the error of the District Court in refusing to permit the plaintiff to read to the jury a certain letter written by Thomas Mackie to the Buckeye Powder Company, and dated at Kansas City, Mo., August 15, 1906, and reading as follows:

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"Kansas City, Mo., August 15, 1906.

"Mr. R. S. Waddell,
Prest. Buckeye Powder Co.,
Peoria, Ill.:

"Dear Sir—Referring to your letter of May 26th quoting prices on powder delivered at our various camps for the ensuing year, beg to state that this matter has just been determined and I regret to advise that you were not the successful bidders.

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Yours truly,

Thomas Mackie,
Genl. Pur. Agent."

20. In refusing to correct the error of the District Court in refusing to permit the plaintiff to read to the jury a certain letter signed by the Waverly Coal & Mining Company, by J. W. Ferguson, President, and addressed to the Buckeye Powder Company, and dated at Kansas City, Kansas, February 17, 1906:

9625 *Assignment of Error 21*

"Kansas City, Kansas, Feb. 17th, 1906.

"Buckeye Powder Co.,
Peoria, Ill.:

"Gentlemen—I wired you today cancelling car of CC Special Powder. I am somewhat tied up with the Du Pont Company and I am obliged to do this. If you have invoiced this car and it is shipped, or if you consider that the powder belongs to us, ship it at once and date your invoice Feb. 16th. Ship by as slow freight as you please, as I do not care for it before the 1st of
9626 March, or even the 10th of March. I say this because I do not wish to pay for it until say 90 days. If you are willing to do this, ship it as directed, but don't give me away to the Du Pont powder people.

"I will be clear of them in a few months. Wire me what you do. Saying you had shipped Feb. 16.

Respectfully,

Waverly Coal & Mining Co.,
by J. W. Ferguson, Pres."

21. In refusing to correct the error of the District Court in refusing to receive in evidence on behalf of the plaintiff certain letters written by
9627 J. H. Somers & Company to the Buckeye Powder Company, reading as follows, to wit:

"J. H. Somers & Co.
Cleveland, Sept. 10, 1904.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:

Your Mr. R. S. Waddell was here the 5th and promised to send me some samples of your powder. One or two other large users of powder with their offices in this city have been in to see me in regard to your powder. I have asked them to defer their orders or any changes they would make until after these samples had ar-

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rived and we had made a thorough investigation of your ability to turn out the kind of powder we require.

The samples Mr. Waddell had with him were beyond question in regard to quality, etc. Some of these other companies I speak of have no contract for powder, consequently you could start to doing business with them at once. It is a little different with us; we are tied up with a contract for the next few months but expect to make some change if we are not taken care of a little better than we have been.

Please forward these samples at once, and oblige,

Yours truly, 9629
J. H. Somers & Co.,
Wm. D. Somers, Pur. Agt."

"J. H. Somers & Co.,
Cleveland, January 31, 1905.
Buckeye Powder Company,
Peoria, Ill.
Gentlemen:

"We have yours of the 28th inst., and in reply will state our present contract does not expire until March. It might be well for you to take this matter up with us at that time.

Your statement that your powder is 'excelled by none' must be correct, as we have heard several parties speak well of your product, and we have a set of your samples, which also speak well for themselves. 9630

We use very little Single F powder. In Michigan we use only FF. Our three mines in this territory have used about 6,000 kegs of FF since October 1st. When Mr. Waddell was in Cleveland he stated your mill was either well supplied with F or FF, the writer does not remember which.

We have been informed that you have been very successful in your new enterprise, and we

9631 are very glad you have met with this success, which, no doubt, is due you.

Yours very truly,
J. H. Somers & Co.,
Wm. D. Somers, Pur. Agt."

"J. H. Somers & Co.,
Cleveland, March 8, 1905.

The Buckeye Powder Company,
Peoria, Ill.

Gentlemen:

9632 We have yours of the 3rd inst., with reference to furnishing powder for our Michigan properties, and note what you say in regard to Mr. Steven Corvin, as being our agent. You have failed to quote us prices on powder, and we would ask you to kindly take this matter up at once and give us your best price delivered St. Charles, Mich.

We have purchased 7,200 kegs of FF powder since October 1st for these properties and you can tell by these figures about how much we will use per year, especially as the coal business in this particular district last winter was not very good.

We might say in conclusion that we expect to buy powder a little cheaper this year than last,
9633 and this business no doubt will be yours if you quote the right price.

Yours very truly,
J. H. Somers & Co.,
Wm. D. Somers, Pur. Agt."

"J. H. Somers & Co.
Cleveland, March 25, 1905.

The Buckeye Powder Company,
Peoria, Ill.

Gentlemen:

We have yours of the 23rd inst. with reference to furnishing powder for our Michigan

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mines. We are sorry to state that your price quoted several days ago did not meet favor, and as you said you can meet any price that is named we will wait until you make another quotation before we place this business.

We have a much better price than the one you have quoted and while we are very anxious to give our friend Mr. Corvin this business, yet we cannot see our way clear to pay a higher price for your powder than we would have to pay for the powder we have been using in the past.

Yours very truly,
J. H. Somers & Co.,
Wm. D. Somers, Pur. Agt."

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"J. H. Somers & Co.
Cleveland, April 15, 1905.

The Buckeye Powder Company,
Peoria, Ill.

Gentlemen:

We are a little late in acknowledging receipt of your quotation of March 31st, however, we have been thinking the matter over and have been in constant correspondence with our superintendent at St. Charles in regard to the matter.

In your letter you state if any Powder Company made us a better price than 1.05 delivered they were entitled to the business. We have the better price all right—same being $1.02½, but we have not decided definitely in regard to the Michigan business. As we use a great deal of powder and have always been well taken care of, we want to know positively if we can get powder promptly after we have placed our order for the same. We have been signed up for some time for our powder in Ohio, and have included the Michigan properties in this contract in a way that we can purchase powder from the same company we purchase our Ohio powder, providing we do not give you the business.

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We cannot give you any definite information on this matter until our superintendent has time to render his decision.

Yours very truly,
J. H. Somers & Co.,
Wm. D. Somers, Pur. Agt."

"J. H. Somers & Co.
Cleveland, Aug. 23, 1905.

Buckeye Powder Company,
Peoria, Ill.

Gentlemen:

9638 We herewith enclose our order #1248 for one carload of FF blasting powder, price to be $1.02½ delivered as per your letter of Aug. 21st. You no doubt have been advised by Mr. Corvin that we are buying our powder for $1.00 per keg at the present time. We are willing to pay you 2½ per keg on this order as we are anxious to give your powder a trial.

Yours truly,
J. H. Somers Coal Co.,
Wm. D. Somers, Pur. Agt."

22. In refusing to correct the error of the District Court in refusing to admit the interlocutory decree and the final decree of the United States
9639 District Court for the District of Delaware, in the case of United States of America, petitioner, against E. I. du Pont de Nemours & Company, *et al.*, defendants.

23. In refusing to correct the error of the District Court in refusing to permit R. S. Waddell, a witness for plaintiff in error, while under redirect examination, to state what the information was which he gave to plaintiff's attorneys upon which the allegations set forth in paragraph 11 of the amended declaration were based—counsel for

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defendants in error on cross-examination having already been permitted to read the said paragraph to the said witness, and thereupon to ask him whether he gave his attorneys the information upon which the said allegations were based, to which the said witness replied that he did and would be glad to state them to the jury.

24. In refusing to correct the error of the District Court in permitting Olive Taylor, a witness for the defendant, to testify as follows:

"Q. Now, Mrs. Taylor, in a suit instituted in 9641
the United States District Court for the District of New Jersey, by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company and two other companies, known as the International Smokeless Powder and Chemical Company and the Eastern Dynamite Company, the Buckeye Powder Company, in answer to a demand for the names of customers of the Buckeye Powder Company induced by the defendants, or by the other persons or corporations I will name to you, the Buckeye Powder Company has given the name of Howarth and Taylor as one of the customers of the Buckeye Powder Company which was induced by these defendants and persons which I will name, to
abandon the purchase of powder from the Buck- 9642
eye Powder Company. The names of these persons are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry E. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmund G. Buckner, Frank L. Connable, Jonathan A. Haskell, and the following corporations: International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Secu-

9643 *Assignment of Errors 25-26*

rities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin & Rand Powder Company, Fairmont Powder Company, and Judson Dynamite and Powder Company. Will you now state whether or not any of the persons that I have mentioned here, or any of the corporations which I have mentioned in this question, or any agent or representative of those persons or corporations, ever induced you, as purchasing agent for your husband, Daniel Taylor, trading as Howarth & Taylor, not to purchase powder of the Buckeye Powder Company? A. No, sir."

9644 25. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

"Plaintiff claims thirty cents a keg profit, but there is no evidence in the case that would justify the conclusion that that was a fair profit."

26. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

"In this case the statute of limitations pleaded by the defendant furnishes a line of demarkation between the two periods of the plaintiff's
9645 business. The 18th of September, 1905, fixes the dividing line and the plaintiff seeks to recover anticipated profits on the kegs of powder manufactured and sold for the three years since that date. The plaintiff claims that up to the 18th day of September, 1905, and covering a period of twenty-two months, it carried on its business profitably. The average profit per keg during such period, according to this claim, is 3 1/7 cents. This price per keg it figures from $6,470.61, which is the sum that the plaintiff claims its books show as the amount of the net profits made during the said twenty-two months and the

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number of kegs upon which the 3 1/7 cents per keg profit is based is 205,931. What I said to you concerning those books as evidence when dealing with the alleged cost of the plant is applicable here. It is only in case you find that these books have been so kept that you can ascertain therefrom with certainty that a profit was made during this period, and the amount of such profit, that you can use that profit as a basis for a comparison upon the question of profits during the subsequent period. If you can not ascertain what were the actual profits by resorting to such books, of course, the inquiry as to profits at all fails for the lack of proof, and no allowance of 9647
profits can be made. If, on the contrary, however, it can be ascertained from such books with certainty that profits were made, and what was the amount of them, then the next question arises whether this period of twenty-two months was sufficiently long in view of the trade conditions prevailing, whatever may have been the cause thereof, to establish with reasonable certainty what the anticipated profits for the period subsequent to this 18th day of September, 1905, would have been if normal trade conditions had prevailed. Now, according to one contention, normal trade conditions did not obtain during this twenty-two months ending with the eighteenth day of September, 1905, while according to another contention that the conditions pre- 9648
vailing during that period, as well as during the period following, were normal; and that they were just such conditions as would be likely to follow the abandonment of the Trade Association, which you know finally was dissolved in June, 1904. Whether they be normal or abnormal, if it be a fact that during that period the plaintiff made profits, they furnish a sufficient basis for comparison with subsequent years for me to submit it to your consideration; but it will be for you to say whether as a fact that period was sufficiently long to furnish a basis for comparison with subsequent years. If you should

9649 find that it isn't sufficient to furnish such a basis, even though you should have found that during the twenty-two months the plaintiff made a profit, the further inquiry as to profits during the remaining years must end, and no profits can be allowed. If, however, you find that it does furnish a satisfactory basis, then you will allow as profits upon the kegs manufactured during such subsequent period all or so much of such 3 1/7 cents per keg as you shall find was the profit per keg on the 224,683 kegs as is shown were made during the three years following September 18, 1905.

9650 "The defendant challenges the correctness of the sum alleged to have been made as profits during the twenty-two months referred to, claiming that the items of salary paid to the Waddells, and the loss sustained in the explosions, one of which I considered a short time ago, when dealing with the question of the book value of the plant, should have been charged to the running or working expense during those twenty-two months, instead of to construction, and that if they had been this amount would have been totally wiped out. If that is the fact, of course, there is no standard here upon which you can calculate profit for the 224,683 kegs which were made and sold; but if you should find that only a part of such salaries and explosion losses, and which were

9651 charged to the construction account, should have been charged to running expense, and after deducting from this sum total, namely, $6,470.61, such amount so found, there remains a profit, that profit will furnish the standard; and when you have ascertained the price per keg such profit represents that will be the profit per keg, and not the 3 1/7 cents per keg that has been allowed as the anticipated profits upon the kegs actually sold."

27. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

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"As the evidence does not furnish us with a legal basis upon which we can determine, as a matter of fact, that the plaintiff could have sold on a profitable basis any more powder than it actually sold, no allowance can be made for such unmade or unsold merchandise."

28. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

"So far I have been dealing with the value of the plant simply as a tangible or physical property. A manufacturing plant, however, may 9653
have another and additional value, namely, its good-will; and as the plaintiff claims that it has suffered damages to its good-will, that phase will now be considered. Good-will may be defined for present purposes as 'the advantage or benefit which is acquired by an establishment beyond the mere value of the capital stock, funds or property employed therein in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position, or from celebrity or reputation for skill, or affluence or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices.' Establishment of a profitable business is the essential of the good-will. 9654
Where that does not exist there can be no good-will.

"The very contention of the plaintiff on another branch of the matter of damages is that from September 18, 1905, until the time that it ceased doing business, it was conducting an unprofitable business; and as the losses said to have been incurred during this period largely overcame the profits claimed to have been made for the twenty-two months preceding we have as the only basis for a good-will, not that a pecuniary advantage or benefit was secured by the plaintiff during the time it was in business, but

9655 *Assignment of Error 29*

that it would have done so except for the wrongful acts of the defendant, and that for a part of such time it actually did make a profit.

"True, a person may be wrongfully prevented from acquiring a good-will; and ethically such a wrong is just as injurious as if an established good-will was injured by such wrong doing. The rule in allowing as well as estimating damages, however, is a practical, rather than an ethical standard, and this excludes all damages that are purely speculative and contingent. To attempt to create out of unknown quantities a good-will for the purpose of giving it a value
9656 when no past conditions establishing a good-will exist, would be but a pure speculation, and therefore not allowable. The claim of damages for good-will therefore must be disallowed."

29. In refusing to correct the error of the District Court in refusing to grant plaintiff in error a new trial, for the reasons and causes therefor shown as follows:

"1. Because the verdict in favor of the E. I. du Pont Nemours Powder Company, returned herein on the 25th day of February, 1914, is against the clear weight of the evidence.

"2. Because the verdict for the Eastern Dynamite Company and International Smokeless Pow-
9657 der and Chemical Company, returned herein on the 25th day of February, 1914, is against the clear weight of the evidence.

"3. Because said verdict rendered in favor of the E. I. du Pont Nemours Powder Company is against the law.

"4. Because said verdict in favor of the Eastern Dynamite Company and International Smokeless Powder and Chemical Company is against the law.

"5. Because the charge of the Court was erroneous in law.

"6. Because of the failure of the Court to instruct the jury on material issues in its charge to the jury.

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"7. Because of the refusal of the Court to instruct the jury on material issues as requested by the plaintiff in its charge to the jury.

"8. Because the jury while deliberating upon their verdict had before them a large number of letters, files, pleadings, and other papers that were not in evidence in said case and which they examined and inspected contrary to law."

WHEREFORE, the plaintiff in error prays that said judgment may be reversed and the errors above stated be corrected and a new trial of the issues in this action be directed.

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TWYMAN O. ABBOTT,

WILLARD U. TAYLOR,

WALTER J. BARTWELL,

Attorneys for Plaintiff in Error,

63 Wall Street,

New York City.

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9661 KNOW ALL MEN BY THESE PRESENTS,—

That We, THE BUCKEYE POWDER COMPANY, a corporation, as principal, and the UNITED STATES FIDELITY AND GUARANTY COMPANY as surety, are held and firmly bound unto E. I. DU PONT DE NEMOURS POWDER COMPANY, a corporation of New Jersey, EASTERN DYNAMITE COMPANY, a corporation of New Jersey, INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY, a corporation of New Jersey, in the full and just sum of TWO HUNDRED AND FIFTY ($250.00) DOLLARS to be paid to the said E. I. DU PONT DE NEMOURS POWDER
9662 COMPANY, a corporation of New Jersey, EASTERN DYNAMITE COMPANY, a corportaion of New Jersey, INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY, a corporation of New Jersey, their certain attorney, their successors or assigns, to which payment well and truly to be made, we bind ourselves, and our successors jointly and severally by these presents.

SEALED WITH OUR SEALS and dated this 20th day of August, 1915.

WHEREAS, lately at a term of the United States Circuit Court of Appeals for the Third Circuit in a suit depending in said Court between the said
9663 THE BUCKEYE POWDER COMPANY, a corporation, plaintiff in error, and E. I. DU PONT DE NEMOURS POWDER COMPANY, a corporation of New Jersey, EASTERN DYNAMITE COMPANY, a corporation of New Jersey, INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY, a corporation of New Jersey, defendant in error, a decree was entered against the said THE BUCKEYE POWDER COMPANY, a corporation, and the said THE BUCKEYE POWDER COMPANY, a corporation, having obtained an order allowing an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed

to the said E. I. DU PONT DE NEMOURS POWDER COMPANY, a corporation of New Jersey, EASTERN DYNAMITE COMPANY, a corporation of New Jersey, INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY, a corporation of New Jersey, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof. 9664

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said THE BUCKEYE POWDER COMPANY, a corporation, shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue. 9665

THE BUCKEYE POWDER COMPANY,
a Corporation. (Seal of company)
By R. S. Waddell, Jr.,
Secy.-Treas. (Seal)

Sealed and delivered in the presence of C. M. JOHNSTON.

UNITED STATES FIDELITY AND
GUARANTY COMPANY,
(Seal of U. S. Fidelity and Guaranty Company)
By (Signed) S. Frank Hedges,
Attorney-in-fact. 9666

Attest:
(Signed) WILLIAM H. ESTWICK,
Attorney-in-fact.

Approved.
(Signed) JOHN B. McPHERSON,
Judge.

Endorsed: No. 1899.
Bond received and filed Sept. 2, 1915.
SAUNDERS LEWIS, JR., Clerk.

9667 UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } sct.
THIRD JUDICIAL CIRCUIT.

I, SAUNDERS LEWIS, JR., Clerk of the United States Circuit Court of Appeals for the Third Circuit, DO HEREBY CERTIFY the foregoing to be a true and faithful copy of the original transcript of record and proceedings in this Court in the case of The Buckeye Powder Company, Plaintiff in Error vs. E. I. du Pont de Nemours Powder Company, Eastern Dynamite Company and International Smokeless Powder and Chemical Com-
9668 pany, Defendants in Error, on file, and now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed by name and affixed the seal of the said Court, at Philadelphia, this eighth day of September, in the year of our Lord One thousand nine hundred and fifteen and of the Independence of the United States the One hundred and fortieth.

(Seal of United States Court
of Appeals, Third Circuit.)

9669 WM. P. ROWLAND,
Deputy Clerk of the U. S. Circuit
Court of Appeals, Third Circuit.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals, before you, or some of you, between The Buckeye Powder Company, and the E. I. Du Pont de Nemours Powder Company, Eastern Dynamite Company, and International Smokeless Powder and Chemical Company, a manifest error hath happened, to the great damage of the said Buckeye Powder Company, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the first day of September, in the year of our Lord one thousand nine hundred and fifteen.

[Seal United States Circuit Court of Appeals, Third Circuit.]

SAUNDERS LEWIS, JR.,
Clerk United States Circuit Court of Appeals for the Third Circuit.

Allowed by—
JOHN B. McPHERSON,
Circuit Judge.

[Endorsed:] U. S. Circuit Court of Appeals for the Third Circuit. The Buckeye Powder Company, a Corporation, Plaintiff in Error, against E. I. Du Pont de Nemours Powder Company (a Corporation of New Jersey), and others, Defendants in Error. Writ of Error. Twyman O. Abbott, Willard U. Taylor, Walter J. Bartnett, Attorneys for Petitioner, 63 Wall Street, Borough of Manhattan, New York City.

UNITED STATES OF AMERICA, *ss:*

[Seal United States Circuit Court of Appeals, Third Circuit.]

To the E. I. Du Pont de Nemours Powder Company, Eastern Dynamite Company, and International Smokeless Powder and Chemical Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's office of the United States Circuit Court of Appeals for the Third Circuit, wherein the Buckeye Powder Company is Plaintiff in Error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this third day of September, in the year of our Lord one thousand nine hundred and fifteen.

JOHN B. McPHERSON,
Circuit Judge.

[Endorsed:] Buckeye Powder Co. vs. E. I. Du Pont de Nemours Powder Co et al. Citation. Service of the within

Citation by receipt of a copy thereof this date is hereby acknowledged. Dated September 7, 1915. Wm. H. Button, Att'ys for Defendant in Error.

Endorsed on cover: File No. 24,926. U. S. Circuit Court Appeals, 3rd Circuit. Term No. 643. The Buckeye Powder Company, plaintiff in error, vs. E. I. Du Pont de Nemours Powder Company, Eastern Dynamite Company, and International Smokeless Powder and Chemical Company. Filed September 28, 1915. File No. 24,926.

-2-

No. 7

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JAMES D. MAHER
CLERK

Supreme Court of the United States

October Term, 1916

THE BUCKEYE POWDER COMPANY (a Corporation)

Plaintiff-in-Error

against

E. I. Du Pont de Nemours Powder Company (a Corporation of New Jersey), Eastern Dynamite Company (a Corporation of New Jersey) and International Smokeless Powder & Chemical Company (a Corporation of New Jersey)

Defendants-in-Error

In Error to the United States Circuit Court of Appeals for the Third Circuit

BRIEF OF PLAINTIFF-IN-ERROR

TWYMAN O. ABBOTT
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Counsel for Plaintiff-in-Error

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— 1917 —

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Supreme Court of the United States

OCTOBER TERM, 1916.

THE BUCKEYE POWDER COMPANY (a corporation),

Plaintiff-in-Error,

against

E. I. DU PONT DE NEMOURS POWDER COMPANY (a corporation of New Jersey), EASTERN DYNAMITE COMPANY (a corporation of New Jersey), INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY (a corporation of New Jersey),

Defendants-in-Error.

No. 249.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF OF PLAINTIFF-IN-ERROR.

The Nature of the Proceedings.

This is an action brought by the plaintiff-in-error to recover damages from the defendants-in-error under the provisions of Section 7 of the Act of Congress of July 2, 1890, commonly known as the "Sherman Law," which reads:

> "Any person who shall be injured in his business or property by any other person or

corporation by reason of anything forbidden or declared to be unlawful by this Act may sue therefor in any Circuit Court of the United States in the District in which the defendant resides or is found, without respect to the amount in controversy and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

The things "forbidden or declared to be unlawful by this Act" are as follows:

"Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be illegal.

"Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States or with foreign nations, shall be deemed guilty of a misdemeanor."

The Trial.

The action was tried by a jury.

The Court instructed the jury to return a verdict "of no cause of action" in favor of the Eastern Dynamite Company and the International Smokeless Powder & Chemical Company, and the jury also returned a verdict to the same effect in favor of the remaining defendant E. I. Du Pont de Nemours Powder Company.

Statement of the Case—The Parties—The Pleadings.

The plaintiff. The plaintiff is a corporation organized on the 28th day of January, 1903, for the purpose of manufacturing explosives; its plant was located at Peoria, Illinois; it began business about the 1st day of September, 1903, and continued in business down to the 19th day of September, 1908. Its organization was principally due to Mr. R. S. Waddell, who had been in the employ of the Hazard and Du Pont Powder Companies for nearly twenty years.

The defendants. The original declaration named 28 corporations and persons as defendants, which had already been held to be acting together as an unlawful combination during the period that plaintiff did business. (See *United States vs. E. I. Du Pont de Nemours & Co.*, 188 Fed., 127.) Plaintiff was able to obtain service upon only three of them, namely, The E. I. Du Pont de Nemours Powder Company, The Eastern Dynamite Company and The International Smokeless Powder and Chemical Company, all New Jersey corporations. As the result of an application by the served defendants for a rule to strike the declaration, the Court directed that the names of all the persons and corporations who had not been served should be stricken from the declaration.

See *Buckeye Powder Co. vs. E. I. Du Pont de Nemours Powder Co.*, 196 Fed., 514, 520.

An amended declaration was thereupon filed, in which only the three corporations above named were made defendants, the other parties being described as "co-conspirators," no relief being asked against them.

The case went to trial upon the Amended Dec-

laration and the separate pleas of the defendants that they were not guilty of the grievances with which they were charged, and that the action was barred by the statute of limitations.

The Amended Declaration is lengthy and the various allegations can best be considered in connection with the Assignments of Error, as they are discussed. Briefly summarized, they are as follows:

It is alleged that for more than 30 years previous to 1902 a large number of manufacturers and vendors of explosives who were engaged in interstate commerce (whose names are set forth), attempted to establish a monopoly in said trade; that in so doing they entered into many agreements and adopted many forms by which they regulated and apportioned the trade among themselves, fixed prices, and imposed fines and penalties for the disobedience or disregard of such agreements; that by forcing competitors out of business or by coercing them into a union with them, they succeeded in establishing a practical monopoly of the explosives trade in the United States; that on or about February, 1902, the idea was conceived of bringing together, under one *corporate* control, all the various corporations and persons composing the combination; that (by means which will be presently noted) the defendant E. I. Du Pont de Nemours Powder Company was organized under the laws of New Jersey, and the actual physical or legal control and ownership of the plants, manufactories and tangible property which belonged to these various corporations and persons was ultimately acquired by it, and thereupon all the various corporations whose properties had been thus acquired were dissolved and thus removed from the explosives field. (See Par. Third and Fourth, Trans., pp. 3-9.)

That one R. S. Waddell who had been an employee of the Du Pont interests for many years, having determined to establish a powder business for himself, conceived the idea of organizing Plaintiff: that when the Defendants learned of his purpose, they attempted to prevent him from carrying out his plan, so as to perpetuate the monopoly which they had acquired; first, they tried to dissuade him; failing in that they offered to join him if he would place a controlling interest in their control; failing in that they tried to influence him to locate in a section of the country where their monopoly would be as little interfered with as possible. Negotiations between them having failed of results, Mr. Waddell set about to find a location; that the defendants placed detectives on his track to follow him about from place to place thus to keep advised of his plans and movements, with a view to creating opposition among the inhabitants of such localities as should be considered by him and thus embarrass and perhaps prevent him from obtaining a site; that he disguised himself and travelled under assumed names and managed to avoid this surveillance and finally, a good location was secured near Peoria, Illinois, tributary to a large and growing powder market and possessing good railroad facilities and favorable freight rates; that in February 1903, plaintiff was organized and erected its plant and began business in September 1903; that by reason of the excellence of its location plaintiff was in a position to compete in fair and open competition; that defendants, realizing this, entered into a conspiracy to drive it out of business, and thereafter carried on a determined warfare for this purpose—the salient features of which warfare were the employment of spies to enter its

mills and obtain its business secrets, the employment of railway agents to divulge information concerning its shipments so that its customers might be induced to abandon it, the employment of leading and influential coal miners to circulate among their fellow workmen and stir up opposition to plaintiff's powder so as to force its customers to abandon it, the offer of secret rebates for the purpose of inducing consumers to enter into long-time contracts for the purchase of all their explosive requirements of the defendants, and by making prices which were not regulated by any law of supply and demand but which were determined solely by what would be a sufficient inducement to the consumer to give all his trade to them, even below cost, thus forcing plaintiff to surrender the trade; that this situation obtained for a period of about five years while plaintiff continued in business and by reason of which it sustained such loss of trade that on September 18, 1908, it was compelled to retire from business altogether. (See Par. Sixth to Twelfth, Trans., pp. 9-25.)

That when plaintiff found itself unable to withstand the great and continuing losses forced upon it by such unlawful and wrongful acts it was finally compelled to offer its mills and plant for sale; that it made many efforts to find a purchaser without success, largely because the methods of the defendants in forcing competitors to retire from the explosives field had become generally well known among the usual investors in powder properties, and it was difficult to induce them to invest in independent properties; that it was ultimately forced to accept an offer made by one Franklin W. Olin, of $70,000 for the entire plant, business and good will, and $5,504.08 for its stock on hand;

but, it is also alleged, Olin purchased the plant at the instance and request of the defendant E. I. Du Pont de Nemours Powder Company, who as a special inducement and, as part of the conspiracy, contracted with him to purchase from him after he should acquire the plant, 95% of its future entire output, for a long period; that Olin was at the time president of the Equitable Powder Manufacturing Company, in which the defendant E. I. Du Pont de Nemours Powder Company was then and for a long time prior had been the owner of 49% of its stock; that he at once organized the Western Powder Manufacturing Company, which took over the plant which he had purchased from plaintiff, and that its output was allotted to the Du Pont Powder Company and its associates, since which time said plant has been operated successfully. (Par. Fifteenth, Trans., p. 27.)

Damages were claimed on account of the loss of the true and fair value of the plant, mills, business and good will, which was alleged to be the sum of $430,000. (Ibid. fol. 90.)

Damages were also claimed for loss of profits as follows: It was alleged that the total capacity of plaintiff's mills was 300,000 kegs per year; that its inability to keep its mills working at full capacity was due to and was the *natural and proximate consequence* of the wrongful acts of the defendants, and that it was prevented from making a fair profit on the powder *actually* sold by it; and also on the amount of powder that it would have manufactured and sold if it had been permitted to operate at its full capacity; and also for future profits which it was prevented from obtaining by being driven out of business; that the fair profit per keg, during this period, was

30 cents, after deducting expenses of manufacture, sale and transportation; and damages at the rate of 30 cents per keg, were claimed on all powder manufactured by it (less the amount actually received) as well as that which it was prevented from manufacturing, all of which totaled the sum of $690,361.90. (Par. Sixteenth, Trans., pp. 30-34.)

Summary of Assignments of Error and Points of Argument.

There are 29 Assignments of Error, but we have grouped and discussed them below under 16 points. Some of these errors relate to the admission or rejection of evidence, but most of them to errors committed by the court in its charge to the jury.

It will serve to a better understanding of the contentions of the plaintiff, to here briefly summarize these Points and the errors discussed.

POINT I. The Court instructed the jury to return a verdict in favor of the Eastern Dynamite Co. and the International Smokeless Powder Co. upon the ground that the evidence failed to support any "participation" by either of said defendants, in any overt act by which the plaintiff claims to have been damaged. Plaintiff's contention is (a) that the evidence shows that these defendants were members of the general conspiracy which was engaged in monopolizing the trade in "powder and *other* explosives," and that, as a matter of law, they were each equally guilty with the remaining defendant the Du Pont Powder Company, and were liable for all the damages which resulted from any act performed by that

company, whether they actually "participated" in or had any actual knowledge of any such act or not; and (b) that, besides, the evidence does show actual and legal participation and knowledge on the part of both these defendants. Involved in this question is the legal effect of stock ownership. (See Assignment No. 3, and discussion infra, p. 25.)

POINT II. This error involves in part, a question of fact and law similar to Point I, at least in so far as it relates to ostensibly *separate*, but in reality *combined* interests, and for that reason is presented somewhat out of its order. It relates to plaintiff's allegation that after its business had been ruined by the defendants and it had been forced to sell its plant, Franklin W. Olin and Almon Lent purchased it at the instance of and in conspiracy with the defendant Du Pont Powder Company, as a part of the plan to drive plaintiff out of business. The Court instructed the jury that "there is no evidence showing that any of the defendants knew or had anything to do with the purchase" of plaintiff's plant, and that they must not consider the fact of such purchase as tending to establish any unlawful conduct on their part. The *undisputed* evidence shows (a) that Mr. Olin was at the time, president of the Equitable Powder Company, located in Illinois, and Mr. Lent was president of the Austin Powder Company, located in Ohio, and each of these gentlemen had been for many years active officers of the various unlawful associations which were composed of the Du Pont Powder Company and others engaged in the explosives trade; that during all this time the Du Pont Powder Company was the owner of a very large part of the stock of both the Equitable

and Austin Companies; and (b) that two of its vice-presidents were on the Board of the Equitable Company; and (c) that a new company, called the Western Powder Manufacturing Company, was organized by Messrs. Olin & Lent, to take over the title to the plant purchased by them, and the stock of the new Company was in its turn owned by one of the subsidiaries of the Equitable Powder Company—thus making the Du Pont Company indirectly interested in the ownership of the plant; and (d) that as an inducement for Messrs. Olin and Lent to purchase, a contract was entered into between Mr. Olin and the Du Pont Powder Company whereby that Company agreed to take from 75,000 to 100,000 kegs of powder per year to be manufactured at this plant. There was other evidence (fully discussed below) which tended to support this allegation. Plaintiff's contention is that all this evidence furnished ample ground for the jury to find that defendants induced Olin and Lent to purchase plaintiff's plant and that it was for the jury alone to weigh and pass upon. (See Assignments Nos. 10, 11, and discussion, infra, p. 109.)

POINT III. At the end of the trial, the Court required plaintiff to make an election between Sections 1 and 2 of the Sherman Act upon the theory that the things declared to be unlawful by each section formed a separate cause of action. The plaintiff contends that Section 7 of the Sherman Act prescribing a remedy for injuries suffered "by reason of anything forbidden or declared to be unlawful by this Act," gives the plaintiff a single and indivisible right of action; and that it is not necessary to plead the offenses under each section as separate causes of action. (See Assignment No. 4, and discussion infra, p. 131.)

POINT IV. The Court instructed the jury that the plaintiff came into being as a result of the efforts of R. S. Waddell, who had formerly been identified with the Du Pont interests for a period of twenty years, and who had thus become familiar with the unlawful business policies and practices by which that company had developed its influence, and who knew of the existence of the various trade associations and of the restraints and limitations which they had put upon their members in apportioning trade and fixing prices; and that when he conceived the idea of severing his connection with these interests and of organizing the plaintiff, and began to carry out his purpose to enter into competition with them, he knew these facts and knew the relation of the Du Pont Company to the explosives industry, of its comparative size with other powder manufacturers and of its influence as a factor in the trade—that, therefore, "the plaintiff does not occupy the same position as a competitor in existence during the period that this influence was being developed, and who may have been during the course of such development, as well as after it had reached the height of its power, injured in its business or property by reason thereof; but is here as one entering the competitive field when such growth and influence has been established." Plaintiff contends that this instruction was a virtual direction of a verdict for the defendants, because it was equivalent to saying that long continued violation of the law may ripen into privilege and may become a vested right, and that the defendant had acquired a right by prescription to perpetuate the monopoly which had been established; and that plaintiff entered the powder field and began

business *at its peril,* knowing that the field was already occupied by a powerful combination of interests which would continue to carry out the long settled and unlawful policies and practices, by which it had secured its domination and monopoly of the powder trade. (See Assignment No. 5 and discussion, infra, p. 144.)

POINT V. The Court reiterated to the jury that because Mr. Waddell was so well advised of the defendants' policies and practices, and knew of the severe competitive struggles which several newcomers in the powder field had been subjected to, and which had resulted in the taking over of the newcomers at a considerable profit, "if he was actuated by the belief that his company would meet with a like experience after some competitive struggles, it might have a bearing upon the question whether the plaintiff was sufficiently capitalized to engage in the struggle for the market already occupied." This error is akin to that just pointed out, but plaintiff contends (a) that the motive of a party in bringing an action, however unworthy it may be, is immaterial if the cause of action itself is valid, and, therefore, (b) that it is not to be deprived of redress for injuries suffered at the hands of the defendants by their violation of the Anti-Trust Act upon the plea that Mr. Waddell might have been actuated by the expectation of profits to be realized from defendants' desire to control the powder trade; and further (c) that even if motives were admissible, the evidence does not justify any imputations upon the motives and intentions of Mr. Waddell, or the plaintiff. (See Assignment No. 6 and discussion, infra, p. 157.)

POINT VI. The Court told the jury that

"competition" "as it exists *under the law,*" was a "fight" in which the "fair fighter" may go away with the "spoils"; and said that the "mere fact that a new competitor suffers injury through severe competition" at the hands of one who had been long established in business, did not make the competitor who had come out of the "fray" successfully, liable to compensate the loss. Plaintiff contends (a) that it is very misleading, incorrect and harmful in an action of this character to say that "fighting", "spoils" and "fray" are recognized *under the law* as necessary and proper elements of competition; (b) that the law encourages individual traders to engage in fair rivalry, not "fighting for spoils," to the end that each may receive a fair profit and the public be protected from excessive charges; and (c) that plaintiff's right to recover did not depend upon "fair fighting" or "unfair fighting" between *individual* traders, but whether a *combination* of individuals had injured it in its business or property "by reason of *anything* forbidden or declared to be unlawful" by the Sherman act; and that it is immaterial whether such injury results from "fair" or "unfair" competition, so long as it was caused by individuals who have combined or conspired to restrain trade (as prohibited by Sec. 1) or have monopolized or attempted to monopolize trade (as prohibited by Sec. 2). (See Assignment No. 7 and discussion, infra, p. 169.)

POINT VII. One of the charges in the Declaration was that the defendants employed detectives to follow Mr. Waddell, while he was seeking a site for his plant, in order to forestall him in the purchase thereof by stirring up opposition among the inhabitants of the neighborhood where he proposed to locate. Plaintiff introduced some evi-

dence in support of this charge, and offered other evidence which was refused. The Court instructed the jury that there was *no evidence* whatever to justify this charge. Both the refusal and the instruction are assigned as errors. The defendants *admitted* that they employed detectives, and that they followed Mr. Waddell about the country for several weeks but denied the *purpose* to be as charged. Plaintiff contends that the evidence which was received was sufficient to justify the jury in arriving at the conclusion contended for by plaintiff, and that it was for the jury to determine its weight and sufficiency, and that the evidence which was refused would have assisted them in arriving at a conclusion. (See Assignments Nos. 8, 9, and discussion at p. 175, infra.)

POINT VIII. The plaintiff alleged that the defendants sold their product below cost when necessary to drive competitors out of business. The Court charged the jury that there was *no evidence* to support this allegation. Plaintiff contends that the evidence shows that the cost of making and selling black blasting powder, including overhead and freight charges was about 95 cents per keg; and that the long-established custom of the trade which was relied upon by buyers and shippers demanded a *uniform* price, arranged according to *districts;* that the coal business was conducted on this basis and freight rates were adjusted to it; that the prevailing price, under normal conditions, east of the Mississippi River was $1.20 per keg, and west of the Mississippi $1.35 per keg; but that prices were made by members of the Gunpowder Trade Association in competition with non-members as low as 75 cents in 1896, when all competitors were finally brought

into the Association; and that defendant, Du Pont Company, during the years 1905, 1906 and 1907, in competition with the plaintiff, made a *general* cut to 95 cents per keg, in the territory tributary to plaintiff's mills, and a *specific* offer of 95 cents to 445 consumers. (See Assignment No. 12 and discussion, infra, p. 181.)

POINT IX. Plaintiff charged that one of the means used by the defendants to destroy its business was to distribute money, intoxicating liquors, etc., among influential coal miners to induce them to stir up strife among their fellow workmen, to bring about boycotts against plaintiff's products. The Court instructed the jury that there was *no evidence* to sustain this charge. This was one of the most important issues in the case, and the evidence is overwhelming in its support—both in specific instances and by necessary inference. It is, in fact, so abundant that it cannot be summarized here. It will be seen however that the greater part of black blasting powder is used in the operation of coal mines; that the mine owner purchases the powder from the manufacturer in large quantities and retails it to the miner as he needs it a keg at a time; that the miner pays the mine-owner a very substantial profit; that this situation has sometimes been taken advantage of by members of the Gunpowder Trade Association to influence the miners to oppose the use of powder made by competitors; that this practice was followed by the defendant DuPont Company in its competition with the plaintiff, in at least five different specific instances; that some of the miners who were thus induced to act were themselves witnesses for plaintiff, and one of whom testified, unequivocally, that he received for his services a commission of 5 cents per keg

on all Du Pont powder going into the mine where he was employed—the owners of the mine being customers of plaintiff—and the evidence of the owners is that he was so successful in his efforts that they were finally forced to abandon the use of plaintiff's powder, against their great desire and interest; that P. H. Donnelly and C. B. Spicer, two of defendants' salesmen, and Dooley Bros., its agents at Peoria, Illinois, are shown to have been directly connected with some of these acts; and the proper inference to be drawn from the other testimony leads to no other conclusion than that money was the inducing consideration. Plaintiff contends that it was the sole province of the jury to weigh all the direct evidence and draw proper inferences from the indirect evidence. (See Assignments Nos. 13, 14, and discussion infra, p. 190.)

POINT X. It was charged by the plaintiff that one of the methods used by the defendants to drive it out of business, was the obtaining of its business secrets by enlisting the services of railway employes, particularly of the Chicago, Burlington & Quincy Railroad Co., (which was the initial line of shipment) to furnish advance information of shipments by plaintiff to its customers. The court refused to allow R. S. Waddell, its president, and John G. Miller, one of its agents, to testify concerning an investigation which they caused to be made by the officials of that road, and the result of that investigation. The Court afterwards instructed the jury that there was no proof that the defendants "ever succeeded in getting such information from such employees," and that, in any event, "the plaintiff was a newcomer in a field *already occupied*"; that it was inevitable that, in order for plaintiff to do

business at all, it must draw some custom from the defendants; that they had a right to compete for the business by "lawful methods," and that it was a lawful method to "keep tab" on a competitor's customers, "and if a particular competitor has been making inroads upon the established trade of another, such other may properly *keep a surveillance* over the conduct of such new competitor." Plaintiff contends (a) that the rulings excluding the proferred testimony prevented it from producing the direct evidence that the defendants "succeeded in getting such information from such employees"; and (b) that the instruction prevented the jury from drawing proper inferences from the evidence which was received by the Court; and (c) that an instruction that it was lawful to obtain the business secrets of a competitor by keeping surveillance over its conduct, is erroneous in law, and calculated seriously to mislead the jury. (See Assignments of Error Nos. 14, 15, 16, and discussion infra, p. 238.)

POINT XI. It was charged by the plaintiff that another of the methods used by the defendants to acquire and maintain a monopoly, was to tie up the trade by inducing large consumers of explosives to enter into long time contracts to purchase all their requirements from them. The evidence that this was done, and was developed into a system, is abundant and conclusive. Plaintiff sought to show, by the letters and statements of the customers themselves, what the effect of this system was upon its business, by offering John G. Miller, one of its agents, as a witness to establish that its customers as well as consumers of explosives whose business he sought to secure, gave as the reason why they did not or would not purchase

plaintiff's powder, that they were bound under these contracts to give all their business to the defendants. Plaintiff also offered certain letters written by consumers themselves. The Court refused all this evidence. (See Assignments Nos. 17, 18, 19, 20, 21 and discussion, infra, p. 249.) That this was error is now settled by this Court in *Lawlor vs. Loewe*, 235 U. S., 522.

POINT XII. Near the close of plaintiff's case, it offered the decrees entered by the District Court of Delaware in the Equity Case of the United States against these same defendants, declaring them to have been acting as an unlawful combination during the whole period of plaintiff's existence, and directing their dissolution. The court refused the offer. Plaintiff contends that these decrees were admissible because (a) they were prima facie proof of the unlawful character of the acts complained of and which had been established by the evidence already in when the offer was made; and (b) were also evidence of the pertinent *fact* of the existence of the *same* combination and conspiracy which was in issue here; and (c) that they constituted an *admission* of guilt—the final decree of dissolution upon the *facts* stated therein having been *consented and agreed* to by the defendants. (See Assignment No. 22 and discussion, infra, p. 257.)

POINT XIII. While R. S. Waddell was under cross examination, paragraph Eleventh of the amended declaration was read *in extenso* to him, and he was asked whether he gave his attorneys the information upon which it was based, to which he replied that he did and would be glad to state them to the jury. The cross-examiner did not give him this opportunity. Upon re-direct he

was asked to state what this information was, but the court refused to permit him to do so, which refusal is assigned as error. Plaintiff contends that this comes within the familiar rule that where a part of a conversation is put in evidence by one party, the other is entitled to put in the remainder. The harmful character of the inquiry by the cross-examiner was, primarily, to discredit the witness and his counsel before the jury; and in any event, plaintiff was entitled, as a matter of right, to take advantage of the opportunity furnished by the defendants to offer evidence and bring out facts which might not otherwise have been admissible. (See Assignment No. 23 and discussion, infra, p. 267.)

POINT XIV. The defendants took the depositions of about 75 persons who had at some time been customers of the plaintiff, to all of whom they propounded a lengthy question, the material substance of which was that in a bill of particulars filed by plaintiff it had stated that he (said customer) was one of those who had been "*induced* by the defendants to abandon the purchase of powder from the Buckeye Powder Co." The question then recited the names of 28 persons as defendants and co-conspirators, after which there followed the inquiry whether any one of such persons "ever *induced* you not to purchase powder of the plaintiff." There was nothing in the question to explain to the witness the *character* of the "inducements" which were *charged* by the plaintiff (such as by tying up his trade by an exclusive contract, or by offering him lower prices, or by employing miners to stir up strife and cause plaintiff's powder to be rejected, etc., etc.) and the witness naturally understood the inquiry to relate to *personal importunity* only and of course answered in the nega-

tive. The Court admitted all this testimony over the objection of the plaintiff. The plaintiff contends (a) that the question itself was in the nature of a hypothetical question which did not embrace all the facts upon which the hypothesis was based; and, (b) that the answer of the witness was a mere conclusion, because given without the slightest intimation of the methods by which it was charged that he was "induced" to abandon plaintiff; and (c) that it was exceedingly harmful because repeated so frequently as to give the impression of a complete and final answer to plaintiff's charges. (See assignment No. 24 and discussion, infra, p. 270.)

POINT XV. Assignments Nos. 25, 26, 27, 28, relate to the instructions of the court with respect to damages claimed by plaintiff. These become important because if the jury could have found under the instructions of the Court that the defendants had been guilty of the things declared unlawful by Section 2 (to which they were confined by the charge of the Court), they might well have reached the conclusion under the limitations which were put upon them with respect to the proof necessary to establish damages, that the plaintiff had suffered no damage. Plaintiff contends that it was entitled to recover nominal damages, in any event; and also all damage resulting as the natural and proximate consequence of the unlawful acts, and that such damages were recoverable not only for the loss of value of the physical assets, but also good will, and for loss of profits on powder manufactured as well as powder which it was prevented from manufacturing—all profits to be estimated in accordance with what would have been a fair and reasonable profit under normal competitive conditions, viz., 30 cents per

keg. The Court withdrew from the consideration of the jury the claim of damages on account of good will, and also for loss of future profits. It withdrew from their consideration all evidence that 30 cents was a fair profit, and told them that unless the evidence showed to their satisfaction that plaintiff had made some profit, at some time, on powder actually manufactured and sold, they could allow nothing as damages (See Assignments and discussion, infra, p. 278.)

POINT XVI. Unless the judgment is set aside and the errors corrected, the 7th Section of the Sherman Act is a dead letter, for even if it were possible to establish the unlawful conduct, it would be impossible to prove damages. (See Assignments Nos. 1 and 2, and discussion, infra, p. 305.)

The Charge of the Court—Erroneous Theories.

It will be observed that many of the errors assigned relate to the charge which is always a most important factor in determining a verdict. In this case it was particularly so because of the great length of time occupied in the trial, and the vast amount of evidence that was introduced. Under such circumstances the instructions must not only be weighty, but conclusive.

The errors were mainly due to the following theories held by the Court:

First. The theory that every allegation must be proved by *direct* and *positive* evidence—nothing being left to inference. (See Points I, II, VIII, IX, X.)

Second. The theory that the defendants were possessed of *primary,* or *pioneer,* rights to the trade in explosives by reason of the supremacy which they had gained, and that they were justified in *maintaining* these rights and that supremacy, re-

gardless of the injury which might result to others in so doing. (See Points V, VI, XI, XV.)

Third. The theory that what an *individual* competitor might lawfully do as affecting trade and commerce, might lawfully be done by a *combination* of individuals; and that the plaintiff was limited in its right to complain of the conduct of the defendants, by reason of the knowledge that its chief sponsor, Mr. R. S. Waddell, had gained while in their employ, concerning the methods, policies and practices which they had long followed with competitors. (See Points IV, V, VI, IX.)

Errors due to the Theory that every Allegation Must be Proved by Direct and Positive Evidence—Nothing being left to Inference.

It will be found that underlying most of the errors committed by the Trial Court, both during the trial and in its charge, the court was influenced by the theory that plaintiff must prove its charges by *direct and positive* evidence. It insisted upon the plaintiff catching the culprit in the *very act.* It left nothing to be *inferred* from specific acts or transactions which were put in evidence. It brushed aside from the consideration of the jury the most important of plaintiff's charges—the proofs with respect to some of them at least, being overwhelming.

That this was an erroneous theory has been settled by the following cases which have arisen under the anti-trust act:

Mr. Justice Day in *Eastern States Lumber Association vs. United States,* 234 U. S., 600, 612, says:

> "But it is said that in order to show a combination or conspiracy within the Sherman Act *some agreement* must be shown under

> which the concerted action is taken. It is elementary, however, that conspiracies are seldom capable of proof by direct testimony and may *be inferred* from the things actually done."

In *Hale v. Hatch, etc.,* 204 Fed., 433, in the Circuit Court of Appeals for the Second Circuit, the plaintiff, who was a coal dealer at Hartford, sued under the 7th Section of the Sherman Act to recover damages from the defendants for forcing him into bankruptcy, by combining and pursuading wholesale dealers in coal to boycott him, by refusing to sell him coal, thus making it impossible for him to take orders or to fill those already taken. The court says:

> "It is true that the evidence is to a large extent circumstantial. The defendants did not write out and formally pass a resolution declaring that Hale was demoralizing the trade by selling at lower prices than the association deemed reasonable and that, therefore, they would not deal with him themselves or with any wholesaler who sold him coal. Conspirators do not work in this way. They do not advertise their purpose openly, their methods are secret, sinister and clandestine. It is rare, indeed, that a conspiracy is proved by direct evidence. In a vast majority of cases circumstantial evidence is relied on. Such evidence is as efficacious as direct if it establishes the proposition that the defendants, or some of them, had a common purpose to violate the law which they succeeded in accomplishing (*Marrash v. United States,* 168 Fed., 225, 229)."

See also *Ware-Kramer v. American Tobacco Co.,* 180 Fed., 160, 169.

The erroneous Theory that what an Individual Competitor might lawfully do, might lawfully be done by a Combination of Individuals.

This distinction between the privileges which the law allows to an individual competitor and which it denies to a combination of individuals, was one which was entirely lost sight of by the Court during the trial, and is expressly repudiated in its instructions to the jury.

For example:

If the plaintiff, perchance, wittingly or unwittingly, happened to make a lower price to some customer than the defendants were making in that same district, he was guilty of "cutting prices"—and the defendants were justified in "meeting the cut", and in fact cutting prices to so low a point that it was impossible for plaintiff to compete with them. (See infra, p. 89.)

If plaintiff employed miners who were experienced in the shooting of powder to act as demonstrators of its products in the mines of its various customers, the defendants were justified in employing miners to induce their fellow workmen to boycott plaintiff's powder. (See infra, p. 222.)

In the *Eastern States Lumber Association* case, 234 U. S., 600, 614, the distinction between the right of an individual to carry on his business in accordance with his own desires, and the restrictions placed upon a combination of individuals, is thus clearly stated:

> "A retail dealer has the unquestioned right to stop dealing with a wholesaler for reasons sufficient to himself, and may do so because he thinks such dealer is acting unfairly in trying to undermine his trade. 'But,' as was said by Mr. Justice Lurton, speaking for the court in *Grenada Lumber Co. v. Mississippi*, 217 U. S., 433, 440, 'when the plaintiffs-in-error *combine* and agree that no one of them will trade with any producer or wholesaler who shall sell to a consumer within the trade range of any of them, quite another case is

presented. An act harmless *when done by one* may become a public wrong *when done by many* acting in concert, for it then takes on the form of a conspiracy, and may be prohibited or punished, if the result be hurtful to the public or *to the individual* against whom the concerted action is directed.'

POINT I.

The Eastern Dynamite Company and the International Smokeless Powder & Chemical Company, being parties to the unlawful combination, were liable for all the overt acts committed by any other party thereto, and for all damages suffered by reason thereof; and it was error to direct the jury to return a verdict in favor of said defendants.

The Court instructed the jury as follows, which is assigned as Error No. 3 (Trans., p. 3199):

> "The suit is brought by the Buckeye Powder Company and has proceeded to trial against three defendants. The evidence, however, fails to support any participation by the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, and my instructions to you are that you return a verdict of no cause of action in their favor."

The sufficiency of the record.

The Court below took the ground that it could not determine the correctness of the ruling of the trial court with respect to this assignment (as well as the fourth assignment), for the reason that—to quote from the opinion (Trans., p. 3186, fol. 9558)—

> "Only selected portions of the evidence are before us, and the district judge very properly called attention to this fact when he granted the exception now being considered, saying: 'In my judgment this exception to be considered should have behind it the entire record, but it is allowed and signed that the plaintiff may have the benefit of it in case I am in error in that view.' "

And, with respect to the fourth assignment (infra, p. 131) the Court said (see Trans., p. 3187, folio 9559):

> "The plaintiff complains also, because the trial judge required it to elect whether it would insist before the jury on a violation of Sec. 1 of the Anti Trust Act, or on a violation of Sec. 2. Manifestly the correctness of this ruling also can only be satisfactorily reviewed upon the whole record and what we have just said applies to this assignment as well."

The court below is in error in saying that the District Judge called attention to his views regarding the necessity for the whole record "when he *granted* the exception now being considered."

On the contrary, the record discloses the exactly opposite to be the fact.

It was not until after the parties had spent over nine months in making up a bill of exceptions, during which time the defendant proposed 813 amendments to plaintiff's proposed bill, and it was *after* the trial judge had heard and finally settled all the questions which the parties themselves could not agree upon, and *after* the final Bill of Exceptions, as thus settled, had been submitted to him for his signature, that he made the entry concerning the record above referred to by the cort below. (See "Docket Entries", p. xii.)

It was not when he *granted* the exception, but when he *signed* the Bill of Exceptions.

The record shows that when he granted the two exceptions, it was without any restrictions whatever, as follows:

Exception to Assignment No. 3 (See Transcript, page 2518, fol. 7552):

> "MR. ABBOTT: If the court please, we desire to enter an exception to the instruction of the court to the jury that they return a verdict in favor of the Eastern Dynamite Company and the International Smokeless Powder Company.
>
> "THE COURT: You may have it."

Exception to Assignment No. 4 (See Transcript, page 2433, fol. 7299):

> "To which ruling of the court, the plaintiff, by its counsel, then and there excepted, and said exception *was allowed.*"

The Bill of Exceptions is virtually an Agreed Statement of Facts.

The Court below says: "Only selected portions of the evidence are before us."

This statement is correct only in the same sense that it might be said of all other bills of exceptions, and is in accordance with the practice recommended by this Court:

A bill of exceptions should contain only so much of the evidence as is necessary to present the legal questions raised, and the practice of inserting more than this has been frequently condemned by this Court.

> *Lincoln vs. Claflin*, 7 Wall, 132;
> *Evans vs. Patterson*, 4 Wall., 224:

Mr. Justice Field, in *Lincoln v. Claflin*, 7 Wall., 132, 136, said:

> "A bill of exceptions should only present the rulings of the court upon some matter of law —as upon the admission or exclusion of evidence—and should contain only so much of the testimony, or such a statement of the proofs made or offered, as may be necessary to explain the bearing of the rulings upon the issues involved. If the facts upon which the rulings were made are admitted, the bill should state them briefly, as the result of the testimony; if the facts are disputed, it will be sufficient if the bill allege that testimony was produced tending to prove them. If a defect in the proofs is the ground of the exception, such defect should be mentioned, without a detail of the testimony. Indeed, it can seldom be necessary for the just determination of any question raised at the trial to set forth the entire evidence given; and the practice in some districts —quite common of late—of sending up to this court bills made up in this way—filled with superfluous and irrelevant matter—must be condemned. It only serves to throw increased labor upon us, and unnecessary expense upon parties. If counsel will not heed the admonitions upon this subject, so frequently expressed ed by us, the judges of the courts below, to whom the bills are presented, should withhold their signatures until the bills are prepared in proper form, freed from all matter not essential to explain and point the exceptions."

As below shown, more than *nine months* was spent by the parties in an effort to comply with this rule. Many extensions of time for filing the bill of exceptions were applied for and granted by the Court (See Orders, etc., Trans., pp. 3098-3101; 3163, 3174, 3176.) It was found impracticable to bring up the testimony in *narrative* form, and an application was made to the Court for authority to set it out by question and answer—the defendant's counsel "agreeing and consenting" thereto—and this authority was given by the Court. (See Order, Trans., p. 3178.)

The Bill of Exceptions as finally settled, was virtually an agreed statement of facts, and the agreed recitals therein are that it contains everything "in so far as the same is necessary to determine the issues" upon this Writ of Error.

The very first paragraph of the Bill of Exceptions negatives the suggestion of the trial judge concerning the necessity of any further record. (See Vol. 1, page 43, folio 128). It is there recited that during the trial testimony was introduced and offered by the respective parties, and certain rulings were made thereon; and—

> "that the names of the witnesses whose testimony was so offered and received in evidence together with the testimony so offered and received, and the objections made thereto, and the orders of said court sustaining or refusing said offers, together with the plaintiff's exceptions taken at the time thereto, and together with the documents and records which were offered in evidence as exhibits and which were received or refused by said court, *in so far as the same is necessary to determine the issues* upon Writ of Error on behalf of the plaintiff herein, are particularly *hereinafter* set forth as follows, to wit:"

The above recitals come almost literally within those approved by this court in *Clyatt vs. United States,* 197 U. S., 207, 220 (a criminal case), except that in that case there was no *affirmative* statement in the bill of exceptions that it contained *all* the necessary testimony; following the rule laid down in *Gunnison County Commissioners v. Rollins,* 173 U. S., 255 (a civil case); and also in *Wiborg v. United States,* 163 U. S., 632.

By reference to the "Docket Entries" on pp. xi, xii, Vol. I, of the Transcript it will be seen that there was, first, a *proposed* bill of exceptions con-

sisting of four printed volumes, filed by the plaintiff on October 10th, 1914; that nine weeks later (on December 9th) the defendants filed eight hundred and thirteen (813) proposed *amendments,* consisting of 350 typewritten pages; that on January 13th, 1915, there was a hearing before the court and the bill of exceptions was partly settled, and on the following day the matter was "referred to C. S. Chevrier to adjust the differences" between the parties; that as late as February 15th, 1915, testimony was taken to determine what the record really was in certain particulars; and that the final hearing on the motion for settlement before the court, was had on March 15th, 1915; and that the final Bill was filed on March 17th, 1915.

The reference to Mr. Chevrier as above noted, was made necessary by reason of the vast number of amendments proposed by the defendants. He was a deputy clerk of the court and had the confidence of all the parties, and it was believed that he could assist the counsel as well as the Court; and this proved to be the case.

The orginal *proposed* bill of exceptions and the original proposed *amendments* thereto have been sent up to the clerk of this court for reference. It will appear therefrom that these 813 proposed amendments covered the minutest details of plaintiff's proposed bill of exceptions; but that no amendment was ever proposed *to correct the recital above quoted* from page 43 of the record, and the record as proposed and amended was certified "in so far as the same is necessary to determine the issues upon the Writ of Error." There had never been any suggestion made by the defendant, that the error now under consideration, or any other assignment of error, "to be considered should have behind it the entire record." This was an entry

made by the trial judge himself on his own initiative and after the parties themselves had agreed that the record as it had been proposed and amended contained everything "necessary to determine the issues."

The duty of the Court is very simple. It is to determine whether there is any evidence in the record which could have been properly submitted to the jury in support of this charge. If the Court finds that there was, then it does not matter how much more of the same sort there may have been, nor does it matter that there may have been other evidence of a negative character. In either such event, it would only have been more clearly the duty of the Trial Court to refer the question to the jury to determine.

Furthermore, counsel for plaintiff do not know of a single shred of anything in the way of testimony or exhibits which was before the Trial Court having the remotest bearing on any issue presented by this Writ of Error that was not before the Court below, and is not now before this Court. If there be any such, it has never been called to the attention of counsel for plaintiff by counsel for defendants, nor by the Trial Court. On the other hand, we believe that the record as it now stands contains hundreds of pages of testimony and many exhibits which are not necessary to the determination of this Writ of Error.

But, in any event: If the record for any reason is not complete, the defendants should have applied for a writ of certiorari to send up the missing matter.

Under Rule 14, it has been held that if the record is incomplete, the dissatisfied party should ask for a certiorari, which will be readily granted when applied for in season.

United States vs. Gomez, 1 Wall. 690.

And in some cases, the court will of its own motion, direct a certiorari to supply the omission.

Sweeney vs. Lomme, 22 Wall. 208;
Union Trust Co. vs. Westhus, 228 U. S., 519.

Furthermore, the rule often announced in this court is, that—

> "Whenever the error is apparent upon the record, it is open to revision, whether it be made to appear by bill of exceptions or in any other manner."

Suydam vs. Williamson, 20 How., 427, 433;
Moline Plow Co. vs. Webb, 141 U. S., 616;
Storm vs. United States, 94 U. S., 76;
Garland vs. Davis, 4 How. 131;
Young vs. Martin, 8 Wall. 354.

Theory of the Court in Directing a Verdict.

The action of the Trial Court in directing a verdict for these two defendants was founded upon the erroneous theory that unless the record showed actual "participation" by them in some overt act, they were not liable, under the law; and that this the record did not show, as a matter of fact. This was—

(a) Erroneous in law; and
(b) Erroneous in fact.

First. Erroneous in law: Every party to an unlawful combination is liable for all the overt acts committed by every other party thereto and for all damages suffered by reason thereof.

Second. Erroneous in fact: The evidence in

the record discloses that the Eastern Dynamite Company and the International Smokeless Powder Company were members of the unlawful combination, and actually participated in monopolizing and attempting to monopolize the explosives trade, and in the benefits which accrued therefrom to the members thereof.

First. The Law—Actual Participation Unnecessary.

In *United States vs. Kissell,* 218 U. S., 601, Mr. Justice Holmes accurately described the situation here with respect to the relation of the Eastern Dynamite Company, the International Smokeless Company, and the Du Pont Powder Company, when he said that a "conspiracy is a *partnership* in criminal purposes"; and "that an overt act of one partner may be the act of all, without *any new agreement specifically directed to that act.*"

In *Nash vs. United States,* 229 U. S., 373, this rule was affirmed in the following language:

> "The Sherman Act punishes the conspiracies at which it is aimed on the common law footing—that is to say it does not make the doing of an act other than the *act of conspiring* a condition of liability."

In *Williamson vs. United States,* 207 U. S. 425, 447, Chief Justice White announced this same rule in relation to a conspiracy to commit the offense of subornation of perjury, as follows:

> "The conspiracy is the offense which the statute defines without reference to whether the crime which the conspirators have conspired to commit is consummated."

In the case of the *United States vs. Cassidy,* 67 Fed. 698, which was based upon an indictment against certain alleged railroad strikers, the rule is stated as follows:

> "Any one who, after a conspiracy is formed, and who knows of its existence, joins therein, becomes as much a party thereto from that time as if he had originally conspired"

And further:

> "Where several persons are proved to have combined together for the same illegal purpose, any act done by one of them, in pursuance of the original concerted plan, and with reference to the common object, is, in the contemplation of the law, the act of the whole party, and therefore the proof of such act will be evidence *against any of the others* who were engaged in the conspiracy."

In *United States vs. Rintelen*, 233 Fed. 793, 796, it is said:

> "The chief element in a common-law conspiracy is the meeting of the minds of two or more or several persons to effect or accomplish an unlawful purpose, or a lawful purpose through unlawful means, or, as suggested by Mr. Justice Holmes in *United States vs. Kissel*, 218 U. S. 601, under the Sherman Act, it is in essence nothing more than a partnership in criminal purposes."

It may be objected that these cases are all on the criminal side of the statute; but it is the criminal conduct of the defendants as outlined in Sections 1 and 2 of the Sherman Act which is the basis of their civil liability; for Section 7 provides that a person who is injured "by reason of anything forbidden or declared to be unlawful by this act, may sue therefor," etc. If, therefore, the Eastern Dynamite Company and the International Smokeless Company were "partners" with the Du Pont Powder Company in the crime of conspiring to monopolize or attempting to monopolize the trade in explosives, then they were civilly liable, with that Company, for any

injury which the plaintiff may have suffered at its hands, whether they actually "participated" in any of the overt acts or not.

In *United States vs. MacAndrews & Forbes Company,* 149 Fed., 823, 830, which was an action on the criminal side of the statute, it was said:

> "It is to be remembered that the same facts and acts which expose violators of this statute to a civil suit also render them subject to indictment."

The general rule, as applied in all jurisdictions is that:

> "Every conspirator is liable for all overt acts illegally committed in pursuance of the conspiracy, and for the consequent loss, whether they were active participants or not."
>
> 8 Cyc., 657, 658.

It has been announced and affirmed in its application to the seventh section of the Sherman Act by this Court in *Lawler vs. Lowe,* 235 U. S., 522.

Also in *City of Atlanta v. Chattanooga Foundry,* etc., 127 Fed., 23, the opinion being delivered by Judge Lurton. The facts were that six corporations who were engaged in the business of making and selling cast iron pipe fittings, entered into a conspiracy for the purpose of restraining interstate trade and commerce in such commodities. The action was brought by the City of Atlanta for the purpose of recovering a sum of money alleged to have been paid in excess of the fair price of certain pipe purchased by it for use in its water system. Only two of the six corporations engaged in the conspiracy were made parties defendant. Judge Lurton said:

> "We have, then, a direct action by this

> plaintiff against two of the members of this unlawful combine. *That there was no purchase made direct from either of them is of no importance.* Their guilt is as great as that of the Alabama corporation from whom the plaintiff did buy its pipe. *If the agreement between the defendants and their associates was unlawful and tortious, each is responsible for the torts committed in the course of the illegal combination.* These defendants have themselves participated in the benefits resulting from the bonus paid by the Alabama member of the association, and have no ground to complain that they have been alone sued."

Applying the above authorities to the error under discussion: If the evidence showed, or tended to show, that these two companies were members of the same general conspiracy to control explosives, of which the defendant Du Pont Powder Company, was a member, they were equally guilty with that company for anything done by it contrary to Sections 1 and 2 of the Sherman Act; and they were liable jointly with it for all damages sustained by plaintiff; **and such evidence was for the jury to weigh and pass upon, under proper instructions from the Court.**

Mr. Justice White, in *Mosheuvel vs. District of Columbia,* 191 U. S., 247, 252, stated that "the elementary law is that questions of fact are to be decided by the jury."

Chief Justice Fuller, in *Texas & Pacific Ry. Co. vs. Cox,* 145 U. S., 593, 606, said:

> "The case should not have been withdrawn from the jury, unless the conclusion followed, as matter of law, that no recovery could be had upon any view which could properly be taken of the facts the evidence *tended* to establish." (Citing *Dunlap vs. Northeastern*

Ry. Co., 130 U. S., 649; *Jones vs. East Tenn. Ry. Co.*, 128 U. S., 443.

This is so even though the court may think there is a preponderance of evidence the other way.

City & Suburban Railroad vs. Svedborg, 194 U. S., 201;
See also Choctaw etc. Railroad vs. McDade, 191 U. S., 64.

If fairminded men may honestly draw different conclusions from the evidence, the question is one of fact for the jury.

McDermott vs. Severe, 202 U. S., 600;
Baltimore & P. Railroad vs. Landrigan 191 U. S., 461;
Atlantic & Pacific Tel. Co. vs. Philadelphia, 190 U. S., 160.

Second. The facts alleged and proved, which establish that the Eastern Dynamite Company and the International Smokeless Powder Company were parties to the conspiracy.

The Court below says (See Trans., p. 3186, fol. 9557):

"Neither of these corporations manufactured or traded in black blasting powder—which was *the particular* business the defendants were *charged* with restraining or monopolizing—and their *indirect* connection with the alleged unlawful combination was rested *wholly* on the fact that a *majority of the stock* in each was owned or controlled by the Du Pont Company. Obviously, however, this fact alone did not prove *their participation* in a conspiracy, and as there was almost

> nothing else to support the allegations, we need not take further time to discuss it."

That the Court below was wrong in its conclusion that the defendants were *charged* solely with restraining or monopolizing trade in black blasting powder, and equally wrong in its conclusion that plaintiff's proofs of this charge "rested *wholly* on the fact that a majority of the stock in each was owned or controlled by the Du Pont Company" is made clear by the following extract from the Declaration, and summary of the evidence.

Paragraph fourth of the Declaration (See Trans. pp. 4-9) describes the various steps by which the conspiracy carried out its purpose to monopolize the trade in "powder and *other* explosives," and alleges that the Du Pont Powder Company finally became possessed of a controlling interest in the capital stock of the Eastern Dynamite Company and the International Smokeless Company (with many others) and thus concludes: (Ibid., p. 8.)

> "And plaintiff further shows that by reason of the matters and things alleged and set forth in this paragraph the defendants and the various other corporations and individuals hereinbefore in paragraph Third named, acting as co-conspirators with the defendants, succeeded in establishing within themselves, and have ever since maintained a practically complete monopoly in interstate trade in powder and *other* explosives amounting to about ninety-five per cent. (95%) of said entire trade, and ever since have been and now are engaged in a combination and conspiracy to unreasonably restrain and monopolize said trade throughout the United States and foreign countries, and have suppressed competition and have fixed prices of powder and *other* explosives arbitrarily and

> unreasonably, and have driven independent competitors out of business or have coerced them into a sale to or union with said unlawful combination, and have unreasonably restrained trade and commerce among the several states of the United States and with foreign nations, and have committed various other unlawful and wrongful acts as hereinafter set forth."

So that the *charge* was not that a monopoly existed in *black blasting powder* only, but in "powder and *other* explosives."

Now, as to the proofs, and whether they rested wholly on the fact that a majority of the stock in each was owned or controlled by the Du Pont Company.

The following remarks by the Trial Court in another part of its instructions to the jury shows that there was *some* evidence and is inconsistent with the instruction under consideration, for it recognizes the fact that both these defendants may have actually "participated" with the Du Pont Powder Company. (See Trans., p. 2463, fol. 7388.)

> "Of course, as the defendant had a *controlling* interest in the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, it would follow that if these two companies carried on a profitable business the defendant would be benefitted by such profits to the extent of its stockholdings in such companies, and such profits would help to make up any loss that it might sustain if it sold its powder below cost."

Therefore, even if the proofs rested *wholly* on stock control, there was evidence of "participation". But there is other and much more conclusive evidence, as set forth in the following facts:

First: That the *black powder* industry was first in the field of explosives, and that a monopoly therein was developed in the "Gunpowder Trade Association."

Second: That the *dynamite* and *smokeless powder* industries were originally distinct branches of the explosives trade, and separate from the black powder industry.

Third: That, when dynamite and smokeless explosives made themselves felt *in competition* with black powder, the interests in control of the dynamite and smokeless industries, and the interests in control of the black powder industry entered into a *combination* with each other to monopolize the entire explosives trade, and this they accomplished (a) by *agreement* with competitive interests, (b) by *purchase* of competitive interests, (c) by *co-operation* between competitive interests through an extensive system of interlocking directorates, committees and boards, and, finally, (d) by complete absorption of the legal and physical ownership and control of *all these interests* by the defendant Du Pont Powder Company.

Fourth. That among the methods used to establish and maintain the said monopoly were (a) the *apportioning* of the *trade* in these various explosives between the different competitive interests, (b) the fixing of low prices in *particular localities* where competition prevailed, (c) the fixing of prices to *specific consumers*, (d) the *tying up of the trade* of consumers by a system of *rebate contracts*, and (e) the *boycotting* of black powder customers of competitors who were also consumers of one of the other kinds of explosives.

In order to fully inform the Court concerning the relation of these two defendants to the unlawful acts charged, it is necessary to review all the evidence in the record which established or tended to establish actual as well as legal participation by them, from which it will be seen that plaintiff's charges were supported by much evidence other than that of stock ownership.

This review will be treated under two general heads:

First: The general conspiracy to monopolize powder and other explosives—how it was built up as a *voluntary* association and finally attained solidarity and legal existence as a *corporate* body in the defendant E. I. Du Pont de Nemours Powder Company.

Second: The importance and effect of dynamite and smokeless powder in their relation to the explosives industry—the history of the development of that trade, and the organization of the Eastern Dynamite Company and International Smokeless Powder Company, and their final absorption by the Du Pont Powder Company.

In the first place, it should be understood that during the period here in question, the explosives industry in the United States was divided into three great classes: First, black powder, chiefly used for commercial purposes, such as coal mining; second, smokeless powder, chiefly used for sporting and military purposes; and third, "high explosives," such as dynamite, chiefly used for rock and ore blasting.

The different interests represented by each one of the defendants originally controlled separate branches of this explosives trade; the Du Pont interests controlled the first, the International

Smokeless Company, the second; and the Eastern Dynamite Company, the third; and these three interests were finally brought together under one corporate management and control in and by the defendant, E. I. Du Pont de Nemours Powder Company, in 1903.

First. The General Powder Combination—The "Gunpowder Trade Association."

The development of the explosives business and of the "Gunpowder Trade Association," including—

(a) The "Fundamental Agreement" of 1889.

(b) Price contests and final absorption of competitors by the Association previous to 1896.

(c) The "General Understanding" or "1896 agreement"—The "Advisory Committee"—The "Compendium of Rules".

(d) The "Foreign", or "European Agreement" of 1897.

(e) Price contests subsequent to 1896 and further absorption of competitors by the Association.

(f) Incorporation of the Du Pont partnership—the "1899 Du Pont Corporation."

(g) Death of Eugene Du Pont and the entry of T. C. Du Pont and Pierre S. Du Pont as the "new management" of the Du Pont interests—Incorporation of the "1902 Du Pont Corporation".

(h) The incorporation of the defendant Du Pont Powder Company in 1903, and the acquisition by it of the actual and legal control and ownership of the stock and physical properties of members of the Trade Association.

(i) Dissolution of the Trade Association.

(j) The legal effect of these various agreements and acts.

Second. The Dynamite Industry—Its Importance and Effect in Development of the Gunpowder Trade Association—The Eastern Dynamite Company.

1. The beginning of the dynamite industry and development prior to the organization of Eastern Dynamite Company, until the actual and legal control of that company and all of its properties was acquired by the defendant Du Pont Powder Company.

2. Expansion and suppression of competition *by agreement* with competitive dynamite interests.

3. Expansion and suppression of competition *by purchase* of competitive dynamite interests.

4. Expansion *by co-operation* between dynamite and black powder interests—Sales to particular classes of consumers of explosives—The "Wilmington High Explosives Companies."

5. Black powder and dynamite interests controlled by the same men—"Interlocking Directorates".

Third. The Smokeless Powder Industry.—Its Development—The organization of the International Smokeless Powder Company, and the acquisition of the actual and legal control thereof by the Du Pont Powder Company.

Fourth. Particular Methods used by the Trade Association to Monopolize the Trade in Explosives and adopted by the Defendants to continue the Monopoly.

Particular methods and unfair practices used

by the members of the Gunpowder Trade Association in the suppression of competition, during its existence, were adopted and continued after its absorption by the Defendant Du Pont Powder Company, and applied effectively to drive plaintiff out of business. Some of these were:

(a) The "Sales Board" as the successor of the "Advisory Committee"—The "Trade Report System".

(b) Special prices to specific customers—fixing lower prices in particular localities where competition prevailed.

(c) Advancing prices after each contract was ended—The first regular price lists.

(d) Tying-up the trade by a system of contracts.

(e) Trading and exchanging contract customers—The rule of "Equities".

(f) "Respecting" contract trade.

(g) The legal effect of the contract system.

The evidence shows that by these methods, a combination was accomplished between these three great branches of the explosives industry, which was completely absorbed by the defendant Du Pont Powder Company, and all the fruits thereof retained and made use of until it had control of the total output in the following proportions (see Defendants' Exhibit A-518, Trans., p. 2957):

Of black blasting powder 77.10% in 1903 to 63.74% in 1908; dynamite 80.77% to 69.41%.

Of smokeless powder, nearly 100% (infra, pp. 85-87).

The rule is well established by the authorities that it is not necessary in order to show a viola-

tion of the Sherman Act that there should be a *complete* monopoly. It is sufficient if the acts only *tend* to that end.

In *United States v. E. C. Knight Co.*, 156 U. S. 1, Chief Justice Fuller said:

> "All the authorities agree that, in order to vitiate a contract or combination, it is not essential that its result be a *complete* monopoly. It is sufficient if it really *tends* to that end, and to deprive the public of the advantages which flow from a free competition."

This language was quoted with approval in the *Addystone Pipe* case, 175 U. S., 237.

See also *Chesapeake & Ohio Fuel Co. v. U. S.*, 115 Fed., 610.

First. The Powder Industry—The Development of the Explosives Business and the "Gunpowder Trade Association".

The history of the explosives business in the United States and the formation and maintenance of the Gunpowder Trade Association shows that an unlawful monopoly of interstate trade in "powder and other expolsives" was built up and maintained by voluntary co-operation between manufacturers and vendors thereof, until the legal and actual control of the business and properties of nearly all of the members of said association (including the Eastern Dynamite Company and the International Smokeless Powder Company) was brought together under one corporate control, in the defendant, Du Pont Powder Company.

The manufacture of explosives in the United States was started in 1802, by a partnership known as the E. I. Du Pont deNemours Company, who occupied the field exclusively until

1820, when the Laflin & Rand Powder Company came into it. In 1850 the Hazard Powder Company entered. These three concerns operated in competition until in 1876, when the Du Pont partnership purchased all the stock of the Hazard Company. (P. S. Du Pont Trans. pp. 44-45.)

Some time after the Hazard Powder Company came into existence, others entered the explosives field, until on December 19, 1889, the following 12 companies were operating as separate organizations, in various parts of the United States.

E. I. Du Pont deNemours & Co., a partnership, Delaware;

Hazard Powder Company, Connecticut;
Laflin & Rand Powder Company, New York;
Oriental Powder Mills, Maine;
American Powder Mills, Massachusetts;
Austin Powder Company, Ohio;
Miami Powder Company, Ohio;
King Powder Company, Ohio;
Ohio Powder Company, Ohio;
Sycamore Powder Company, Tennessee;
Lake Superior Powder Company, Michigan;
Marcellus Powder Company, New York.

For many years previous to the 19th day of December, 1889, these various companies had cooperated together to control the gunpowder trade of the United States; (Haskell Trans. p. 1680); had organized and carried on an Association under various styles which held meetings at stated intervals and established a set of rules known as the "Compendium of Rules" to regulate their relations with each other and with the trade, and fixed the prices which its members were to charge for their product. (Waddell, Trans., pp. 710-711).

(a) THE "FUNDAMENTAL AGREEMENT OF 1899."

This Association continued in a more or less effective manner, until on December 19, 1889, a written agreement, known as the "Fundamental Agreement", was executed by the above named 12 companies, to become effective on Jan. 1, 1890. (See Plaintiff's Exhibit 1116, Trans., pp. 2637-2654.)

The agreement recited that it was executed

> "for the purpose of regulating in a convenient and desirable manner the business of the parties hereto, in such of their sales of powder as are treated in this agreement; for the purpose of avoiding unnecessary loss in the sale and disposition of such powder by *ill regulated or unauthorized competition and underbidding by* the agents of the parties hereto, and for the purpose of protecting consumers and the public from unjust fluctuations in prices and from unjust discriminations." (Ibid., p. 2639, folio 7915.)

It divided the United States into seven districts, according to convenient geographical boundaries, one of which was known as the "Neutral Belt," and embraced the Rocky Mountain States and territories. (Ibid, pp. 2640, 2642.)

The whole trade in gunpowder in the United States was divided up and the amount which each party was entitled to claim as its share in the future yearly business was allotted; so many kegs of sporting powder and so many kegs of blasting powder to each. (Ibid, pp. 2643, 2644.)

At the end of each year the parties were required to submit sworn statements of their sales as a basis for the "adjustment or clearance of such differences, in money values" as might be found to exist, and an accounting was required to

be made for oversales or undersales, above or below the quota allotted. If a member had sold more than its allotted quota it was required to pay a penalty for oversales, which was distributed to those members who had sold less than their quota (Ibid, pp. 2645-2646).

Officers and committees were provided for to manage the affairs of the Association; annual meetings were to be held, and a "Board of Trade" was to be elected to act for the Association *ad interim*. This Board was authorized "to fix prices and to vary or change the same at any time and for any place," and to enforce the rules of the Association (Ibid., p. 2652). Certain agreements already in existence between some of the members of the Association and the California Powder works relating to the trade of the "Neutral Belt" and of the Pacific Coast were continued in existence.

(b) PRICE CONTESTS AND FINAL ABSORPTION OF COMPETITORS BY THE ASSOCIATION PREVIOUS TO 1896.

Shortly after the making of this agreement, the following other companies commenced operations in the manufacture and sale of gunpowder:

The Equitable Powder Company,
The Chattanooga Powder Company,
The Phoenix Powder Company,
The Southern Powder Company.

These companies were not members of the Association and "their injection into the powder business at the time they commenced operations caused the demoralization which existed for the next few years." (Haskell, p. 1697, folio 5089.)

The minutes of the meetings of the Association

during this period show that it had difficulty in enforcing strict observance by its members of the prices which were fixed from time to time. (See Government's Exhibits 101, 101a, 101b, 102, in Plaintiff's Exhibit P-3; also Haskell, Trans., p. 1765.)

General permission was given to the associate members to *defend* their trade and the evidence shows that a contest was conducted vigorously between those companies that were in the Association, acting as a unit, and those that were on the outside. Prices went down in the district where the "outside" competitors operated from $1.50 per keg to as low as 80 cents, and in a few cases to 75 cents (R. S. Waddell, Trans., p. 1011; also Haskell, Trans., pp. 1616, 1619, 1733, 1764-1765).

The contest extended from the early 90's until 1896, when all the independents were "rounded up" (R. S. Waddell, Trans., p. 1011).

At a meeting of the Association on May 21, 1896, the Equitable, the Chattanooga and the Phoenix Companies were taken into the Association, and given an allotment or quota of the trade on a basis similar to that of the other members. (Trans., pp. 1896-1900.) The Southern Powder Company was jointly purchased by members of the Association and absorbed and dissolved soon after. (Trans., pp. 1693-1694.) The others were likewise purchased in whole or in part by members of the Association, but they maintained their identity as separate organizations and were separately represented at the meetings of the Association. (See Government's Exhibits 109, 110 in Plaintiff's Exhibit P-3, at pp. 965, 967.)

(c) THE "GENERAL UNDERSTANDING" OR "1896 AGREEMENT"—THE ADVISORY COMMITTEE.

A new agreement was formulated called the "General Understanding," which was in the nature of an amendment to the "Fundamental Agreement" (Haskell, Trans., pp. 1623-1635), and instead of the "Board of Trade" an "Advisory Committee," with similar powers was established. Only one copy of the 1896 Agreement was prepared, which was left in the custody of the Advisory Committee, and a summary of its provisions, called "Abstract" was prepared for the use of each of the parties. (See Ibid, Government Ex. 110, in P-3 at p. 971.)

The duty of the "Advisory Committee" was to recommend prices to the members of the Association (Haskell, Trans., p. 1669). Also there was a "Special Committee" whose duty it was to make special prices in the interim between the meetings of the "Advisory Committee." (Ibid, p. 1670.)

(d) THE "FOREIGN" OR "EUROPEAN AGREEMENT OF 1897."

In 1897, an agreement was entered into between the "American Factories" and the "European Factories" engaged in the manufacture of explosives which *divided the trade of the world* between them.

The following were the "American Factories", who were parties to the agreement:

E. I. Du Pont deNemours & Company.
Laflin & Rand Powder Company.
Eastern Dynamite Company.
Miami Powder Company.
American Powder Mills.
Aetna Powder Company.

Austin Powder Company.
California Powder Works.
Judson Dynamite and Powder Company.

And the following were the "European Factories":

The Vereinigte-Koln-Rottweiler Pulverfabriken of Cologne.

Nobel Dynamite Trust Company Limited of London. (See Trans., pp. 1657-1658.)

The salient conditions of this agreement were as follows (Haskell Trans., pp. 1656-1665):

1. The American Factories were assigned all the territory embraced in the United States, Mexico, Central America and the Islands of Carribean Sea. The European factories were assigned all of Europe and other foreign territory. South American states were to be joint territory.

2. Neither party was to build any plant in the territory assigned to the other and a plant which had been started by the foreign interests at Jamesburg, N. J., was to be abandoned.

3. Each party agreed not to build plants in the other's territory for the manufacture of black blasting powder, and smokeless powder.

4. The American interests were to purchase detonators of the foreign interests.

5. There was a reciprocal provision that neither party should sell explosives in the territory assigned to the other.

6. There was a reciprocal provision whereby if the American factories received an inquiry for European smokeless powder, military powder, it was necessary for them to ask the European factories for the price to be charged, and vice versa.

7. Two chairmen were to be selected, one to represent the American interests and the other the European interests. Mr. Eugene du Pont was selected as the first American Chairman, and after his death Mr. T. C. du Pont was selected.

8. A fund was established to carry out its provisions, and payments were made into his fund by the American factories.

9. The agreement was to continue for ten years.

This agreement was in full force, and its provisions were carried out until in 1906, when Mr. T. C. du Pont went abroad and paid a very considerable sum of money for its cancellation, and it was torn up and burned in his presence. (T. C. du Pont, p. 214; also Haskell, p. 1665.)

(e) PRICE CONTESTS SUBSEQUENT TO 1896 AND FURTHER ABSORPTION OF COMPETITORS BY THE ASSOCIATION.

Other competitors entered the field—notably the Birmingham Powder Company, located near Birmingham, Alabama, and the Indiana Powder Company near Terre Haute, Ind., but they were soon made the object of fierce contests, and were ultimately taken over and brought into the combination.

The King Powder Company, while it was a member of the Association was more or less of a disturbing factor, in that it was not at all times submissive to the rules. In 1901 an agreement was made between the 1899 Du Pont Company and the Laflin & Rand Powder Company, on the one hand, and the King Powder Company, on the other, whereby the product of the latter company was to be sold by the former companies; and thereupon the King Mercantile Company was organized as a selling company through which this business

was to be handled. This agreement was to run for 25 years and was operated under until in 1906, when it was canceled by payment to the King Powder Company of $100,000 on account of advice that the contract was illegal. (Haskell, Trans., pp. 1641, 1666-1667, 1773, 1774.)

When this contract was made, the King Powder Company withdrew from the Gunpowder Trade Association. (Haskell, p. 1769, folio 5307.)

But after the time of the "General Understanding" the Gunpowder Trade Association became active and vigorous in its control of the powder trade, until it was succeeded by the E. I. Du Pont de Nemours Powder Company in 1903. It finally died and was buried without obsequies in June, 1904, after "it had outlived its usefulness" as stated by Mr. Haskell, its prime organizer and most active spirit after the "General Understanding" was entered into. (See Trans., p. 1651, fol. 4951.) A general advance in prices all over the country was immediately made, amounting to 25 *cents per keg*.. (Test of Haskell, Trans., p. 1711, fol. 5131.)

(f) Incorporation of the Du Pont Partnership—the "1889 Corporation."

In 1899, the E. I. Du Pont de Nemours & Co., a partnership, was dissolved, and a corporation of the same name was organized, with a capital stock of $2,000,000, which took over all the partnership interests. This corporation will hereafter be referred to as the "1899 Corporation." Its stockholders were the same persons who were formerly interested in the partnership, and consisted of—

Eugene Du Pont, owning 20 per cent.;
Col. H. A. Du Pont, owning 20 per cent.;
Alexis I. Du Pont, owning 20 per cent.;

F. D. Du Pont, owning 20 per cent.;
Alfred I. Du Pont, owning 10 per cent.;
Charles I. Du Pont, owning 10 per cent.

(g) DEATH OF EUGENE DU PONT AND THE ENTRY OF T. C. DU PONT AND PIERRE S. DU PONT AS THE "NEW MANAGEMENT" OF THE DU PONT INTERESTS—INCORPORATION OF THE "1902 DU PONT CORPORATION."

This corporation continued its existence until the spring of 1902, when Eugene Du Pont, who was its president and manager, died. None of the remaining stockholders cared to take active charge of the business, and all except Alfred I. Du Pont decided to sell out their interests. Mr. Thomas Coleman Du Pont, and Mr. Pierre S. Du Pont, neither of whom up to that time had been connected with the business, were invited to join Alfred I. Du Pont, and these three proceeded to acquire these interests.

The first step in taking them over was the organization of another corporation of the same name except that the "&" was omitted, which will hereafter be designated as the "1902 Corporation." Very shortly afterwards the 1899 corporation was dissolved and the name of the 1902 corporation was changed so as to include the "&," taking the same title that the 1899 corporation had yielded. T. C. Du Pont was elected its president, Alfred I. Du Pont, vice-president, and Alexis I. Du Pont, secretary. The 1902 corporation took over all the assets of the 1899 corporation, paying therefor $24,000,000—$12,000,000 being paid in 4 per cent. notes, and $12,000,000 in stock of the 1902 corporation. The balance of the capital stock remained unissued until a short

time later, when $1,000,000 more was issued and sold for cash. (P. S. Du Pont, Trans. pp. 45-59.)

By agreement between the stockholders of the 1899 Corporation, and T. C., Alfred I. and P. S. Du Pont, these three gentlemen received $8,000,000 of the stock of the 1902 Corporation, which had been issued in payment for the property of the 1899 corporation, and thereby they came *into actual voting control of the 1902 corporation, which control they have since retained.* (P. S. Du Pont, Trans., 66, 86-88.)

The 1902 corporation continued thereafter to conduct the business until in August, 1903, at which time it sold all its property and business to the E. I. Du Pont de Nemours Powder Company. (P. S. Du Pont, Trans., p. 63.)

But in the meantime the 1902 corporation caused a series of corporations to be organized, in which it retained a controlling interest, by means of which it acquired complete or controlling interests in other explosives companies, in which it had hitherto had only minority interests.

The first of the series was the DELAWARE SECURITIES COMPANY, which acquired all the remaning capital stock of the Laflin & Rand Powder Company which had not already been acquired by the 1902 corporation through the purchase of the assets of the 1899 corporation. The Laflin & Rand Company was at this time a large stockholder in the following companies, all of which were at that time members of the Gunpowder Trade Association (P. S. Du Pont, Trans., pp. 83, 89):

The Birmingham Powder Company,
The Chattanooga Powder Company,
The Eastern Dynamite Company,
The Fairmount Powder Company,

The Laflin Powder Manufacturing Company,
The Lake Superior Powder Company,
The Mahoning Powder Company,
The Marcellus Powder Company,
The Monarch Powder Company,
The Oriental Powder Mills,
The Phoenix Powder Company,
The Indiana Powder Company,
The Northwestern Powder Company.

The reason given by P. S. Du Pont for deciding to take over the Laflin & Rand Company was that that company was a minority owner of a large amount of stock in various corporations in which the 1902 Du Pont corporation also held a minority interest. It was the desire of the management to vest a *controlling* interest in all these corporations, in the Du Pont Company. By acquiring the Laflin & Rand Company the 1902 Du Pont corporation acquired this desired controlling interest (Trans., pp. 104-105). He did not regard this control as absolutely *necessary* but very *advisable*. (Ibid, p. 107. See also Trans., pp. 661-662.)

By reference to Plaintiff's Exhibit 1095 (Trans. pp. 2623-2625; P. S. Du Pont, Trans. pp. 661-664), the effect of the final absorption of the Laflin & Rand Co. was to tremendously centralize the *sources of supply* in the hands of the Du Pont interests. This testimony shows that on March 1, 1902, when T. C. Du Pont, P. S. Dupont and Alfred I. Du Pont acquired control of the Du Pont interests, these interests separately owned only 11 plants, and the Laflin & Rand Company separately owned 10 plants, and that they jointly owned 35 plants. Through the Delaware Securities Company, which these three gentlemen organized, all the stock of the Laflin & Rand Company was ac-

quired by the Du Pont interests, and these 57 plants were consolidated under one legal ownership and control in the Defendant Du Pont Company. It added 8 more by purchase and 10 more by construction, during the period after plaintiff was in business—thus giving it a total of 74 plants.

Many of these plants were for the manufacture of *dynamite.*

The effect of the alliance between the Laflin & Rand Powder Company and the Du Pont Company, and the *policy* carried out with respect to *dynamite* as well as powder, is well illustrated by the correspondence set forth, infra, pp. 66-67.

The next corporation in the series was the DELAWARE INVESTMENT COMPANY, which acquired all the capital stock of the Moosic Powder Company with mills located in Pennsylvania. (P. S. Du Pont, p. 83.)

The next was the CALIFORNIA INVESTMENT COMPANY, which acquired all the stock of the Judson Dynamite & Powder Company with mills located in California. (P. S. Du Pont, Trans., p. 83.)

(h) THE INCORPORATION OF THE DEFENDANT DU PONT POWDER COMPANY IN 1903, AND THE ACQUISITION BY IT OF THE ACTUAL AND LEGAL CONTROL AND OWNERSHIP OF THE STOCK AND PHYSICAL PROPERTIES OF MEMBERS OF THE TRADE ASSOCIATION.

After the foregoing corporations had succeeded in their purpose of acquiring the various interests above stated, the way was cleared for the combining of these interests under one management, and the final corporation in the series, the E. I. DU PONT DE NEMOURS POWDER COMPANY

(defendant), was organized on the 19th day of May, 1903. Its purpose is thus stated by P. S. Du Pont (Trans., pp. 84, 108, 668):

> "The E. I. Du Pont de Nemours Powder Company was organized under the laws of the State of New Jersey on May 19, 1903, for the purpose of consolidating into one corporation the numerous interests of the E. I. Du Pont de Nemours & Company, which corporation and its predecessor, a partnership of like name, had been engaged in the manufacture and sales of explosives for over one hundred years, having started business in the year 1802."

Mr. Haskell used the expressive phraseology in describing the purpose to be "to bring together under one corporate entity a number of separate units owned by the same owner"; and further that this it proceeded to do after its organization "just as quickly as it could" (Trans., p. 1650, fol. 4948).

It was capitalized at $50,000,000 of which $25,000,000 was common and $25,000,000 was preferred. Of this amount $30,200,000 par value was issued to the 1902 corporation and by it retained in its treasury.

T. C. Du Pont, P. S. Du Pont and Alfred I. Du Pont, thus became, *by reason of their control of the stock of the 1902 corporation,* the absolute masters of the explosives industry of the United States as formerly represented by the Gunpowder Trade Association except as shown below. (T. C. Du Pont, Trans., p. 228; P. S. Du Pont, Trans., pp. 87-88; Haskell, 1692.)

It was their original plan to have this final Du Pont Company (the defendant) take over only the *stocks* of the various corporations (Ibid, p. 666) but later this plan was changed and it eventually

acquired all their physical assets, and the various corporations whose stocks it had acquired were dissolved. (Ibid, p. 108.)

At the time these various companies were acquired by the Powder Company all of the *subsidiary companies* that belonged to or were used by any of them were acquired also (Haskell Trans., p. 1695).

A total of between 100 and 110 different companies, including subsidiary companies, engaged in some part of the explosive business, which were eventually acquired by the Du Pont Powder Company when it came into existence, were afterwards dissolved (Moxham Trans., pp. 135, 138).

See also the following exhibits: (Plaintiff's Exhibit 1171, Trans., p. 2665; Exhibit 1176, p. 2669; Ex. 1177, p. 2670; Ex. 1185, p. 2672; Ex. 1187, p. 2674; Ex. 1205, p. 2678).

(i) Dissolution of the Trade Association.

The Association was finally dissolved on June 30, 1904, **because "it had outlived its usefulness"** (Haskell, p. 1651, folio 4951).

It had remained intact and held its meetings continuously until this date.

The companies not entirely absorbed by the defendant Du Pont Company were still bound to it by large stock interests or by agreement. These were (Haskell, Trans., pp. 1642-1644):

The King Powder Company,
The Miami Powder Company,
The American Powder Company,
The Aetna Powder Company,
The Equitable Powder Company,
The Austin Powder Company.

While the last two continued to operate under

separate management their stock was owned by the defendant Du Pont Company in the following proportion:

The Equitable Powder Co. 49%,
The Austin Powder Co. 33%.

The entire product of the King Powder Company was still *controlled* by the Powder Company, under the contract with the King Mercantile Company which continued in existence until in 1906. (Ibid., p. 1643; see also supra pp. 52-53.)

The Miami, American and Aetna Companies continued to be affiliated with the Powder Company through the Sullivan-Fay agreement (See *infra*, p. 75) until in March, 1905 (Ibid., p. 1644).

Judge Lanning, in the "Government Case" (at 188 Fed., 152) said:

> "It is a significant fact that the trade association, organized under the agreement of July 1, 1896, was not dissolved until June 30, 1904. It had been utilized until that date by Thomas Coleman Du Pont, Pierre S. Du Pont and Alfred I. Du Pont in suppressing competition and thereby building up a monopoly. Between February, 1902, and June, 1904, **the combination had been so completely transmuted into a corporate form that the trade association was no longer necessary.** Consequently the trade association was dissolved, and the process of dissolving the corporations whose capital stocks had been acquired, and concentrating their physical assets in one great corporation, was begun. Before the plan had been fully carried out this suit was commenced. The proofs satisfy us that the **present form of the combination is no less obnoxious to the law than was the combination under the trade association agreement,** which was dissolved on June 30, 1904".

(j) THE LEGAL EFFECT OF THE VARIOUS ACTS AND AGREEMENTS ABOVE SET FORTH.

The foregoing evidence presents a state of facts similar to that presented in the *Standard Oil* case (221 U. S., 1, 32-40) which, briefly summarized, were that sundry individuals, operating in the business of refining crude oil originally as partnerships, finally brought these interests together in a corporation known as the Standard Oil Company of Ohio—the members of the various partnerships becoming in proportion to their prior ownership stockholders in the corporation; and by forcing their competitors to join with them or by driving them out of business, they gradually absorbed them, willingly or unwillingly; and as soon as the complete mastery of the oil industry had been attained, the Standard Oil Company of New Jersey came into being, took over the actual and legal control of these various properties, and brought them under one corporate management.

Chief Justice White (p. 76) regarded it as conclusive that the agreements entered into between the members of the combination was evidence of—

> "An intent and purpose to *exclude others*, which was frequently manifested by acts and dealings wholly inconsistent with the theory that they were made with the single conception of advancing the development of business power by usual methods, but which on the other hand necessarily involved the intent to drive others from the field and exclude them from their right to trade and thus accomplish the mastery which was the end in view."

See also *Standard Sanitary Mfg. Co. vs. United States*, 226 U. S., 20, 47.

Judge Lanning, speaking for the Circuit Court

of Delaware in the "Government Case" against these defendants, recognized the similarity of the facts to those recited in the Standard Oil Case and said (See 188 Fed. at p. 151):

> "The recent decisions of the Supreme Court make it equally clear that a combination cannot escape the condemnation of the anti-trust act merely by the form it assumes or by the dress it wears. It matters not whether the combination be 'in the form of a trust or otherwise,' whether it be in the form of a trade association or a corporation, if it arbitrarily uses its power to force weaker competitors out of business, or to coerce them into sale to or union with the combination it puts restraint upon interstate commerce, and monopolizes or attempts to monopolize a part of that commerce, in a sense that violates the anti-trust act."

His resume of the facts found in that case show that they were almost identical with those here presented (Ibid., p. 145):

> "All *the advantages* of the *trade association* agreement *were now much better secured* by the series of corporate transmutations that had followed the introduction of T. C. Du Pont and Pierre S. Du Pont into the explosive business. Between 1902 and the commencement of this suit in July, 1907, many of the corporations whose property and business had been acquired by the above-mentioned methods were dissolved, and thereby the relations of the combined companies were simplified and the assurances of the perpetuity of their power were increased."

And also (ibid., pp. 151-152):

> "The record of the case now before us shows that from 1872 to 1902, a period of 30 years, the purpose of the trade associations had been to dominate the powder and explosives trade

in the United States, by fixing prices, *not according to any law of supply and demand,* for they arbitrarily limited the output of each member, but according to *the will of their managers.* It appears, further, that although these associations were not always strong enough to control absolutely the prices of explosives, *their purpose* to do so was never abandoned. Under the last of the trade association agreements—the one dated July 1, 1896, and which was in force until June 30, 1904—the control of the combination was firmer than it had before been. Succeeding the death of Eugene Du Pont in January, 1902, and the advent of Thomas Coleman Du Pont and Pierre S. Du Pont, the attempt was made to continue the restraint upon interstate commerce and the monopoly then existing by vesting in a few corporations, the title to the assets of all the corporations affiliated with the trade association, then dissolving the corporations whose assets had been so acquired, and binding the few corporations owning the operating plants in one holding company, which should be able to prescribe policies and control the business of all the subsidiaries without the uncertainties attendant upon a combination in the nature of a trade association. That attempt resulted in complete success.

"Much the larger part of the trade in black and **smokeless** powder and **dynamite** in the United States is now under the control of the combination supported by the 28 defendants above named. That combination is the successor of the combination in existence from 1896 to June 30, 1904.

He summarizes the facts which he considers sufficient to establish the relationship between these parties (Ibid., pp. 148-149), and concludes:

"It is clear that these 28 defendants are associated in a combination for carrying on interstate commerce in powder and other explosives."

Second: The dynamite industry—Its importance and effect in development of the Gunpowder Trade Association—The Eastern Dynamite Company.

I. The beginning of the dynamite industry—Its development—The organization of the Eastern Dynamite Company—Suppression of competition by co-operation with powder industry.

The history of the dynamite branch of the explosives business and the manner in which it became a part of the unlawful combination, as shown by the bill of exceptions now before this court is as follows:

Dynamite as an explosive began to be exploited during the early '70s, Mr. P. S. Du Pont himself testified that it was a field "quite separate from black powder" (Trans., p. 84, folio 252). In 1880, the Du Pont interests and the Laflin & Rand interests took it up and carried it on on the Atlantic Coast through the instrumentality of the Repauno Chemical Company and the Hercules Powder Company. By 1895 it had become an important factor in the explosives trade and the Eastern Dynamite Company was formed for the purpose of *consolidating* these interests. (Ibid, pp. 99-100; 673-674.) It at once acquired the Repauno and Hercules Companies (P. S. Du Pont, Trans., p. 85, folio 253).

The officers and directors of the Eastern Dynamite Company were identical with the former Hercules and Repauno Companies. Mr. Haskell became its president and active manager, and has so remained. (Haskell, p. 1646.) Just previous to the organization of the Eastern Dynamite Com-

pany, the California dynamite interests entered the field occupied by the Repauno Chemical Company and the Hercules Powder Company in competition with them. After its organization the California interests retired entirely and had no representation of any kind upon the Board. (Haskell, Trans., p. 1612.)

The Eastern Dynamite Company was formed with a Capital stock of $2,000,000. Of this $1,400,000 was given to the former stockholders of the Repauno Chemical Company and the Hercules Powder Company and $600,000 to the Atlantic Dynamite Company of California in exchange for all of its assets, excepting $5,000 which was reserved for the purpose of winding up the California Company. (Ibid, pp. 1759, 1760.)

The Eastern Dynamite Company thereafter cooperated with the Gunpowder Trade Association to make it a success. For example, it became a party to the "European" or "Foreign Agreement," and bore a part of the expense of maintaining that agreement (see supra, p. 50), until it was finally absorbed by the defendant Du Pont Powder Company. (Haskell, Trans., pp. 1613-1614, 1756, 1758.)

From the foregoing it will appear that the organization of the Eastern Dynamite Company resulted in a combination between the dynamite interests of the entire United States, as represented by the dynamite companies on the Atlantic Coast and those on the Pacific coast. From that time on there has been no serious opposition to the monopoly thus established in the Eastern Dynamite Company. The exhibits and the testimony of the witnesses show that the dynamite business controlled by the defendants was as high as 80.77

per cent. of the entire dynamite business in the United States, in 1903, the lowest being 69.41 per cent. in 1908. (See Defendants' Exhibit A-518, Trans., p. 2957; see also plaintiff's Exhibit 1125, 1125-A, Trans., pp. 2700-2702.)

Co-operation between the black powder interests in the Association and the dynamite interests is well and conclusively shown by the letter of instructions written by Mr. Haskell to his agent, Mr. Miller, on August 26th, 1895, immediately after he brought the dynamite interests into the Association (See Ex. 26, Trans, pp. 2556-2558):

> "Regarding our relations with Du Pont & Company and other Powder Companies, would say that I can best give you our desires by quoting from Circular Letter issued some time ago, outlining the policy we thought best, as follows:
>
> "From time to time Trade Report Calls will be sent out and we would indicate policy to be pursued in certain cases as far as local conditions will permit.
>
> "While we are very anxious to enlarge our trade and agents will use their utmost endeavors to achieve that end, it is not worth while to divert trade from associate companies, such as Du Pont, Hazard, Oriental, Ohio, etc., by cutting prices, as such a course will probably result in their meeting the price or perhaps cutting it and regaining the trade, which merely hurts the former seller and does no one any good *excepting the buyer.*
>
> "As our interest in the Repauno Chemical Company and The Hercules Powder Company is very large, it is our desire that agents and salesmen assist them as much as possible in marketing their goods whenever it can be done without cutting the prices of or interfering with The Atlantic Dynamite Company. Aetna Powder Company or The Hecla Pow-

der Company, and in case a buyer visited uses or buys dynamite the amount used, kind, price and of whom purchased should be touched on in Remarks of Trade Reports."

That this policy was continued by the "new management" after it obtained control is shown in the following extract from a letter of instruction written December 22, 1902, by Mr. Moxham, Vice-President of the defendant Du Pont Company to one of its agents (see Plaintiff's Exhibit 1147, Trans., p. 2656):

> "We would state to you in confidence, and with a special request that the information be not in any way divulged, that arrangements have been perfected with the Laflin & Rand Powder Company by which the *co-operation will be so complete as to amount to practically consolidation.* We give you this information as it will doubtless govern you in your handling of our business. The Laflin & Rand Company will exist as a separate company under the same control as heretofore. As matters progress, if you find developments going on that appear to you as 'playing into their hands' it may become intelligible to you when you realize that *it will not be to our loss.* On the other hand, if points of interest may arise whereby their co-operation will be to our good we will be glad to have you confidentially call our attention to the same.
>
> "We ask that no inkling of this should be permitted to reach any of the Laflin & Rand employees and that you give no confirmation to such rumors as may creep through the trade bearing on the matter."

II. Expansion and suppression of competition by agreement with competitive dynamite interests.

After the formation of the Eastern Dynamite Company the dynamite monopoly was rapidly expanded in two ways:

1. By agreements with competitive interests.

2. By purchase of competitive interests.

A series of agreements with other dynamite interests which were not directly owned or controlled by the Eastern Dynamite Company, began to be made about this time and continued to be made down to 1904. These agreements were:

(a) The Haskell-Fay agreements of 1895 and 1897—for co-operation and division of trade between competitive dynamite interests.

(b) The King Powder Company agreements in 1897 and in 1901—for controlling the output of an active dynamite competitor.

(c) The "Mexican" agreement in 1898—for co-operation with Pacific Coast competitors in the control of the dynamite trade in Mexico.

(d) The Hancock Chemical Company agreements of 1898—for controlling the output of an active dynamite competitor.

(e) The Sullivan-Fay agreement of 1904—for the continuation of the co-operation and division between the Fay interests, and the defendant Du Pont Powder Co. and Sullivan as the representative of the successor of the Trade Association *after* the defendant Du Pont Company had *succeeded the Association.*

(A) THE HASKELL-FAY AGREEMENTS OF 1895 AND 1897—FOR CO-OPERATION AND DIVISION OF TRADE BETWEEN COMPETITIVE DYNAMITE INTERESTS.

In 1895, previous to the organization of the Eastern Dynamite Company, a corporation known as the Aetna Powder Company (which was then managed and controlled by Mr. A. O. Fay) had acquired a considerable amount of business in the middle states in the manufacture and sale of dyna-

mite, and about the same time that the California interests were acquired and the Eastern Dynamite Company was formed, an agreement was made between Mr. Haskell and Mr. Fay for the purpose of maintaining "the present relative relation as regard proportions of trade between the two parties to this understanding *for the interests they represent.*" (See Plaintiff's Exhibit 1328, p. 2787, fol. 8361.)

This agreement, and the "interests represented" by these two gentlemen are thus explained by Mr. Haskell, (Trans., p. 1638, fol. 4913) as follows:

> "Q. What was the purpose of the original agreement that you made with Mr. Fay? A. To establish proportions of trade between the interests he and I represented.
>
> "Q. What were the interests he represented? A. The Aetna Powder Company.
>
> "Q. And what were the interests you represented? A. The Eastern Dynamite Company."

And it must be remembered that these two companies at that time, controlled all the dynamite business of the Atlantic coast and of the middle west, except that which was carried on through members of the Gunpowder Trade Association. Furthermore, Mr. Haskell was president of the Laflin & Rand Powder Company, and Mr. Fay, was president of the Miami Powder Company and the American Powder Company, all of which Companies had been for years members of the Gunpowder Trade Association and important factors in the *black powder* trade.

By this agreement the dynamite interests were brought effectually into complete affiliation with the black powder interests of the Gunpowder Trade Association.

Even the very *terms* of the agreement were similar to and patterned after those which governed the Gunpowder Trade Association (Trans., pp. 2787-2795):

(a) The business was apportioned between them and sworn statements of the business done by each of the parties were to be submitted to an Adjuster, who was to ascertain from a careful computation of the total business done by the parties, whether either party had exceeded the quota or proportion of business which was assigned to him under the terms of the agreement, and settlement was to be made for oversales and undersales, at a stipulated rate.

(b) A standing committee of five persons was formed which was to be composed of four parties to be selected by Mr. Haskell and one party to be selected by Mr. Fay and this committee had power to *designate prices* at which sales should be made by the parties and to consider and determine complaints of violations of the agreement.

(c) A set of rules was agreed upon, which was in effect similar to the Compendium of Rules of the Gunpowder Trade Association.

(d) Provisions were also made in case either party should subsequently purchase or acquire any interests in other high explosives companies, for the relative proportion which should belong to either party as affected by such increased manufacturing capacity.

Subsequently a supplemental agreement was entered into by Mr. Haskell and Mr. Fay for the purpose of making the quotas of each more definite, in view of the fact that each had acquired several other companies since the making of the former agreement. (Trans., p. 2792.)

The object and purpose of the Haskell-Fay agreements was to apportion between the companies controlled by the Eastern Dynamite Company and the Aetna Powder Company the trade in dynamite, so that each party should thereafter be conversant with the affairs of the other, and to eliminate competition between them, and to prevent any possibility of a disturbance of the operations of the then existing Gunpowder Trade Association which might occur by reason of offering dynamite advantageously to take the place of black blasting powder.

(B) THE KING POWDER COMPANY AGREEMENTS IN 1897—FOR CONTROLLING THE OUTPUT OF AN ACTIVE DYNAMITE COMPETITOR.

As already pointed out (supra, pp. 52-53), the *black powder* interests of the King Company were taken over by the Du Pont Company, through the King Mercantile Company, and its entire output contracted for a period of twenty-five years.

The *dynamite* interests of the King Company were the subject of separate contracts made with the Eastern Dynamite Company, as follows:

On the 31st day of December, 1897, after the Eastern Dynamite Company had been organized and had acquired all the interests that Mr. Haskell represented (including the California interests) the dynamite business of the King Powder Company, of Ohio—another member of the Gunpowder Trade Association—was brought under the control of the combination, by means of an agreement made by Mr. Haskell for the Eastern Dynamite Company, to which the King Powder Company was made a party. (See Plaintiff's Exhibit 1329, Trans., pp. 2796-2799.) The King Powder Company undertook to sell the explosives of the

Eastern Dynamite and the Aetna Powder Companies *exclusively,* and these two companies agreed to furnish the King Company such quantities of high explosives as it should require for re-sale up to 3% of the number of pounds sold by them in the United States. The two companies were required to select some company or companies controlled by them with whom the King Company should be required to "transact its business, make its returns, and receive instructions as to prices, terms, etc., at which powder covered by this agreement is to be sold. Until further notice, however, the Aetna Powder Company shall be the concern to which this clause refers." (The "Aetna Powder Company" here referred to was the company of which Mr. Fay was president.)

Provision was also made for the manner of placing orders and making payments and rendering statements.

The King Company agreed to follow the rules and regulations of the Price Committee "exception being made when trade is threatened by *outside* competitors or large contracts where it is *deemed advisable for some one company* to make a lower price to a former or large customer." The agreement was to run for ten years.

This agreement was modified on the first of May, 1901, by the King Powder Company agreeing to retire from active sale of dynamite in consideration of receiving $2,400 from the Eastern Dynamite and Aetna Powder Companies. (See Plaintiff's Exhibit 1330, p. 2800.) And by another agreement between the same parties on September 7th, 1904, the King Powder Company sold to the Eastern Dynamite Company its trademark,

"Rex"—a well-known and reputable mark or brand for dynamite. (See Plaintiff's Exhibit 1331, Trans., p. 2801).

(c) THE "MEXICAN" AGREEMENT IN 1898—FOR CO-OPERATION WITH PACIFIC COAST COMPETITORS IN AND CONTROL OF THE DYNAMITE TRADE IN MEXICO.

On October 1st, 1898, an agreement was entered into between the California Powder Works, the Giant Powder Company, the Judson Dynamite Company, the Aetna Powder Company and the Eastern Dynamite Company, (all manufacturers of dynamite the first three being concerns located in California and operating on the Pacific Coast and in Mexico), the objects of which were to regulate the trade of these parties with consumers of explosives in the Republic of Mexico and to establish prices therefor. The agreement is specific in detail concerning the method by which the business was to be apportioned, and the rules for conducting their business within that country; and among others contains the following significant provision. (See Plaintiff's Exhibit 1334, pp. 2815-2816.)

> "In the event of attacks upon the trade of any party to this agreement by any other manufacturer not a party to this agreement, the party whose trade is attacked may, having first obtained permission from Mr. H. M. Barksdale, and Captain John Bermingham, have authority to defend that trade against such *outside* competition within such limitations as may at the time be fixed by Mr. Barksdale and Captain Bermingham.
>
> "In case the party whose trade is attacked should not desire to defend its trade as herein provided, then it shall be permissible for Mr. Barksdale and Captain Bermingham to

authorize the Standard Explosives Company to take such steps as they may designate to meet the threatened *outside* competition, in order that the common interests may be conserved, the *profits from said trade being credited to the parties to this agreement in their proper quota proportions.*"

(D) THE HANCOCK CHEMICAL COMPANY AGREEMENT OF 1898—FOR CONTROLLING THE OUTPUT OF AN ACTIVE DYNAMITE COMPETITOR.

On October 11th, 1898, an agreement was made with the Hancock Chemical Company, having a plant in Michigan for the manufacture of nitroglycerine—which is one of the principal ingredients of dynamite—wherein the Eastern Dynamite Company was appointed "Selling Agent" and bound itself to take the entire output of the Hancock Chemical Company plant except that which the latter was already selling to certain specified mines. It agreed to pay 15% above the actual cost of manufacture. The contract was to run for five years and after that to continue until terminated by three months' notice. (See Plaintiff's Exhibit 1301, Transcript, p. 2784.)

On October 31st, 1898, the Lake Superior Powder Company—having a plant in the Lake Superior region, and of which Mr. Haskell was Vice-president—and the Aetna Powder Company. (Mr. Fay's Company) entered into an agreement with the Hancock Chemical Company (See Plaintiff's Exhibit 1333, Trans., p. 2804), reciting that these two companies were interested in the selling agency of the Eastern Dynamite Company under the Hancock Chemical Company agreement of October 11th, 1898, and that they would guarantee the performance of the covenants assumed by the Eastern Dynamite Company thereunder.

On February 20th, 1898, another agreement was made between the Eastern Dynamite Company, the Lake Superior Powder Company and the Aetna Powder Company, reciting that the Hancock Chemical Company agreement of October 11th, 1898 was made for their joint benefit, and agreeing to share the expenses of carrying it out. (See Plaintiff's Exhibit 1332, Trans., p. 2803.)

(E) THE SULLIVAN-FAY AGREEMENT OF 1904—FOR THE CONTINUATION OF THE CO-OPERATION AND DIVISION BETWEEN THE FAY INTERESTS, AND THE DU PONT POWDER COMPANY, AS SUCCESSOR OF TRADE ASSOCIATION.

After the dissolution of the Gunpowder Trade Association in June, 1904—at which time the interests represented by Mr. Fay (namely, the Miami Powder Company, the American Powder Company and the Aetna Powder Company) were left outside of the properties acquired by the defendant Du Pont Powder Company—another agreement was made between one Sullivan, on behalf of the Du Pont Company, and Mr. Fay, on behalf of the Aetna, Miami and American Companies. By the terms of this agreement there was an allotment of trade between the parties, and an adjustment provided for by which certain percentages of dynamite and black powder might be sold by the respective interests; if the Du Pont Company exceeded its quota it was to pay a certain rate on account of over sales, if it fell below its quota it was to receive a certain rate on account of under sales. (Haskell Transcript, pp. 1635, 1636, 1677, 1679, 1799.)

This agreement lasted until March 31, 1905 (Ibid, p. 1636).

There was no provision in this agreement as to the *prices* which should be charged by either

party, the reason for this being stated by Mr. Haskell as follows:

> "It was deemed entirely *unnecessary* and perhaps *unwise* to have control exercised by either of the other's sales as *regards prices.*" (Ibid, p. 1677, fol. 5031.)

Undoubtedly this was an attempt to avoid the *appearance* of making an agreement contrary to the Anti-Trust Acts. But Mr. Haskell was right when he said that it was *unnecessary* to insert such a provision in the agreement, because by allotting and apportioning the trade between them and fixing penalties for oversales they had removed all temptation to compete.

III. Expansion and suppression of competition by purchase of competitive dynamite interests.

From the time when the Eastern Dynamite Company was organized in 1895 down to the time when the Du Pont Powder Company was organized in 1903 various companies which were engaged in the high explosives industry—either by way of manufacturing raw materials (such as glycerine and acids) or the finished product—many of which had hitherto been operating independently and, therefore, more or less in competition with it, were absorbed in whole or in part by the Eastern Dynamite Company and their properties finally taken over and acquired by the Du Pont Powder Company. These were as follows (see Plaintiff's Exhibit 1093, Trans., p. 2622; also Test. Haskell, Trans., pp. 1803-1804):

Acme Powder Company.

American Forcite Powder Manufacturing Company.

Blue Ridge Powder Company.

Clinton Dynamite Company.
Columbian Powder Company.
Dittmar Powder & Chemical Company.
Enterprise High Explosives Company.
Hecla Powder Company.
Hudson River Powder Company.
James Macbeth Company.
Mt. Wolf Dynamite Company.
Pennsylvania Torpedo Company.
Standard Explosives Company, Limited.
Sterling Dynamite Company.
United States Dynamite Company.
Atlantic Dynamite Company of New Jersey.
Atlantic Dynamite Company of New York.
Atlantic Manufacturing Company.
Electric Exploder Company.
Explosives Supplies Company.
Forcite Powder Company of New Jersey.
Forcite Powder Company of New York.
Hecla Dynamite Company.
Hercules Powder Company.
Hercules Powder Company, New York.
Hudson River Wood Pulp Manufacturing Company.
Joplin Powder Company.

The manner in which these various corporations were acquired, and the amounts paid therefor is fully set forth in Plaintiff's Exhibit 1169, Trans., pp. 2663-2664; and Exhibit 1175, Trans., p. 2668.

IV. Expansion by co-operation between dynamite and black powder interests in making sales to particular classes of consumers of explosives—The "Wilmington High-Explosives Companies".

Mr. Haskell testified (Trans., p. 1616, fol. 4847) that:

> "In the sale of high explosives it very frequently occurs, particularly on construction work, that it is *necessary to sell black blasting powder in connection with high explosives.*"

For example, a railroad contractor uses both grades of explosives—black powder for the softer formations and dynamite for the rock, etc.—His business could be much more surely controlled by *co-operation* between manufacturers of *both* articles; and that this very thing was done is shown by the evidence. Before the Eastern Dynamite Company was taken over by the defendant Du Pont Powder Company, the term "Wilmington High-Explosives Companies" was used by all those members of the Trade Association who manufactured dynamite, as a title or trade-name for the sale of dynamite. This term was used to designate the Repauno Chemical Company, Hercules Powder Company, the Atlantic Dynamite Company, the Forcite Dynamite Company, and the Eastern Dynamite Company as the holding company (Trans., pp. 748-749); and all sales of dynamite which were made to those customers who used both high explosives and black blasting powder were made under this name (R. S. Waddell, Trans., p. 750):

> "The Wilmington High Explosives Companies that I have named, were enormous manufacturers of dynamite; and in the sale of their dynamite they required some black powder for their customers, and they obtained that through the—from the black powder companies who were in the association, and they made application for special prices and for contracts to be used in connection with their dynamite contracts with railroad contractors and public contractors, and where

the quantity of black powder was very small as compared with the dynamite, the sales were made through the High Explosives Companies, whichever one happened to have the contract with the trade.

"Q. How did the 'High Explosives Companies' obtain the black blasting powder which they required? A. They received that from the members of the association who were authorized to sell or contract."

Mr. Waddell testified that he, as the Agent of the Hazard and Du Pont Companies at Cincinnati, also acted as agent of the Repauno Chemical Company and that he came in contact with the dynamite business in that way (Trans., p. 749); while he was acting for Mr. Du Pont on the Special Committee of the Gunpowder Trade Association the Special Committee awarded a number of contracts and made special prices to the trade through the "Wilmington High Explosives Companies" (Trans., p. 734).

This testimony is well supported by the minutes of the Gunpowder Trade Association which are in evidence

Attention is called to the numerous contracts authorized by the Gunpowder Trade Association to be made with the "Wilmington High Explosives Companies," as set forth on pages 1349, 2824, 2825, 2828, 2829, all of 2830, 2831, 2832, 2833, 2837, 2843, 2844, 2845, 2846, 2856, 2857, 2858, 2867, 2870, 2871, 2872, 2873, 2874, 2879, 2880, 2881, 2882, 2885, 2886 of the Transcript.

Further evidence of the co-operation between dynamite and black powder interests is shown by the fact that not until October, 1907, was any price list issued for dynamite. At this time, and *coincidently* with the issuance of the first price list

for *black powder*, the first price list for dynamite and high explosives was also issued. (See Plaintiff's Exhibit 1120, not printed in Transcript.) See discussion of price lists infra page 94.

But the evidence tended strongly to show that the defendant Du Pont Company actually made use of its monopoly of the dynamite business to directly influence plaintiff's customers to abandon it in cases where those customers used both dynamite and black powder. Plaintiff, not being a manufacturer of dynamite, could not, of course, supply the dynamite needs of its black powder customers. It was, naturally, an effective measure to use with such customers to say that they could have no dynamite unless they also used Du Pont black powder. That this was actually done is supported by the testimony of Robert C. Bruce. He was a member of the firm of Bruce & Burdick, who were engaged at Joliet, Illinois, during 1903, 1904, 1905, in the stone, coal and powder business. During such period this firm acted as sales agent as well as a purchaser of black powder *and dynamite*—the powder being purchased from the plaintiff, and the dynamite from the Du Pont Company. Some time during the year 1904 Mr. Elliot S. Rice, the Chicago agent of the Du Pont Company, told him that unless he stopped buying black powder of the plaintiff, his principals would cancel their agency with him for dynamite (Trans., p. 2407). Mr. Rice denied that he had any such conversation with Mr. Bruce (Trans., p. 1847).

The Trial Court submitted this testimony to the jury to determine "whether it is a part of a general plan and purpose to injure the plaintiff in its efforts to secure business, or whether it is

merely to protect the interests of the defendants" (see Trans., p. 2472, fol. 7414); but not with respect to the question of the actual participation of the Eastern Dynamite Company in an overt act. It had already directed them to return a verdict for that company.

Boycotting goods of a competitor is "undue" restraint of trade.

> *Loewe vs. Lawlor,* 208 U. S., 274;
> *U. S. vs. Keystone Watch Co.,* 218 Fed., 502.

V. Black powder and dynamite interests controlled by the same men—"Interlocking Directorates".

One of the important acquisitions by the Gunpowder Trade Association at the time when the dynamite interests were brought in combination with that Association through the Haskell-Fay agreements were certain gentlemen who have since been connected with the Gunpowder interests of the Association and the Du Pont Company down to the present day.

Among those primarily was MR. JONATHAN HASKELL. He was one of the Vice-Presidents of the Du Pont Powder Company since its organization, was the President and the active Manager of the interests represented by the Repauno Chemical Company and the Hercules Powder Company, previous to the time when the Eastern Dynamite Company came into existence, and was largely instrumental in bringing about its organization (supra, pp. 64-66).

In 1895 Mr. Haskell became President of the Laflin & Rand Powder Company, which was his first connection with the black powder interests in

any way. The Laflin & Rand Company was at the time a member of the Gunpowder Trade Association, and Mr. Haskell became one of the most active members of that body and so remained to the end. He attended the general meetings of the Association, was made a member of the Advisory Committee and of the "Special Committee", and the minutes of the subsequent proceedings show that he was the most active of all the members of that body in carrying out its purposes. (Haskell, Trans., p. 1709, folio 5157.)

The evidence shows that previous to the entry of Mr. Haskell into the Gunpowder Trade Association, and during the period that the dynamite business was developing under his management, the business of black blasting powder was materially interfered with and the affairs of the Gunpowder Trade Association were lagging very considerably.

From that time on the affairs of the Association were revitalized and a few months later, through his active influence, the "Understanding" or "1896 Agreement" was formulated; and the Equitable, the Phoenix and the Chattanooga Powder Companies, which were exclusively engaged in manufacturing black blasting powder were then brought into the Association and from that time forth until its final dissolution in June, 1904, it was not only active but was powerful and dominant in the explosives business in the United States.

After the organization of the defendant E. I. Du Pont de Nemours Powder Company, and the absorption by that Company of the various interests already described, he became one of its Vice-Presidents, a Director and a member of the Executive Committee. Haskell, p. 1646; also p. 1932.)

Besides, he was President and a Director in 8 companies, Vice-President and a Director in 6 more and Director in still 6 others, and an unnamed officer in one other—making 22 companies altogether which were members of the combination or their subsidiaries, whose business and affairs he assisted in directing. (Ibid., pp. 1646-1648.)

Mr. C. L. PATTERSON, who was originally employed by the Repauno Chemical Company, also came into the E. I. Du Pont de Nemours Powder Company, and continued as the representative of the high-explosives department for some time as Mr. Haskell's assistant. (Patterson, Trans., pp. 146-147.)

Another was MR. H. M. BARKSDALE, who had been connected with the dynamite business since 1887. He represented originally the Repauno Chemical Company and afterwards the Eastern Dynamite Company, and subsequently became one of the Vice-Presidents of the E. I. Du Pont de Nemours Powder Company, and a member of the Executive Committee. (Barksdale, Trans., p. 1914) His influence is well shown by the part which he bore in the contest with the Indiana Powder Company, he being a member of a committee appointed by the Gunpowder Trade Association to represent the dynamite interests, together with two others who represented the black powder interests in carrying on that fight. This committee organized the Great Northern Manufacturing Supply Company as a "fighting company" whose only object or purpose was to conduct the fight against the Indiana Powder Company until it should be driven from business. (See testimony R. S. Waddell, Trans., pp. 731-732.) It established its office at Terre Haute, Ind., near the Indiana Powder Company's location, and retailed powder direct to the miners at lower prices than the miners

could purchase powder of the operators. (Ibid., pp. 727-729.) When that contest ended by the absorption of the Indiana Powder Company, the Great Northern Manufacturing & Supply Company discontinued business (Ibid., p. 739.)

MR. T. C. DU PONT was elected President to succeed Eugene Du Pont and was appointed a member of the Advisory Committee and Special Committee of the Association. (Trans., p. 1670.) He was elected Chairman for the "American Factories" under the "Foreign Agreement." (Trans., p. 214, fol. 641; Haskell, p. 1663.)

MR. P. S. DU PONT was an officer and Director in the various companies which were organized after the acquirement of the Du Pont interests and also Treasurer, member of the Board of Directors and of the Executive Committee of the defendant Du Pont Powder Company after its organization. (P. S. Du Pont, Trans., pp. 1951-1952.) He also attended the meetings of the Association, from March, 1902 (Trans., pp. 75-77), to as late as January 1, 1904. (Trans., p. 110.)

MR. A. J. MOXHAM, who came in with the "new management" was President of the Hazard Powder Company and one of the Vice-Presidents, member of the Board of Directors and of the Executive Committee of the defendant Du Pont Powder Company. (Moxham, Trans., p. 1944.) He was also a member of the Association (Trans., pp. 127-128, 132); he attended its meetings regularly, was a member of the Advisory Committee and was very active in its affairs (Haskell, Trans., p. 1671); at the meeting of December 19, 1902, he delivered an address (see Plff's Ex. 22, p. 2539) which marked an epoch in the affairs of the Association and was largely instrumental in bringing about the dissolution of the Association. (Trans., p. 133.)

Third. The smokeless powder industry. Its Development—The organization of the International Smokeless Powder Company, and the acquisition of the actual and legal control thereof by the Du Pont Powder Company.

Prior to the entry of the "new management" and the organization, and the taking over, of the Du Pont interests by the defendant Du Pont Powder Company, smokeless powder was manufactured by the following companies (P. S. Du Pont, pp. 84, 95, 96, 113-116):

1. E. I. Du Pont de Nemours & Co.
2. Laflin & Rand Powder Company.
3. The American E. C. Schultz Powder Company.
4. The California Powder Works.
5. The International Smokeless Powder & Chemical Co.
6. The Du Pont International Powder Company.
7. The King Powder Company.
8. The Robin Hood Powder Company.

By the time the Du Pont Powder Company was organized in 1903, all the interests of all these companies, except the last two, had been brought under the ownership and control of the "new management," and after its organization the ownership and control of all these interests was transferred to it, as already detailed with regard to the acquisition of the black powder and dynamite interests; and this ownership and control was maintained during the entire existence of the plaintiff (Ibid, p. 96).

While the "new management" did not acquire actual legal *ownership* of the King Powder Company, they did in fact have effective *control*, by

reason of the agreement by which all *its output* was sold by the King Mercantile Company, which contract was acquired by the defendant, and which continued in existence until the Spring of 1906. (See supra, pp. 52-53.)

The Robin Hood Company never came under the control of the defendant (P. S. Du Pont, Trans., p. 95, fol. 285).

The International Smokeless Powder and Chemical Company was organized by the "new management." Subsequently the Du Pont International Powder Company was organized to take over and acquire the capital stock of the International Smokeless Powder and Chemical Company (Ibid).

The stock of this latter company was acquired by the defendant Du Pont Powder Company and it has ever since remained in exclusive control of all the smokeless powder manufacturing business in the United States, with the exception of that which was controlled by the Robin Hood. (Ibid; also Moxham, Trans., p. 139; also Haskell, Trans., p. 1649.)

That all commercial smokeless powder was handled by the Du Pont Powder Company is fully established by the testimony of its own employees. Wm. Coyne, its general sales agent, testified that it had always been exclusively handled through the Sales Department of that company. The government or ordnance smokeless powder was sold under special arrangement with the government. (Trans., pp. 382-383, fols. 1146-1147.)

All of the commercial smokeless powder which was sold was obtained from the smokeless powder plants at Carney's Point, Haskell, Oakland and

Parlin, all in New Jersey, and all owned by the Eastern Dynamite Company. There were no other plants manufacturing smokeless powder in the United States during the period from 1903 to 1908 with the exception of that of the American Powder mills near Boston. The plants controlled by the Du Pont Powder Company sold and controlled between 65 and 75% of all grades and kinds of *commercial* smokeless powder, the balance being controlled by the American Powder Mills (Ibid, p. 383).

Fourth. Particular methods and unfair practices used by the members of the Gunpowder Trade Association in the suppression of competition, during its existence, which were adopted and continued after its absorption by the defendant Du Pont Powder Company, and applied effectively to drive plaintiff out of business.

(a) The "Sales Board" as the successor of the "Advisory Committee"—The "Trade Report System".

A Sales Board was established by the Powder Company, which consisted of a Director of Sales, and Assistant Directors of Sales from each district, and a sales auditor. It was under the immediate charge of Mr. Haskell as Vice-President, (Haskell, Trans., pp. 1672-1673; also Patterson, Trans., p. 150). Its duties were to pass upon all matters relating to prices, (Coyne, Trans., p. 385) and the delivery of powder (Ibid.).

It performed the function formerly performed by the "Advisory Committee" of the Gunpowder Trade Association.

Judge Lanning, in the "Government Case" (at 188 Fed., 145), says:

> "After the incorporation of the du Pont Company of 1903, *a sales board* was created. This Board, composed of a director of sales and assistant directors, *coexisted* with the advisory and special committees until June 30, 1904, when the committees *were superseded by the sales board*, which thereafter exercised the power of fixing prices and policies for the corporations that had, by the methods already outlined, been brought together *under one corporate management*. In July, 1904, there was no further need of advisory or special committees, or of the trade association formed under the agreement of July 1, 1896."

In 1892, while Mr. Haskell was connected with the dynamite branch of the explosive business, he originated a system of "Trade Reports", which was afterwards carried by him into the gunpowder industry when he became President of the Laflin & Rand Powder Company in 1895. Later on, when this Company was acquired by the defendant Du Pont Powder Company Mr. Haskell made the system applicable to the entire *consolidated* explosives business of the country. (Haskell, Trans., p. 1723). A "Trade Record Division" was established for their filing and orderly reference, and kept in charge of a manager. (Geo. H. Kerr, Trans., p. 328).

These "Trade Reports" were reports made by salesmen upon the trade of specific customers, giving the details of such information as they were able to obtain concerning his explosives requirements, etc. (Ibid).

A "Competitive Division" was also established by Mr. Haskell for the purpose of carrying on with the branch offices correspondence pertaining to sales matters where the trade had passed from

the Powder Company to a competitor. (Haskell, Trans., p. 1724).

Over 600 of these Reports were filed as Plaintiff's Exhibits in this case, none of which were printed, except those which are found in a Printed Volume of the record in the Government case. (See also Exhibits 74 to 666). They show upon their face various marks and signs which indicate whether the trade is "Competitive" or "partly competitive" or "active" or "inactive." These marks are in various colors, red, blue, etc.

Agents were directed to forward everything of interest that might be *picked up* bearing upon the general situation, even *including gossip and rumor,* and concerning business held by competitors even though they might not have any direct interest in it (See Plaintiff's Exhibit 1146, Trans., p. 2655).

This information was collected at Wilmington and disseminated to the branch offices or to their salesmen. (Waddell, Trans., pp. 804-805; also 945-950).

(b) Fixing lower prices in specific cases—fixing lower prices in competitive localities than in non-competitive.

During the existence of the Gunpowder Trade Association, lower prices were made in competitive districts than in non-competitive districts. This policy was adopted by the defendant Du Pont Powder Company and applied effectively in the territory tributary to the plaintiff's mills.

The prices shown on Plaintiff's Exhibit 1219 (See Trans., p. 2721) are conclusive upon this point. This exhibit was produced by Mr. Coyne, the Director of Sales of the Du Pont Powder

Company and sets forth the yearly average delivered price of explosives in the various districts from the years 1903 to 1908, inclusive. (See Trans., p. 379.)

Before passing to the examination of this exhibit it should be borne in mind that the territory naturally supplied from plaintiff's plant was embraced in the Pittsburg, Cincinnati, St. Louis and Chicago districts described thereon. It should also be borne in mind that "B. Blasting" indicates black blasting powder—the article manufactured by plaintiff.

It will be observed that in those districts where competition did not prevail—such as Marquette, Boston, New York, San Francisco, Nashville, Birmingham, Denver, Duluth—the prices obtained by the Du Pont company, were much above those obtained at the same time and under the same general conditions in the districts reached from plaintiff's plant.

In Philadelphia, Hazelton, Huntington, and Scranton Districts, there was, during this same period, competition with other companies—particularly the Rockdale Powder Company, with its plant located in Maryland, and engaged in the manufacture of powder *and dynamite*—which accounts for the lower prices which prevailed there.

This contest was similar in many respects to that used to drive the plaintiff out of business. Mr. Haskell, at a meeting between the representatives of the Rockdale Company and the officers of the Du Pont Company, openly stated to Mr. Koller, Manager of the Rockdale Company, that it was a case of the "survival of the fittest," and that the fight would be carried to a finish (see Trans., pp. 286-287).

Aside from this table the evidence was beyond dispute, that in May, 1905, the Du Pont Company made a general cut in the price of "B. Blasting" in plaintiff's territory, to 95 cents per keg, and that this price was maintained by that company until the fall of 1907—by which time plaintiff had lost nearly all of its customers and had practically ceased to do any business. (Haskell, Trans., p. 1717, fol. 5151; Patterson, Trans., p. 165, folio 493; Brewster, 2389-2390.)

Two other exhibits in the record show how and why this 95-cent price was made and maintained. One of these is the "Brewster Report" (Exhibit 1437, Trans., pp. 2940-2949); and the other is the "95-cent Price List" (Exhibit 1348, Trans., pp. 2734-2744.).

(A) The Brewster Report.

The "Brewster Report" was very conclusive on the point.

Mr. David S. Brewster testified that he was employed by the Du Pont Company in the "competitive division" of the Sales Department, in 1904-1905. That in the Spring of 1905, in obedience to orders given to him by Mr. Haskell, he made a report from the records of his office as to the prices that were being obtained by competitors of the Du Pont Company, in black blasting powder and dynamite, in the Central District of the United States; that this report was made for the purpose of submitting it to the Executive Board; that he completed it in the forepart of May, 1905, and turned it over to Mr. Bumstead, the head of his division (see Trans., pp. 2377-2379); that shortly afterwards a telegram was sent out from the Wilmington office to the general agent at Chicago authorizing a general 95-cent price (see Trans., p. 2381): that Mr. Bumstead told him that *this price*

was low enough to get the business (Ibid. p. 2402 fol. 7206); that the data which he examined in his possession at that time, concerning the prices the plaintiff was making, showed that "the prices that the Buckeye Powder Company were getting at that time, according to the report based on the information furnished by the salesmen, indicated that the Buckeye Powder Company were *getting a bigger price than the Du Pont people*"; the prices being, as he remembered, $1.15 and $1.20 per keg. (Ibid, p. 2383, fol. 7148.)

A document was subsequently produced from the files of the Du Pont Company, upon demand of plaintiff, which was said to be the report referred to by Mr. Brewster and it shows that the prices obtained by the Buckeye Powder Company at that time were as follows: In Kentucky, $1.25 to $1.50 per keg; in St. Louis district, $1.10 to $1.25 except one customer at 95 cents; in Wyoming, $1.65; in Iowa, $1.10 to $1.25; in Ohio, $1.05 to $1.25; in Missouri, $1.25 to $1.60; in Illinois, $1.00 to $1.35. (See Plaintiff's Exhibit 1437, pp. 2940-2949.)

(B) The "95-Cent Price List."

The "95-cent price list," is a list of consumers of black blasting powder in the Cincinnati, Chicago and St. Louis districts, to whom a price of 95 cents per keg was made by the authority of the Sales Board of the Du Pont Powder Company. (See Plaintiff's Exhibit 1248, Trans., p. 2735.)

These authorizations covered the States of Ohio, Indiana, Illinois, Kentucky, Missouri and Kansas (Coyne, p. 1599.)

The first authorization was made on May 5, 1905—which supports Mr. Brewster's testimony

—and the last on October 8, 1907 just six days before the issuance of the first price list, advancing the price in the same districts ten cents per keg.

There were a total of 445 authorizations to sell at 95 cents. The Du Pont Company succeeded in selling as a result of 154 of the authorizations. (Coyne, Trans., p. 1602.)

The foregoing evidence enables one to understand what Judge Lanning meant when he stated in the opinion in the Government Case that (188 Fed., p. 145).

> "This policy of fixing prices in particular cases, affecting particular localities, was one which the independent manufacturers of explosives could not easily cope with."

(c) Advancing prices after each contest was ended.—The first regular price lists.

It was the uniform policy and practice of the Associate Companies during the life of the Association to immediately raise prices after each contest had ended by the absorption of the independent companies. In 1886, after the close of a contest with the King and Ohio Companies, when the first pool was formed, the price of rifle powder jumped from $2.25 per keg to $4.00; and the blasting from 80 cents to $1.50. In 1896, after the close of the contest with the Equitable, Phoenix and Chattanooga Companies, the price on rifle was advanced from $3.00 to $5.00, and on blasting from 90 cents to $1.25. (Trans., p. 742.) After the close of the contest with the Indiana Powder Company, price of blasting powder was advanced from 90 cents to $1.25, and in December, 1902, it was again advanced ten cents per keg in the territory occupied by the Indiana Powder Company. (Ibid, p. 740.)

This policy was applied to the plaintiff. By the Fall of 1907 the plaintiff had been practically driven out of business. Its trade had sunk so low as to be of no consequence. Mr. Haskell testified that the defendants had ceased to give any further attention to its quotations. (See Trans., p. 1938, folio 5812.)

The defendants proceeded to take the step which had uniformly been taken at the end of every contest, namely, it *raised* its prices.

No regular, open price list was ever issued by any one in the powder trade during its entire history until the Du Pont Powder Company issued the first one in the Fall of 1907. (Patterson, Trans., p. 152; also Coyne, Trans., p. 381.)

Price List No. 1 was issued October 14, 1907.

It increased the price of blasting powder ten cents per keg—from 95 cents to $1.05 in the Illinois district. (See Plaintiff's Exhibit 1119, not printed in record.)

At the same time the first price list for High Explosives (dynamite, etc.) was issued. (See Plaintiff's Exhibit 1120, not printed in record.)

Price List No. 2 was issued about two weeks later, on Dec. 1, 1907, increasing the price of blasting powder 5 cents per keg—from $1.05 to $1.10. (See Plaintiff's Exhibit 1118, not printed in record.)

Price List No. 3 was issued about seven months later, on July 10, 1908, increasing the price of blasting powder another 5 cents per keg—from $1.10 to $1.15. (See Plaintiff's Exhibit 1117, not printed in record.) This price list obtained until 1912 when No. 4 was issued.

(d) Tying-up the trade by a system of contracts.

Black blasting powder has always been mainly used in coal mining operations. The custom is for the owner or operator of the mine to buy the powder in large quantities, and resell it to the miner, a keg at a time as he may need it. The miner is therefore the real consumer. The owner buys from the manufacturer as cheaply as he can and the miner pays him a substantial profit. In Illinois, for example, by agreement between the mine owners and the miner's association, the miners paid $1.75 per keg for powder which the evidence shows, cost the owner 90 cents to $1.25 per keg. The owner is merely a jobber—buying and selling at a profit. The powder company is the wholesaler and the mine owner is the retailer. His situation, under the law, is not different from a jobber in cameras or in shoes.

On June 10th, 1917, the Gunpowder Trade Association began the development of a system of tying up the trade in explosives by inducing each mine owner to enter into a contract with the respective member of the association to whom his trade had been alloted or apportioned. for the purchase of all the requirements of his mine, for a period of from two to five years, in consideration of a rebate of from five to fifteen cents per keg, which was calculated on a sliding scale according to the number of kegs annually consumed at his mines.

These contracts could be made only upon the authority of the governing body of the Association, and were confidential.

> "The terms and conditions as well as the existence of this contract to be confidential." (See Trans., p. 542, folio 1626; p. 544, folio 1631.)

Rebates on outstanding contracts were often *increased* in those cases where there was competition or danger of competition from sources outside of the association, or where for any reason it became necessary to make a reduction in price to the mine owner.

Many instances of increase of rebates are recorded in the minutes of the association (see for example, Trans., 2824-2825).

The purpose and policy of the Contract System was to tie up the trade so that competition would at least be discouraged and rendered difficult if not impossible.

Mr. Moxham in his Speech before the Gunpowder Trade Association in 1902 makes this clear when he says:

> "It has been the general policy to cover the *future demand* by contracting for as lengthy a period as possible." (See Plaintiff's Exhibit 22, p. 2539, fol. 7616.)

As soon as the Association authorized the making of contracts the agents of the various members were instructed to encourage their customers to enter into contracts. The system was followed with such success that in 1902 about one-fourth of the *entire trade* in the United States was under contract. (See Trans., p. 1235, fol. 3705.)

The contracts were distributed among the members of the Association on December 19, 1902, (See Plaintiff's Exhibit 22, Trans., p. 2549.):

	No. kegs under Contract
Du Pont Co.	985,864
Hazard Company	237,013
Laflin & Rand	241,960
Equitable Co.	86,399

Oriental Co.	33,105
Ohio Company	2,775
Miami Company	121,615
King Company	104,040
American Company	2,575
Chattanooga Co.	143,262
Austin Company	42,287
Phoenix Company	40,081
Sycamore Company	19,550
Indiana Company	358,414
Northwestern Co.	23,040
Total	2,441,970

ADOPTION OF THE SYSTEM BY THE DEFENDANT DU PONT POWDER COMPANY AFTER ITS ACQUIRED LEGAL OWNERSHIP AND CONTROL OF THE ASSOCIATION MEMBERS.

The defendant acquired all the contracts that were in existence at the time that it acquired, took over and absorbed the following members of the Association: E. I. Du Pont de Nemours & Company, Sycamore Powder Mills, Hazard Powder Company, Laflin & Rand Powder Company, Schaghticoke Powder Company, Oriental Powder Company, Ohio Powder Company, Marcellus Powder Company, Lake Superior Powder Company, Chattanooga Powder Company, Southern Powder Company, Phoenix Powder Company. (See Haskell, p. 1695, fol. 5085.)

Mr. T. C. Du Pont, President, testified that when he came into the powder business in 1902 he found that it was a custom to have contracts for powder, and he "adopted" it (Trans., p. 1909, fol. 5725):

"The contract system was there when I got in the powder business.

"Q. And you followed the system which

was in existence at that time? A. Yes, sir. So far as I know there was no change made in it."

Mr. Barksdale, Vice-President, testified as follows (Trans., p. 1915, fol. 5743):

"Q. The same method of contracting for explosives, either *dynamite* or blasting powder, that prevailed prior to the time when you became associated with the Powder Company has continued since? A. Yes, sir.

"Q. The same thing? A. Yes, sir."

Mr. Moxham, Vice-President, testified to the same effect. (See Trans., p. 1951, fol. 5852.)

The co-operative policies of the members of the Association were continued long after it was formally dissolved or abandoned in June, 1904, through this System of Contracts and rebates. These contracts were continuous, running on for a term of years, without interference; and the Miami, the Equitable, the Austin, and the others that were not absorbed by the Du Pont Company, *retained the contracts* which had been awarded to them as a part of the system while members of the Association, and these contracts and the rights acquired by these companies in them continued to be respected long after the Association had ceased. So that while the meetings of the Association may have been discontinued, when they were no longer necessary, the co-operation under the Contract System continued on. (See Trans., pp. 1208-1209.)

In the contests which prevailed from time to time, the business of the customer was first obtained by cutting prices to a point so low that powder could not be made and sold at a profit. The competitor then retired from the contest. Thereupon, to make sure of its advantage, it proceeded to *tie up* the customer by inducing him to enter into a contract, for a period sufficiently

long to discourage the competitor from again seeking his trade.

Plaintiff's Exhibit 1248 (Trans., p. 2735) known as the "95-cent Price List" (just discussed at pp. 92-93, supra) furnishes good evidence of this practice.

The list itself shows that 86 contracts were made by the Du Pont Company at 95 cents, so that that company secured the business of those particular consumers for several years as a result of the price. The evidence shows that the powder could not be made and sold at a profit at 95 cents. This evidence is fully discussed below under Point VIII. (See Infra p. 181.)

Contract System Employed to Tie Up the Trade in the District Reached by Plaintiff.

The Contract System was first applied effectively to drive a competitor out of business in the case of the Indiana Powder Company during the contest which was carried on between that company and the Association from 1897 to 1901. The testimony shows that the trade in the district where the Indiana Powder Company operated was induced to enter into contracts wherever it was possible. (See Testimony R. S. Waddell, pp. 732-733.)

In the case of the Indiana Powder Company it did not *begin* contracting the trade, until after that company had already become powerful by having itself made contracts with the important trade in its district. But in the case of the plaintiff, the Association began contracting the trade in the territory tributary to plaintiff's plant, just as soon as it became known that this competitor was to enter the field.

The plaintiff was incorporated on the 28th day of January, 1903. Its plant was under construc-

tion in May, 1903. It began business in September, 1903.

At the meeting of the Advisory Committee of the Gunpowder Trade Association held on the 27th day of May, 1903, the associate companies were authorized to make a large number of contracts in the district reached from plaintiff's plant, and the E. I. du Pont de Nemours & Co. (the 1902 Du Pont Corporation organized by the "new management") was authorized to make or renew contracts, and to increase rebates and make special prices to a large list of consumers of black blasting powder in the *immediate vicinity* of plaintiff's mills (see Ex. 1348, pp. 2822-2826).

At the meetings of the Special Committee of the Association held in June and July, 1903, further contracts were authorized to be made in the same district (see Ex. 1349, Trans., p. 2837).

That this authorization was carried into effect is shown by Plaintiff's Exhibit 1143 (Trans., p. 2708), known as the "Rice List," which contains a list of 97 customers in the *immediate vicinity* of plaintiff's mills, with whom contracts were made by *the Du Pont Company alone* in 1903 and 1904 —to say nothing of those which were made by the Hazard, the Laflin & Rand, the Oriental, and the various other companies which were members of the Association, though the legal control over them had been at the time actually acquired by the defendants.

Mr. Rice, himself, who was the agent for the Du Pont Company in the Chicago district during this period, testified that **every coal operator in the State of Illinois who consumed 1,200 kegs or more was under contract** (See Trans., p. 1850, fol.

5550), and that the larger part of the trade in black blasting powder in that district was covered by contracts. (See Trans., p. 1857, fols. 5570-5571.)

Mr. Waddell testified that that trade was no more accessible to the plaintiff than if its plant were located in Europe. (Trans., p. 1208, fol. 3623.)

J. G. Miller, who sold the product of the mills of plaintiff on a net price basis, from 1904 until it went out of business in September, 1908, testified that he travelled through Illinois, Iowa, Minnesota, Kansas and Missouri and solicited business the same as when he was in the employ of the Laflin & Rand Company; that he called on customer after customer and was informed that he could do no business with him because he was under contract (Trans., pp. 305-306). He gives the names of a large number of other concerns, of whom he obtained their trade for the plaintiff, and whose trade he afterwards lost (see Trans., p. 315), but he was not permitted to state the reasons given by these customers for not continuing to do business with him, which forms the subject of an Assignment of Error No. 17 and fully discussed under Point XI (infra, p. 249).

The effect of the Contract System upon the business of the plaintiff is also shown by the large number of depositions taken by the defendants. These depositions were taken as the result of the Answer to the demand for a Bill of Particulars, wherein plaintiff furnished a list of the names and addresses of a large number of its customers who were induced by the various unlawful acts of the defendants to abandon it. In order to disprove this claim the defendants took

the depositions of about 100 of these persons. Many of them were of small producers whose output was less than 1,200 kegs per year, and who were therefore not in the class whose trade was subject to contract. Of those who were in the class entitled to contract, almost every one of them was under contract during nearly all of the period plaintiff was in business. It is true that these witnesses did not always give the existence of these contracts as their reason for not doing business with plaintiff, but the fact remains that they were under contract and that they felt bound thereby legally and morally and by self-interest.

As an aid to the Contract System—or rather to supplement it and as an aid in tieing up the trade—was another system known as the "Special Price System."

Where a consumer could not be induced to enter into a contract, application would be made to the Association for permission to make him a special price of 5, 10, 15 or 20 cents less than schedule price (Waddell, Trans., p. 733, fol. 2199). This right was given to some particular member of the Association, as for example, to the Hazard Powder Company, and no other powder company was permitted to enter into competition for such trade. (See R. S. Waddell, Trans., p. 1238, fol. 3714.)

The minutes of the Association in evidence show many instances in which special prices were authorized. (See, for example, Plaintiff's Exhibits 1348, 1349, printed at Trans., pp. 2821 to 2889.)

The practice was also followed by the Du Pont Powder Company after it succeeded the Association. See the "Rice List" furnished by its Chicago

agent. (Plaintiff's Exhibit 1143, Trans., p. 2708, fols. 8123, 8129, 8133, 8150.)

It is also shown by the fact that of the 445 specific authorizations of a 95-cent price which was made by the Sales Board of the Du Pont Company, as shown by the "95-cent Price List," none of these included customers who were already *under contract.* By the *terms* of many of these contracts, such customers were guaranteed the benefit of any *less* price which might be made during the life of the contract. These reductions to existing customers were not required to be specially authorized by the Sales Board.

The minutes of the Gunpowder Trade Association of June 10, 1897, which was the date of the beginning of the Contract System, recite that, "Any principal may guarantee contract customers against decline in prices" (see Trans., p. 1686, fol. 5056). See also as an example of a contract containing such guaranty, and as evidence that this practice was adopted by the Du Pont Powder Company, the contract printed in the Transcript on page 2619, as Plaintiff's Exhibit 1027. This contract was made between the Explosives Supplies Company (one of the subsidiaries of the Du Pont Company) and the Western Coal & Mining Company. Subdivision (h) at folio 7863 contains the following:

> "In case parties of the first part reduce their price to any company, corporation or individual in the State of Missouri (except to points on west bank of the Mississippi River, which take Illinois price), Arkansas, Kansas or Indian Territory, below the price named herein for each of these states, parties of the first part guarantee to parties of the second part a like reduction in price for

similar deliveries so long as they make such reduced prices and in such quantities."

(e) Trading and exchanging contract customers—the rule of "equities."

The policy was followed of recognizing the existing trade of each member, and it was divided up for the future upon a so-called "equitable" basis so as to avoid the possibility of conflicting interests, and thereby weaken the influence and endanger the stability of the Association. This practice became very general and the interests so set off and treated were described as "equities."

Mr. Haskell best describes the practice as follows (see Trans., pp. 1735, 1736):

> "It was generally not possible that more than one concern could make a contract with a given individual buyer, and it was arranged that if a particular concern was permitted to make a contract, if another concern had sold that same buyer powder during the test period, that an effort should be made to get that buyer to use that amount which that other concern would be entitled to sell. Failing in that, equities were exchanged so a given concern might trade an equity in one trade for an equity in another trade and make a contract which would cover all the equities of the case."

The practical workings of the rule is thus described by Mr. Waddell (Trans., p. 719): The coal trade of the Pocohantas field at Bramwell, West Virginia, consisting of about forty coal companies, was divided between the King, Hazard, Du Pont and Laflin & Rand Company in the following manner:

> "The rule of the association fixed and determined what company should have the con-

tracts—any contract. We would apply to the powder company, the principal that we represented—with a statement of the number of kegs that we had supplied a given customer during the previous two years, with the price that we had charged for it and made application for permission to contract with that customer. I applied at Cincinnati while agent there for the Hazard and Du Pont Company for permission to contract with all of those companies in that list. The King Company did the same, and we conflicted. Under the rule, the King Company having secured part of the Hazard customers and a part of the Du Pont customers would be entitled to an equity in their trade, so that we were mixed up with equities when we came to make the first contract, and by agreement between the Hazard—between myself representing the Hazard and Du Pont Company, and Mr. O. E. Peters representing the King Company, we offset our equities in the trade of these coal companies. That is, I would trade my equities in one of his customers with him for his equity in the trade of the others, so that we separated the trade and made certain customers Du Pont contracts and certain other Hazard contracts, and the others were King. And in the district we found one Laflin & Rand customer and they took over that contract."

(f) "Respecting" the contract trade.

The trade of the members of the Association was "respected" by all other members. In other words, an *appearance* of competition was kept up between them; and this practice was continued by the Du Pont Company after it acquired the physical properties of the various members and after the "dissolution."

When a contract was once made with a customer by one of the members of the Association,

that contract was respected permanently after that period and that particular associate was permitted to make renewals of that particular contract from time to time; and was authorized to make whatever prices were necessary to continue to hold that trade (Haskell, Trans., p. 1734, fol. 5202; also p. 1736, fol. 5207).

Instances of how this policy was made effective in particular cases appear in the minutes of the Association. (See Trans., pp. 1011, 1012; also pp. 1740-1743; also pp. 1747-1748.)

Mr. Waddell testified that he came in contact with it frequently. He said he never had but one competitor for trade of a given customer and that competitor was the powder company to whom that customer's trade was *originally* assigned and contracted by the Powder Association. Once a Du Pont customer, always a Du Pont customer, and none of the associate companies ever afterward competed with that company for *that* trade (see Trans., pp. 813-815).

(g) **The legal effect of the Contract System as employed by the Defendants was to prevent Competition and restrain Trade.**

These contracts were numerous; they were identical or nearly identical in their terms; they embraced the greater part of the more important mine owners in the territory reached from plaintiff's plant; and while the mine owner did not agree in terms not to use or deal in the commodities of competitors, the rebates constituted sufficient inducement for the mine owner to give all his trade to the Du Pont Company. Both parties understood that they were intended to secure the exclusive trade, and each acted upon this understanding.

The testimony of many of the witnesses, showed that they regarded these contracts as lawful and binding, and imposing upon them the obligation to deal exclusively with the powder company.

Therefore, the case comes within the rule laid down by Judge Lurton in *John D. Park & Sons vs. Hartman,* 153 Fed., 24, 41, and approved and followed by this Court in *Miles vs. Park,* 220 U. S., 373. Judge Lurton said:

> "In the first place, we are to consider that we are not here dealing with a single contract. The complainant has made a multitude of them in identical terms, and the opposite parties comprehend, according to his bill, a large majority of the wholesale and retail druggists in the United States. *The reasons which might uphold covenants restricting the liberty of a single buyer might prove quite inadequate where there are a multitude of identical agreements.* The single covenant might in no way affect the public interest, when a large number might. So, also, the question as to whether the restraint was necessary to the retained business, and, therefore, ancillary to the principal purpose of the agreement, or whether the restraining covenants were not the principal rather than the ancillary matter, would largely depend upon the general sweep and result of a multiplication of identical contracts. The general purpose of each separate contract is the regulation of the prices and sales of the line of preparations made by complainant. *A common purpose unites each covenantee to every other and the 'system' is to be construed as 'one piece,' in which the complainant and every assenting dealer, whether wholesaler or retailer, is a party,* and the agreement of each such covenantee to sell only at the prices dictated by the manufac-

turer *constitutes one general scheme.* The question here is, therefore, one of a totally different character from that which would arise if the question was the more simple one presented by a breach by a single covenantee. In *Continental Wall Paper Co. v. Voight & Sons Co.* (C. C. A.), 148 Fed., 939, where was involved a combination in restraint of trade, and where each wholesaler and retailer in the business had executed separate, but identical contracts with the corporation representing the combined manufacturers, we held that each such separate covenantee was *a party to the general scheme for enhancing prices.* This was rested upon the holding that the several agreements constituted one whole. See, also observations of Judge Taft in *United States v. Addyston Pipe Co.*, 85 Fed., 275, and of Justice Peckham in *Montague v. Lowry*, 193 U. S., 38, 45, 46.

"A general system of contracts, such as that which the complainant seeks to enforce, and which the bill avers is a method generally adopted in his line of business, involves very different questions from those which arise when a single contract only is involved and when the action is between the contracting parties for a breach, as was the case in *Garst v. Harris*, 177 Mass., 72; 58 N. E., 174, and *Elliman v. Carrington*, L. R. 1901, 2 Ch. Div., 275."

In *U. S. Telephone Company vs. Central Union Telephone Company*, 202 Fed., 66, 71.

"A *general system* of contracts may be obnoxious to an anti-trust law, though the individual contract would not be."

Contracts which provide for the giving of rebates when the object in so doing is to secure the exclusive trade of another have been held invalid in *Dennehy vs. McNulty*, 86 Fed., 825. A con-

tract in the form of a rebate certificate which was a promise on the part of a distilling company to refund at the end of six months, a certain sum per gallon on all purchases made during that period, was held to be in violation of law and unenforceable because tending to create a monopoly.

The common law rule relative to rebating was enacted into statute by Congress in the Clayton law. It was provided, by Section 3, that it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods or fix a price charged therefor, through discount from, or rebate upon, such price, on the condition, agreemnt or understanding that the lessee or purchaser thereof shall not use or deal in the goods of a competitor, where the effect is to substantially lessen competition or tend to create a monopoly.

POINT II.

It was error for the Trial Court to instruct the jury that there was no evidence to the effect that the defendants exercised any influence over the affairs of the Equitable and Austin Powder Companies, or to the effect that they knew anything about, or had anything to do with the purchase of plaintiff's plant by Mr. Olin and Mr. Lent.

Akin to the subject just discussed, in so far as it relates to the affiliation and co-operation between *nominally* separate interests, but which were in reality acting *in combination* to control the explosives trade, are the questions, involved in Assignments 10 and 11 as follows:

ASSIGNMENT No. 10: The Court instructed the jury as follows (see Trans., p. 3203, fol. 9609):

> "There is *no* evidence to the effect that the defendants or any of them exercised *any control at any time* over the affairs of the Equitable Powder Company or the Austin Powder Company by virtue of any stock that they have held in those corporations, and therefore you must not consider any claim to the effect that they had exercised such control."

ASSIGNMENT No. 11: The Court also instructed the jury as follows (Trans. p. 3204, fol. 9610):

> "There is *no* evidence showing that any of the defendants knew or had anything whatever to do with the purchase of the Buckeye Powder plant and property by Mr. Olin and his associates, and therefore you must not consider the fact of such purchase as tending to establish any combination or conspiracy or other conduct prohibited by the Sherman Act."

While these two assignments will be argued together, the first is more far-reaching than the second, in that it includes the second, and also raises the question whether the Equitable Powder Company and the Austin Powder Company continued to act *in combination* as co-conspirators with the defendant Du Pont Powder Company, after it had absorbed and succeeded the Gunpowder Trade Association.

Allegations of the Declaration.

Briefly stated the plaintiff alleged in the declaration that, being unable to withstand the great and continuing losses forced upon it by reason of the unlawful acts of the Defendants, it was finally compelled to offer its mills, plant and business for sale; that the methods employed by the Defendants and their co-con-

spirators against the Plaintiff had become generally known as the methods that had long been similarly employed against other manufacturers and vendors of powder who had attempted to operate independently of the defendants, and who had been unable to survive the combined assaults of the defendants and their co-conspirators, and for this reason there was no general market for such property except among the defendants and their co-conspirators, and among investors who had been accustomed to invest only in such properties as were operated or controlled by them; that plaintiff, not being able to find a purchaser, finally solicited the defendants and some of their co-conspirators to purchase its mills and plant at its fair and reasonable value, and in order to avoid a total and irretrievable loss of the entire value of said properties, was forced to accept any offer that it might be able to obtain therefor without regard to its true and fair value; that on or about the 19th day of September, 1908, plaintiff sold its entire plant, mills, business and good will for the sum of $70,000 to one Franklin W. Olin; that Mr. Olin purchased it *at the instance* of the defendant the Du Pont Powder Company, by reason of a contract which he made with the said defendant whereby it agreed to purchase 95 per cent. of the *future output* of said mills and plant for a long period of time; that immediately after Mr. Olin purchased said properties, he organized a corporation known as the Western Powder Manufacturing Company and thereupon transferred these properties to it, and that the output of these mills was allotted to the defendant Du Pont Company and its associates; that at the time of the purchase, Mr. Olin was the President of the Equitable Powder Manufacturing

Company and that 49 per cent of the stock of said Company was then and is now held by the Du Pont Company; that immediately after said purchase and transfer, the said mills and plant began operating to their full capacity and have so continued to the present time, and that its business at once became very profitable, and that the entire output has ever since been disposed of at its fair value.

Plaintiff alleged that the true value of the plant, mills, business and good will was the sum of $500,000 and claims damages for the difference between said value and the price at which it was compelled to sell the same.

The Contention of the Parties and the Evidence in Support of Plaintiff's Allegations.

The harmful effect of the two instructions now under consideration was far-reaching among other issues of the case, because—

(a) They negatived plaintiff's contention that these two companies *continued to act in combination with and as the co-conspirators* of the Du Pont Powder Company to control the trade in explosives, after the absorption of the Gunpowder Trade Association by that Company; and

(b) They also negatived plaintiff's contention that after its business had been destroyed by this combination and conspiracy, Mr. Olin and Mr. Lent purchased its plant as a part of the plan to suppress competition; and

(c) They supported the contention of the defendants—and one which they vigorously pressed throughout the trial—that they themselves were in *active competition with these two companies* and that whatever they did in a competitive way —such as making prices, etc.—was intended to be

directed against these two defendants as well as its other "competitors," and was, therefore, only incidental in its effect on the plaintiff.

This latter contention not only impressed itself upon the Trial Court but on the Court of Appeals (Trans. p. 3185, folio 9555). It says:

> "To refute the charge that the defendants had oppressively and illegally lowered prices, *evidence was offered* that during the period in question there was much *independent competition*, led by the plaintiff itself, and that this competition was the prevailing, if not the sole, factor in lowering prices. There *was also evidence* that the Du Pont Company's hold on the trade continually diminished during the whole period of the suit."

But the evidence upon which the Court below bases the above conclusions was in dispute and was the very evidence that the Trial Court took away from the jury so far as the Equitable and the Austin Powder Companies were concerned.

The respective contentions of the parties centered about Exhibits 1126 and 1127 (Trans. pp. 2704-2707) which was prepared by Du Pont Company officials and vouched for by Mr. Coyne, its general sales agent. They purported to show what the capacity and output was of the Du Pont *owned* plants, in contrast with that of *all other plants*, which were denominated as "competitors." According to this theory the Du Pont plants had a total capacity for the year 1904, of 8,250,000 kegs; and that of the so-called "competitors" for the same year was 4,005,000 kegs.

Included among the "competitors" were the following companies—all of whom were members of the "Gunpowder Trade Association." The first one was Mr. Lent's Company—in which the

Du Pont Company owned 33% of its stock; the second and third were Mr. Olin's Companies—in which the Du Pont Company owned 49% of the stock; the entire output of the fourth was controlled by the Du Pont Company as its selling agent under a 25-year contract (Supra pp. 52-53), **and the fifth and sixth, were the "Fay Companies" which were bound to the Du Pont interests by the "Haskell-Fay" Agreements** (Supra pp. 68-71):

1.	Austin Powder Company,	480,000 kegs.
2.	Equitable Powder Company,	300,000 kegs.
3.	Egyptian Powder Company,	247,000 kegs.
4.	King Powder Company,	420,000 kegs.
5.	American Powder Company,	90,000 kegs.
6.	Miami Powder Company,	480,000 kegs.
	Total,	2,017,000 kegs.

Adding this to the 8,250,000 kegs of the Du Pont owned plants, and we have a total of 10,267,000 kegs per annum controlled by the defendants and their *co-conspirators*.

Mr. Coyne exerted all his ingenuity as an astute witness to uphold the theory of the above Exhibits; but succeeded in making it more certain that there was no real competition from any of these companies. (Trans., pp. 412-424.)

At any rate all this evidence was disputed, and as such it should have gone to the jury; and neither the Trial Court nor the Court of Appeals had any right to determine the issue.

The evidence in the record in support of the foregoing allegations will be considered under three heads:

FIRST: What transpired in the Gunpowder Trade Association and after it was succeeded by

the defendant Du Pont Company up to the sale of plaintiff's plant as evidence of the control which the Du Pont Company exercised over the affairs of the Equitable and Austin Companies, and in combination with them; and

SECOND: What transpired *after* the sale of plaintiff's plant as evidence of the knowledge and interest which the Du Pont Company had in the purchase; and

THIRD: The only just and legal conclusion to be drawn from the evidence.

I. What transpired before the sale as evidence of knowledge and interest which the Du Pont Company had in the transaction.

(a) Evidence of the continuation of the combination between these interests to control the explosives trade, after the dissolution of the Trade Association.

It is *undisputed* that the Equitable Powder Company was organized in 1891 (Trans., p. 574, fol. 1720); that Mr. Olin was its founder and has always owned or controlled 51 per cent of its stock (Trans., p. 597); that it operated independently, or *outside* of the Gunpowder Trade Association until 1896, when it became a member of said Association (Trans., p. 574, fol. 1722); that at this same time, the Du Pont interests acquired 49 per cent. of its capital stock and have retained it ever since (Trans., pp. 589-590, fols. 1767-1768); that immediately afterwards (that is, "early in 1907,") the Equitable Powder Company acquired the stock of the Egyptian Powder Company (Trans., p. 595, fol. 1783); that in 1907, the Equitable Powder Company acquired 30 per cent. of the stock of the United States Powder Com-

pany (Trans., p. 595). All the foregoing is shown by the testimony of Mr. Olin himself. He adds, however, that he conducted all the negotiations himself and did not disclose his purpose to buy the Egyptian Company, or the United States Company to anyone connected with the Du Pont Company, but carried on the negotiations therefor in secret. The Du Pont Company, through its ownership of the 49 per cent. of the stock of the Equitable Company, nevertheless participated in the purchase and received the direct benefits thereof, as stockholders, and the indirect benefit by the removal of these competing companies from the competitive field; and there is no intimation that it ever opposed these purchases. On the other hand he testifies that they have sometimes sent him a proxy to vote their stock, and that while there had sometimes been a diversity of opinion between them, he could not recall a single instance in which there had been such a diversity as to cause them to vote one way and he another (Trans., pp. 604-605).

While Mr. Haskell agrees with Mr. Olin to the extent that the Du Pont Company has not exercised any influence or control over the *managerial* policy of the Equitable—that is its selling policy—he makes it clear that he has not been a mere dummy director, and very significantly contradicts Mr. Olin when he says (see Trans., p. 1933):

> "I as a member of the Board of Directors of the Equitable Company, have attended the meetings, discussed questions of *acquisition of property*, and the other *physical* matters pertaining to the operation of the plant."

Mr. Haskell also said that, as a member of the

Board of Directors of the Equitable, he was conversant with what Mr. Olin was doing concerning the purchase of the Egyptian Company and the United States Powder Company, at the time he did it (Trans., p. 1798, fol. 5394).

It is *undisputed* that the next step taken by Mr. Olin in the acquisition of competing interests was the purchase of plaintiff's plant in 1908. In this step he was joined by Mr. Lent and thereby the Austin Powder Company was brought into closer affiliation with the Olin interests. They organized the Western Powder Company as an operating company; but the ownership of the plant soon passed to Mr. Olin's other company, the Egyptian Powder Company (Trans., p. 586, fol. 1758). The acquisition of these various companies placed Mr. Olin (with his 51 per cent. in the Equitable Company), and Mr. Lent (with his 67 per cent. in the Austin Company), and the Du Pont Company (with its 49 per cent. in the Equitable and 33 per cent. in the Austin) in possession of six separate explosives plants located in Illinois, Arkansas, Indiana and Ohio, viz. (pp. 586-587):

The Equitable Powder Company, two.
The Egyptian Powder Company, one.
The United States Powder Company, one.
The Western Powder Company, one.
The Austin Powder Company, one.

And in addition to these is the Western *Cartridge* Company controlled by Mr. Olin, but in which the Du Pont Company holds preferred stock (Trans., p. 587, fol. 1789).

It is *undisputed* that Mr. Waddell began in the Fall of 1907 to make efforts to find a purchaser for his plant, and negotiated with various

persons and interests without success; and that in the Spring of 1908, in his search for a buyer he began negotiations with Mr. Olin for its purchase, and on September 19, 1908, these negotiations culminated in the sale and transfer of the plant to him. (Trans., p. 1982, folio 5946.)

It is *undisputed* that the interests represented by Mr. Olin and Mr. Lent were not only affiliated with the Du Pont Company at the time when the plant of the plaintiff was purchased by Mr. Olin, namely, September 18th, 1908, but they had been so affiliated from the time of the organization of the Gunpowder Trade Association down to the time when the Association was dissolved in June, 1904, and even as late as November 11, 1905, when the Equitable was remitting to the American Chairman on account of the European Agreement (See Trans., p. 578, folio 1732, also p. 582).

Mr. Olin and Mr. Lent as members of the Gunpowder Trade Association had been active in conducting its affairs and were well known to be loyal and earnest in support of the policies sought to be carried out for monopolizing the trade in explosives.

Mr. Lent was Secretary of the Association and Mr. Olin was a member of its Executive Committee, and of special committees; and the record shows that both these gentlemen were present at most of the meetings, and influential in participation in its affairs.

It is *undisputed* that the Equitable, the Egyptian, the United States, the Austin Powder Company, and all other alleged competitors of the Du Pont Company, after the issuance of the first price list, *advanced* their prices to the same rate, and only in exceptional cases have they since departed therefrom (Haskell, Trans., p. 1942, fol.

5826; Coyne, Trans., pp. 381-382), which was a very strong circumstance justifying the jury in drawing the inference that there was a combination between these interests to monopolize the explosives trade.

Mr. Olin is an inventor or designer and manufacturer of powder-making machinery and the Du Pont Company has always been a large user of his machinery in its various mills. (Olin, p. 2011, fol. 6032.) It is in evidence that as a part of its policy to control the explosive trade, it has entered into contracts with various manufacturers of powder-making machinery for the exclusive use of their machinery. (See Test. of Jacob Schoemehl, Trans., pp. 777-787; R. S. Waddell, pp. 766-768, 788.) See contract with Indiana Powder Company owned by the Du Pont Company (Trans., pp. 779-781.)

(*b*) *The agreement to take a large part of the output as an inducing motive for Olin and Lent to purchase plaintiff's plant.*

It is also *undisputed* that the following correspondence passed between the Du Pont Powder Company by Mr. Patterson its Vice-President, and Mr. Olin. (See Plffs. Exhibits 1240, 1241, Trans., pp. 591, 594.)

"E. I. Du Pont de Nemours Powder Company
"Wilmington, Delaware.
"Vice-President's office.
"November 18th, 1908.

"Personal
"Mr. F. W. Olin, President,
"Equitable Powder Mfg. Co.,
"East Alton, Illinois.
"Dear Sir:
"In confirmation of our interview in New York, I understand that the arrangement agreed upon is that we are to purchase at

least 75,000 kegs of blasting powder a year from the Peoria Mill, and have the privilege of taking 100,000 kegs if we want them, and the price to be paid for this powder is to be 95c. a keg for 1-4 of our purchases and 97½c. a keg for the balance, both prices being f.o.b. mill.

"The arrangement to continue in effect for one year and thereafter indefinitely, subject to a reasonable notice from either side of a desire to cancel it.

"Will you kindly advise me if the foregoing is in accord with your understanding? If so, will you please suggest what notice you think would be reasonable to be given by either side in the event of wishing to terminate the arrangement? Will you also advise the date upon which you would like the arrangement to begin? I would add that it is my understanding that we will not be expected to take the uniform amount each month, but that the amount ordered per month may be varied to suit the requirements of our business, so long as our total orders for the year do not fall below 75,000 kegs, or over 100,000 kegs.

"Yours very truly,

"CHARLES L. PATTERSON,

"Vice-President."

"Peoria, Ill., November 21st, 1908.

"Chas. L. Patterson, V. P.,

"Wilmington, Dela.

"Dear Sir:

"Replying to your letter of November 18th, file S D—8993, I think the same fully covers our understanding and agreement as formulated in New York.

"I should say that three months' notice might be considered as a reasonable time for either party to adjust themselves to new conditions—if the contract was to be terminated. We will be in position to supply you with powder in the near future as, assuming that this matter is now closed, I have

ordered a car of Du Pont kegs, the same as we formerly manufactured for you and shipped to your Belleville Mill, for powder to be manufactured and shipped to Peoria. If this is not satisfactory, please advise.

"Yours truly,
"WESTERN POWDER MFG. CO.,
"(Signed) F. W. Olin,
"President."

It is true that Mr. Olin tries to avoid the effect of the letter of November 18th as evidence of a previous understanding between himself and the Du Pont Company concerning the purchase of the Buckeye plant, and particularly the words, "in confirmation of our interview in New York," by saying, on cross-examination, that the letter was received by him "*probably* three or four days after our conference in New York." (See p. 600.)

The effect of this statement if accepted by the jury to be true, if the question had been submitted to them, would have been to negative the inference that the interview which called forth the letter was held *prior* to the purchase of the Buckeye plant—the letter being dated November 18, 1908, and the sale of the plant having been completed on September 19th, 1908. His statement regarding the *particular* interview might be true (which we do not for a moment concede), and yet it would not justify the trial court in withdrawing from the jury the right to determine for themselves whether it was true, in view of all the surrounding circumstances. There are many facts in the record which go to show that the interview referred to in the letter from Mr. Patterson was the *culmination* of the negotiations rather than their beginning.

FIRST: In the first place it must be noted that

Mr. Olin refused to put himself on record *positively* in regard to that particular interview.

On his cross-examination the following occurred (Trans., p. 600):

> "Q. Now, Mr. Olin, when that arrangement was made, as shown by these letters that passed between you and Mr. Patterson, had there been previous negotiations in reference to the matter? A. I *think* not.
>
> "Q. Had there been negotiations about the purchase of the powder, previous to those letters? I ask the question, because one of the letters refers to the fact that you met Mr. Patterson in New York? A. That was the first conference, I *think* on the subject."

Mr. Olin's statement was, however, not conclusive by any means, and the jury should have been permitted to consider his testimony together with the other evidence in the record. There is much evidence in the record which controverts Mr. Olin's recollection of the matter, some of which is as follows:

SECOND: The evidence shows that Mr. Coyne, as Director of Sales of the Du Pont Company at the time when this purchase was made, had "practically entire charge of the marketing of all the products of the Du Pont Powder Company, with the exception of Government powder." (Trans., p. 370, fol. 1110.)

Furthermore, it was Mr. Coyne who did have charge of the purchases which were subsequently made from the Western Powder plant. (Trans., pp. 377, 378.)

Mr. Patterson could not therefore have agreed to purchase from 75,000 to 100,000 kegs per year without some previous conference with the proper

officers of his own company, and without having obtained previous authority.

THIRD: In view of the long and bitter feeling and the competitive contest which had been maintained between the Du Pont and the Buckeye Powder companies it is not at all likely, even if Mr. Patterson *possessed* the authority to act independently and agree to purchase at least 75,000 kegs per year, that he would have exercised such authority without consultation with the officers of the Du Pont Company.

FOURTH: It was about the time of the purchase of this plant by Mr. Olin (see Trans., p. 590, fol. 1770), that this same Mr. Patterson *went on the Board of Directors* of Mr. Olin's principal company, the Equitable Powder Company. Mr. Haskell, another Vice-President, who had been on the Board for the previous five or six years, still remained. What was the reason for adding Mr. Patterson to the Board at this particular time, if it was not to look after the increasing interests of the Du Pont Company, caused by the acquisition of the plaintiffs mills? Mr. Patterson was added for *some reason*. It was proper for the jury to draw its own inferences from the surrounding circumstances what that reason was, and to infer that it was because the Buckeye plant was to be added to the *holdings of the Equitable Company* in which the Du Pont Company was then, and for twelve years had been, the owner of forty-nine per cent. (49%) of its stock.

FIFTH: It appears from a letter written by Mr. T. C. Du Pont in December, 1906, that the officials of the Du Pont Company were fully conversant with Mr. Waddell's efforts to dispose of his plant to the Coal Operators. Is it possible that the Du

Pont Company would be better advised concerning the sale of plaintiff's plant, to *entirely outside* interests, and not know anything about the negotiations which had been carried on for nearly a year with their own associate, and which finally culminated in the property being taken over by a corporation in which they were directly interested as large minority stockholders? Furthermore, this letter clearly suggests *a policy,* with reference to the purchase of the plant and business of the Buckeye Powder Company, which applies to the situation very forcibly (Trans., p. 622):

> "We have understood for some time that Mr. Waddell has been trying to dispose of his powder plant to operators. Our experience in *other directions* has taught us *that we can usually make much better terms* for the purchase of such a plant after the operators have tried the experiment of making their own powder rather than before, and if, therefore, we were to seriously consider the purchase of this plant *we would prefer making the effort after the operators had gathered the experience that is probably before them.*"

The "experience" referred to by Mr. Du Pont where the operators had tried the experiment of making their own powder was undoubtedly the case of the Indiana Powder Company. (See Supra p. 83.)

(*c*) *The policy of the defendants with respect to purchase of the output of competitors, rather than the plants themselves.*

The evidence also shows that after the 1902 Du Pont Corporation came into existence, the policy was announced by the leading officials of the company that from that time forth no further purchases of competing plants would be made. (See Trans., p. 1556.) But it is also in evidence that a

better way had been discovered to carry on an effective combination without running so much danger of coming into conflict with the law. This way found expression in the contract which was made between the Du Pont Company and the King Mercantile Company, to *purchase its output* (see supra, pp. 52-53).

The change of policy concerning the purchase of plants was *in name only*. Instead of buying up competing plants by taking them over *in their own name* they made the interests of the competing company identical with their own by contracting to take its entire output.

The contract with Mr. Olin to purchase the output of this plant was but the continuation of this policy.

II. What transpired after the sale to Olin as evidence of the knowledge and interest which the Du Pont Company had in the transaction.

Further evidence that the Du Pont Company had knowledge of and something to do with the purchase of the plant by Mr. Olin is found in the fact that after the plant had been purchased by Mr. Olin the sale of its product was permitted to be made to *Du Pont customers without opposition* from the Du Pont Company. Elsewhere, (see infra, pp. 190, 203, 207, 209) it is shown that while the plant was being operated by the plaintiff there was constant opposition on the part of the miners and others against the use of Buckeye powder at certain mines. As soon as the title to the property passed into the hands of Mr. Olin we find that this opposition ceased instantly and that such mines as those of Applegate & Lewis and others, where the opposition had been most bitter, were per-

mitted to make use of the powder manufactured at this plant immediately, without any opposition whatever.

Furthermore, the Du Pont Company allowed Mr. Olin to sell powder from this plant to the customers of the Du Pont Powder Company, who were *under contract* with the Du Pont Company. In other words, the Du Pont Company immediately *shared its business* with Mr. Olin and surrendered its contract right, without protest. Some of these operators were as follows: A. Reents & Bros., Spoon River Coal Company, Winters Coal Company, Big Creek Coal Company, Clark Coal & Coke Company (Olin, Trans., p. 589).

In others words, as soon as the plaintiff ceased business, the contention over the powder produced at the same plant immediately ceased. There were no further "tests" or strikes, or contests of any kind concerning the substitution of some powder other than Du Pont.

Mr. William J. Thrush who was employed by the Du Pont Company to lead the opposition to plaintiff's powder at the Applegate & Lewis mine (sometimes called the "Hanna City" mines), testified as follows (Trans., pp. 687-688):

> "Q. What powder is being used at the Hanna City mines at the present time? A. Western powder.
>
> "Q. Western powder—where is that manufactured? A. It is manufactured over at Edwards Station, Illinois.
>
> "Q. The powder plant known as the Western Powder Manufacturing Company's plant? A. Yes, sir.
>
> "Q. When did they begin using Western powder at the Hanna City Mines? A. *They were using just as quick as Mr. Waddell, I believe, went out of business.*

"Q. Was there any complaint made at any time after you began using Western powder, *by the miners,* on account of Western powder? A. *None whatever.*

"Q. Were you familiar with the kind of powder used in the mines at the time Mr. Waddell sold his property you speak of? A. Yes, sir.

"Q. What powder was being used just before he sold out? A. Du Pont powder.

"Q. And what powder was used shortly after he sold out? A. *Just as quick as we got rid of the Du Pont powder, they used Western.*

"Q. And have they used Du Pont powder since that? A. Not to my knowledge.

"Q. And have you been working in the mines continuously since that time? A. That is right.

"Q. Did you ever hear any more complaints regarding the quality of the Western powder after Mr. Waddell disposed of his property? A. No, sir.

"Q. Have you ever heard any complaints regarding the quality of that powder from that time down to the present day? A. No, sir."

III. The only just and legal conclusion to be drawn from the undisputed evidence negatives the Court's instruction.

The conclusion from the foregoing undisputed evidence is irresistible that the defendants knew all about the situation of the Buckeye Powder Company,—that its plant was being offered for sale, that it had been offered by Mr. Waddell to the coal operators and others, and that the contract which they made with Mr. Olin to purchase the output after he should acquire it was the *principal inducing motive* for him to buy it.

Taking these facts into consideration, together with the fact that the defendants actually participated in the benefits accruing from the sale of the plant, shared its customers, and thereafter cooperated with Mr. Olin and Mr. Lent in maintaining the prices, how is it possible to say that there is *no evidence* of a combination between these interests to control the explosives trade, or of the charge that the defendants knew of, and had something to do with, the purchase of this plant.

It is stretching human credulity to the limit to ask one to believe that the managers of the Du Pont interests were kept in ignorance of all these transactions.

The law implies knowledge on the part of the Du Pont Company from its situation as a stockholder. "Control" of a corporation by its stockholders is a question of fact as well as law.

The evidence, above summarized, should all have gone to the jury for the exercise of their own judgment both as to the facts and the inferences to be drawn therefrom.

In law, the Du Pont Company was *presumed* to know that the negotiations were pending and that the purchase had been authorized and would be made, not only by virtue of the ownership of forty-nine per cent. of the stock of the Equitable Company, but also because of the fact that it was directly interested in the ownership of the plant purchased from the plaintiff, for the reason that the Equitable Powder Company was the owner of the Egyptian Powder Company, and the Egyptian Powder Company was the owner of the Western Powder Company. (See Trans., page 586, folio 1758.)

In the case of *United States vs. Union Pacific Railroad,* 226 U. S., 61, the question of how far a minority stockholder could be said to exercise control was considered and a rule announced. It was asserted that because the Union Pacific Railroad did not acquire a majority of the stock of the Southern Pacific it did not in fact exercise any control over the acts of that company in suppressing competition. The amount which it finally held as a minority stockholder was forty-six per cent. The Court held that "a compact united ownership of forty-six per cent. is ample to control the operations of the corporation."

It has been stated by publicists that it is not necessary to own anything like a majority of the stock of a corporation in order to have "actual and complete control" of its affairs; that in fact ten per cent or even five per cent of the capital stock will sometimes give actual control as effectively as if the possessor had it all. This is due to what has been termed "stockholder inertia"; or the disposition of the investor to trust the management of the corporation's business to the board of directors or to those who are in influential positions with respect to its affairs—financial or otherwise.

Singularly enough the very evidence given by the chief officers of the Du Pont Company, conclusively establishes that this is not a mere theory.

The testimony of T. C. Du Pont, the president of the Du Pont Powder Company, concerning the influence of that company as the holder of *minority* interests in affiliated corporations, is very much in point here. Previous to the organization of the defendant Du Pont Powder Company

in 1903 the Du Pont interests had held a minority interest of 42 per cent., in the California Powder Works (Trans., p. 275, folio 823). In explaining the relations of the Du Pont Company as a minority stockholder under such circumstances Mr. Du Pont said (Trans., p. 211, folio 633):

> "The California Powder Works, which was not absolutely controlled by the Du Ponts in stock ownership, but which was *practically* controlled by them, because the other stockholders were in no case, or in very few cases, much interested in the powder business and they always went more or less by what the Du Ponts wanted done; so that they really controlled that as much as if they really had owned it."

Mr. P. S. Du Pont, Treasurer of the Du Pont Powder Company, testified that in most of the many corporations which the "new management" acquired, the 1902 Du Pont corporation found itself the largest single stockholder, but still a minority stockholder; therefore he determined to purchase further stock, if possible, in these various corporations, "or to make a plan by which the minority stockholders should have *common interests* in the whole concern," and very significantly concluded as follows (see Transcript, pp. 105, 106):

> "The Du Pont Company was largely interested in all the corporations—in fact, was the *controlling* factor from the virtue of the fact that they were the largest stockholders and were best versed in the line of business in which the companies were engaged. Many of the minority stockholders were not practical men or had nothing to do whatever with the business."

POINT III.

The order of the Trial Court requiring Plaintiff to make an election between Sections One and Two of the "Sherman Act" upon the theory that the things declared to be unlawful by each Section forms a separate cause of action, was erroneous.

Upon motion of the Defendants at the close of the entire case and just previous to the time when the arguments were to be presented to the jury, the Court required Plaintiff to make an election whether under the Declaration it would rely upon the first or the second section of the Sherman Act in seeking a recovery. (See Trans., p. 2433.)

In obedience to the order of the Court, preserving an exception thereto, Plaintiff elected to rely upon Section 2 of said act. (Ibid.)

This action of the Trial Court is covered by Assignment of Error No. 4, as follows, (see Transcript, page 3199). The Court erred—

> "In refusing to correct the error of the District Court in making an order requiring the plaintiff in error to make an election whether under its declaration it would rely upon the first or second sections of the Act of Congress of July 2, 1890, commonly known as the Sherman Act."

The order was based upon the ground that the acts declared unlawful by the first section of the Sherman Act constitute one cause of action, and that those declared unlawful under the second section of the Act constitute another cause of action; and that in the Declaration they were pleaded as one cause of action.

The Court below in arriving at the conclusion that the Trial Court was right in this ruling, bases its views on what it erroneously supposes to have been the action of Judge Rellstab in the early stages of this suit. We quote from the opinion as follows:

> "Moreover, we may take note of the fact that this subject had evidently been a source of contention from the beginning of the suit, as will appear from Judge Rellstab's opinion in 196 Fed., 514, where the original declaration is printed. The question of duplicity was thus raised at an early stage, and as a result of that decision an amended declaration was afterwards filed. But this also contained only one count, and, as Judge Lanning (sitting in the Circuit Court for the District of New Jersey) had already decided in *Rice v. Standard Oil Co.*, 134 Fed., 464, that a declaration in a similar suit under the same section was bad for duplicity because it combined two causes of action in one count, we think the trial Judge was sufficiently justified in requiring the plaintiff to elect."

The above conclusions are erroneous in the following particulars:

1. Judge Rellstab did not hold that the original Declaration was bad because it contained more than one count, but expressly held to the contrary. His own language, found at 196 Fed., 517, at the bottom of the page, sufficiently disposes of this contention, as follows:

> "As to the charge of duplicity. The defendants contend that the plaintiff has not only combined in one count all three causes for which actions are given by the Anti-Trust Act, but also alleged causes for which action are not given by such act. Paragraph

> 4 of such declaration is said to allege the causes of action founded on such act, and paragraphs 5, 14 and 17 the other causes of action. Paragraph 4 does charge the making of unlawful agreements, the entering into unlawful combinations and the maintenance of a practically complete monopoly. If in so doing, the pleader has combined two or more distinct causes of action, the pleading is bad for duplicity. *Rice v. Standard Oil Co.*, supra. But as a conspiracy may be accomplished by any number or variety of steps, some of which may be in the form of contracts, others as combinations, if the contracts and the combinations referred to in the declaration are but steps in such conspiracy, and such conspiracy has for its purpose the alleged monopoly, the *whole constitutes but one cause of action.* (*Connors vs. United States,* 158 U. S., 408; *United States vs. Swift,* 188 Fed., 92.)"

To make assurance doubly sure, Judge Rellstab proceeded to examine each paragraph of the Declaration above referred to, and thus concluded at the bottom of page 519:

> "The cause of action pleaded throughout the Declaration is *single,* and, therefore *not* bad for duplicity."

2. The amended Declaration was *not* filed because the first one was bad for duplicity, as the Court below states, but because—

(a) The Declaration was laid against twenty-eight persons called "defendants," only four of whom had been served and brought into court, and the Court ordered, "that the names of all the persons mentioned in such Declaration as defendants, except the four served, be struck out" (see 196 Fed., on page 520); and,

(b) That certain averments in paragraph 9 of the Declaration, were, (to again use the language

of the Court), "impertinent and irrelevant to any issue that can be raised in the cause, and should be stricken out." (See Ibid, on page 523.)

The amended Declaration when filed was almost identically the same as the original Declaration in form and contents, except in the two particulars above directed by the Court.

3. As to *Rice v. Standard Oil Company,* referred to above by the Court below, Judge Rellstab stated at pages 520-521:

> "Defendants rely almost entirely upon *Rice v. Standard Oil Company,* supra, as authority that in the particulars pointed out by them to be presently considered, the plaintiff's allegations are too vague and uncertain. In that case, the court applied strictly the well-established rules governing common law pleadings, making no distinction, apparently, between the common-law and statutory rights of action. In view however, of the decisions of the United States Supreme Court in which this subject-matter has been more recently considered, greater liberality than there permitted must be allowed the pleader who founds his cause of action upon the Anti-Trust Act, in the form of stating the several steps which, in his judgment, bring his cause of action with the purview of such Act."

The principal authority relied upon by Judge Rellstab in the above ruling was the case of *Swift v. United States,* 196 U. S., 375, in which Mr. Justice Holmes said that a new problem in pleading was presented by the Sherman law, but that that law had been upheld, and therefore, the courts were bound to enforce it notwithstanding difficulties; that it was "the scheme as a whole" which was within the reach of the law; and that the constituent elements "are bound together as

the parts of a single plan. The plan may make the parts unlawful." And again, that "the unity of the plan embraces all the parts." See lengthy quotation from this case in Judge Rellstab's opinion, 196 Fed., at page 521.

Section 7 of the Sherman Act prescribing a remedy for injuries suffered "by reason of anything forbidden or declared to be unlawful by this act," gives the plaintiff a single and indivisible right of action.

This section does not make any distinction between the things that are declared to be unlawful by Section 1 and those that are declared to be unlawful by Section 2.

The subject has received consideration in other jurisdictions, and the view contended for by plaintiff seems to be sustained by unanimous authority.

Mr. Justice Holmes said in *United States vs. Kissel,* 218 U. S., 601, 607:

> "When the plot contemplates bringing to pass a continuous result that will not continue without the continuous co-operation of the conspirators to keep it up, and shows such continuous co-operation, it is a perversion of natural thought and of natural language to call such continuous co-operation a cinematographic series of distinct conspiracies rather than to call it a single one."

The very question arose in *Cilley v. United Shoe Machinery Co.,* 202 Fed., 598; and *Strout v. Same,* 202 Fed., 602, which were actions under Section 7. Circuit Judge Colt held that a declaration, which was limited to a single count, was not bad for duplicity, for the reason that the thing forbidden by the statute may reside in the *scheme or combination considered as a whole,* fol-

lowing the authority of the *Swift* case, supra. Judge Colt's language (p. 601) is exceedingly pertinent to the issue here presented, as follows:

> "The defendant's theory of this case is that each one of the things forbidden by sections 1 and 2 are distinct offenses, and that in a civil action brought under section 7 the declaration should charge these separate offenses in separate counts. This theory does not accord with the view taken by the Supreme Court that the thing forbidden by the act may consist of 'the scheme as a whole' or 'the combination as a whole.' Under this construction of the statute it is plain that the separate elements considered by themselves may not be illegal, and yet that the scheme or combination as a whole may be."

In *Corey v. Independent Ice Company*, 207 Fed., 459, 463, Circuit Judge Dodge said that:

> "'Combination,' 'conspiracy,' and 'monopolizing or attempting to monopolize' need not necessarily be alleged separately and distinctly from each other but may be indiscriminately charged."

Monarch Tobacco Works v. American Tobacco Co., 165 Fed., 774, was an action to recover damages under Section 7 of the Sherman Act, upon the ground that—

> "The defendants combined and conspired with each other, and with various other persons unknown, in the form of trust or otherwise to *restrain* trade and commerce in tobacco among the several States; and, further, that the defendants combined and conspired to *monopolize*, and have *attempted* to monopolize, trade and commerce in tobacco among the several States. Such are the charges of the plaintiff against the defendant, and in general terms they come within the language of Sections 1 and 2 of the act."

All these allegations were set forth in one cause of action. It was held that the petitioner stated a good cause of action. Two of the defendants insisted that two separate causes of action not affecting all of the parties defendant were set up in the petition and moved to require the plaintiff to *elect* which to prosecute. The Court denied the motion for the reason, as it states:

> "We have no doubt that all the defendants are jointly charged with having entered into each of the alleged combinations and conspiracies complained of, and, while one is charged with doing one thereof, and one another, all of their acts, we think, are sufficiently alleged to have been done in *pursuance of a common design.*"

In *People's Tobacco Co. v. American Tobacco Co.*, 170 Fed., 396, the Circuit Court of Appeals for the Fifth Circuit had before it the identical question presented here. The action was to recover damages for injury to plaintiff's business by certain acts constituting not only a conspiracy to *restrain* interstate trade as prohibited by Section 1 of the Sherman Act, but also to an *attempt to monopolize* interstate trade as prohibited by Section 2. The petition set forth all these acts as one cause of action. The Court at page 407, says:

> "The first and second sections of the statute describe and condemn certain acts which restrain interstate or foreign commerce, and the seventh section provides that one who is injured in his business or property by another by reason of anything forbidden by the statute may sue for threefold damages. To repeat, the first and second sections condemn certain acts, and punish them as misdemeanors. The seventh section is to the effect that those who do the forbidden things, commit the mis-

> demeanors, may be sued in a civil action for threefold damages by one who is injured in his business or property."

What is and is not a "cause of action" is well stated in *Occidental, &c., Co. v. Comstock Tunnel Co.*, 111 Fed., 135:

> "The principle I have thus deduced will serve as an unerring test in determining whether different causes of action have been joined in a pleading, or whether one alone has been stated. If the facts alleged show *one primary right* of the plaintiff, and *one wrong done* by the defendant which involves that right, the plaintiff has stated but a single cause of action, no matter how many forms and kinds of relief he may claim that he is entitled to, and may ask to recover. *The relief is no part of the* cause of action * * *. These suggestions are necessary to guard against a mistake of supposing that a distinct cause of action will arise from each special subordinate right included in the general primary right held by the plaintiff, or from each particular act or wrong which, in connection with others, may make up the composite but single delict complained of."

Furthermore, in practically all Equity cases brought by the Government under the Sherman Act, both sections 1 and 2 were involved, and the Government has never been compelled to elect under which section it would proceed. Under the Clayton Act, it is now provided that private persons may sue in Equity. See Act of Congress October 15, 1914 (38 Stats., 731, Section 16). If the ruling of the Trial Court is correct, the absurd situation will be presented that a private person will be required to elect in an action at law, but not in an Equity proceeding.

There does not seem to be any authority nor

any reason in principle, in support of the action of the Trial Court in requiring Plaintiff to elect.

Was the Error Harmless?

It was easy enough, and perhaps consistent, for the Court below, after having reached the erroneous conclusion that the Declaration had originally been held bad for duplicity, to reach the further erroneous conclusion that the ruling complained of was harmless, because "the easy remedy by amendment was at hand", and that plaintiff failed to take advantage of it.

We quote from the opinion (See Trans. p. 3187, fol. 9561):

> "But in any event we do not see how the ruling could have done harm; if the declaration did not support alternative charges, and if such charges were regarded as important to the case, the easy remedy by amendment was at hand. It is not surprising, however, that the plaintiff did not ask to amend; for we cannot conceive it possible that any one could doubt, at the end of this five months trial, that the plaintiff's case depended for success upon the truth of the charge (to which practically all the evidence was directed) that the defendants had unlawfully attempted to monopolize a large part of the trade in black powder. The case was certainly tried on the merits, and the ruling complained of was harmless, even if it were formally erroneous."

The statement that *"practically"* all of the evidence was so directed, is an admission that in the mind of the court there was *some* evidence in support of the "contract, combination in the form of trust or otherwise," which is declared to be unlawful by Section 1 of the Sherman Act. It is perhaps, however, a sufficient answer to this

contention to say that plaintiff was entitled to have the scheme or combination considered as a whole, by the jury, and not in part only.

The fact is that the motion and ruling requiring plaintiff to elect was made as the *final act,* after the case had been *argued to the jury,* and just before the charge of the Court. (See Trans., p. 2433.) Amendment at that stage of the case was entirely out of the question, as a matter of fact, even if not as a matter of law. Furthermore, it came as a complete surprise to the plaintiff as it was a reversal of the earlier position taken by the Court upon the motion to strike the Declaration. Plaintiff relied, and had a right to rely, upon the ruling made at this time, as being the law of the case.

The Trial Court did not let the matter rest with plaintiff's enforced election, but in its charge to the jury they were particularly enjoined to consider only the acts forbidden by Section 2, and the meaning and effect of that section was thus explained (see Trans., p. 2438, fol. 7313):

> "The plaintiff's grievance is, that the defendant has violated the second section of the Anti-Trust Act and which, as already noted, makes the monopolizing 'or attempt to monopolize' any part of the trade among the several States unlawful; and, that in consequence thereof it has been injured in both its business and its property. The suppression of competition is the dominant idea of the monopoly sought to be prevented by this act and where this condition results there is monopoly, no matter what steps were used to bring it about. Such unlawful monopoly, however, is not the only thing sought to be prevented by this section. To *attempt* to monopolize is also embraced in its legislative

purpose and an attempt to monopolize includes any means purposely adopted for and manifestly adapted to the accomplishment of such monopoly.

"As this second section, however, is but supplementary to the first section, and to make certain that the purpose of the first section be not evaded, but fully carried out, it follows that it is not every step which makes for monopoly that is within the prohibition of this section. It is only when the purpose of such step or its necessary effect is to stifle or to directly and substantially restrict competition that such step is an attempt to monopolize within such section."

By the ruling complained of, the jury was prevented from considering the *successful culmination of the attempt.* And, they might well argue, if the defendants did not succeed in the attempt how is it possible that the plaintiff was injured thereby. It must be apparent without argument that a mere attempt to monopolize, in itself could and ordinarily would be absolutely barren of *injurious* results. The jury might well have found, when explicitly limited to such injuries as might have resulted to plaintiff from the *attempt* only, that none such had been established.

The things "forbidden or declared to be unlawful" by Section 1 of the Sherman Act, which the ruling of the court prevented plaintiff from having the benefit of were:

"Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations."

The following acts and facts, which are clearly established by the evidence, come within the definition of these prohibitions: The making of the "Fundamental Agreement" of 1889, and the "Gen-

eral Understanding" of 1896, and of the "Foreign Agreement" of 1897; the Haskell-Fay agreements and the other agreements by which the dynamite trade was monopolized and brought into combination with the black powder interests, and the various acts of these combined interests through the medium of the machinery provided by the Gunpowder Trade Association—such as apportioning trade, exchanging trade, fixing prices, imposing fines and penalties for disobedience of rules, the adoption of the system of tying up the trade by rebate contracts which began in 1896 and was continued on without abatement to the final overthrow of the plaintiff; the vicious price contests which gradually forced all competitors to join with them or retire from business. (See full discussion under Point I, supra, pp. 47-53.)

The acquisition by the defendant Du Pont Powder Company of the complete legal control of all the contracts, business and physical properties of various members of the Association and the retention by it of the fruits and benefits of the monopoly thus built up, the carrying on through the Sales Board of the same policies and practices of fixing lower prices in localities where competition prevailed than it fixed in those localities where competition did not prevail, the continuance of the policy of tying up the trade by the Contract System (pp. 87-106), the efforts to prevent Mr. Waddell from establishing an independent business in explosives (see Points V and VII), the blacklisting of employees who entered plaintiff's service (Trans. pp. 357-361), the fostering of opposition on the part of miners to the use of plaintiff's powder thereby forcing plaintiff's customers to abandon it and taking to itself the

benefits of the trade thus abandoned (see Point IX), the employment of railway agents to divulge information concerning shipments to plaintiff's customers (see Point X)—and the many other incidents and facts established by the evidence whereby plaintiff was finally compelled to cease business and dispose of its plant to the co-conspirators of the defendants. If these and other facts which the record discloses do not establish the successful accomplishment of the attempt to monopolize the trade in explosives, and the perpetuation of that monopoly by the defendants then it is hardly possible to conceive of a condition which would come within the provisions of Section 1 of the Sherman Act.

It is true that some of these acts and facts were submitted to the jury, but only for their consideration as evidence of an *attempt* to monopolize, and if the jury had gone beyond the consideration of the attempt and had entered the domain of the actual accomplishment of the result claimed by plaintiff, it would have been in disobedience of the Court's instructions.

POINT IV.

The Defendants did not acquire the right to perpetuate their monopoly by reason of long continued misconduct; and the fact that the Defendants were large and powerful as factors in the explosives trade and that Plaintiff's promoter had knowledge of this fact, and also had knowledge of their monopoly of the explosives trade and of their practices and policies in maintaining such monopoly, did not alter Plaintiff's right of action under Section 7 of the Sherman Act to recover for injuries suffered by reason of conduct forbidden by that act. Plaintiff was not bound under the Sherman Act to enter the business at its peril by reason of his knowledge of the unlawful practices of the defendants; nor did plaintiff occupy any different position as a competitor than it would have occupied if it had been in existence during the period that the Defendant's influence was being developed, and had suffered injuries at the hands of the Defendants during said period or afterwards.

The Court gave the following instruction, which is assigned as error No. 5. (See Trans. p. 3199.)

> "This suit is unique in many respects. The plaintiff, as a corporation and as a competitor in the powder business, is due to the efforts of R. S. Waddell, its chief witness in the suit. He organized it shortly after he separated himself from his employment with the defendant with which and its predecessors he

had been identified for about twenty years. His services, while in the employment of the Du Pont interests brought him in touch with their business policies and operations in the vending of powder. *He knew of the existence of the trade association and of such of the restraints and limitations put upon its members as related to the apportionment of the trade and the fixing of prices.* The comparative size of the defendant's capacity for output in relation to other powder manufacturers, and its influence as a factor in the trade generally, *were known to him when he severed his connection and when he conceived and began to carry out his purpose of entering into such powder field as a competitor.* **The plaintiff does not occupy the same position as a competitor in existence during the period that this influence was being developed and who may have been, during the course of such development, as well as after it had reached the height of its power, injured in its business or property by reason thereof, but is here as one entering the competitive field when such growth and influence have been established.** To it, this influence and power of the defendant, when it, the plaintiff was launched into the powder field, is not in itself actionable, even though that status is due in part to methods which are prohibited by the Anti-Trust Act, and before the plaintiff can recover it must establish that the defendant used its power in the trade oppressively, not necessarily against the plaintiff alone, but at least in the conduct of its business generally; that is, that it used such methods as, backed by its influential position, tended to the suppression of open competition and to obstruct the free flow of commerce—the trade conditions sought to be secured and protected by the prohibitions of the Anti-Trust Act, and that it, the plaintiff, was injured by reason thereof."

In our brief in the Court below, we summarized this instruction in language which still seems to us to properly interpret it and we cannot do better than to repeat it here as correctly analyzing its real meaning and effect, as follows:

> "It is tantamount to saying that monopoly needs but to obtain a foothold, and thereafter competitors must enter the field at their peril.
>
> "It was a virtual direction of a verdict for the Defendants, because it was equivalent to saying that long-continued violation of the law may ripen into *privilege*, and may become a *vested right*. It is a most dangerous doctrine that monopoly can gain the right to perpetuate itself *by prescription;* that one who may venture into the field occupied by it must do so at his peril, and if he does so with the knowledge of its existence, can claim no protection from its unlawful methods.
>
> "Certainly no surer way of perpetuating monopoly could be devised. No greater incentive to the creation of monopoly could be offered."

The Court below quotes this language in its opinion and adds (See Transcript, fol. 9567):

> "It is almost needless to say that the instructions of the learned judge carry no such meaning, and could have had no such effect."

It then proceeds to discuss the language of the Trial Court here excepted to in connection with the other parts of the charge to the jury and concludes as follows, (See fol. 9574):

> "We confess our inability to see anything objectionable in this language. It states nothing but *indisputable facts*, and does not take on a harmful character even when it is bracketed with the second passage complained of."

The "second passage" referred to is contained in Assignment No. 6, discussed Infra, page 157.

A careful reading of the opinion of the Court below in this respect, and an examination of the full charge to the jury (which was exceedingly lengthy) does not seem to disclose any necessary relation between the other parts of the charge quoted in the opinion, and the part above excepted to.

It appears to be a statement of a *general* rule which the Court intended that the jury should consider *generally* as applicable to the entire problem committed to them, for the purpose of making clear to their minds that *there was a distinction between the existing rights of the plaintiff, and what these rights would have been but for the knowledge and experience which Mr. Waddell had gained while in the service of the defendants.*

This interpretation of the meaning of this instruction is emphasized by the exception taken thereto for plaintiff in the presence of the jury, and the court's remarks made at the time (See Trans, p. 2518, fol. 7553):

> "MR. ABBOTT: We also desire to except to that portion of your Honor's charge to the effect that the plaintiff in this case does not occupy the same situation as one who had been in the field before the unlawful combination—
>
> "THE COURT: (Interrupting.) Whatever I said in regard to that."

It is in keeping with the views often expressed by the Court throughout its instructions in pursuance of its theory that the defendant possessed certain *primary* rights to the powder trade, and was entitled to maintain, at all hazards, the

monopoly therein which it had secured. If these rights did not become vested by prescription, they were at least "pioneer rights."

(a) Referring to the negotiations by Mr. Waddell with his employers preceding his leaving their employ to establish an independent business of his own, the Court said the question was whether the circumstances show a "purpose to prevent Mr. Waddell from entering into business as a competitor, or a desire on the part of the defendant to protect its *legitimate interests.*" (Trans., p. 2453, fol. 7358.) What these legitimate interests were the Court did not say, but what could they have been except to maintain the monopoly which it had already secured?

(b) Again, referring to the employment of Mr. Thrush, a miner, to exclude plaintiff's powder from the Applegate & Lewis mine at Hanna City, Illinois, the Court said the question here was whether the defendants were "prompted solely by the purpose of *protecting the trade* which the defendants *had had* with such mine *before* plaintiff succeeded in securing such trade", etc. (Trans., p. 2469, fol. 7406.)

(c) Referring to the threat made by Mr. Rice, the Chicago agent of the Du Pont Company, to Mr. Bruce, a customer of plaintiff (as testified to by Mr. Bruce) that unless he stopped buying plaintiff's powder the defendants would cancel his agency for their dynamite, the Court said the jury must consider whether this was done, "*merely to protect the interests* of the defendant," and that "the refusal of a manufacturer of several commodities to sell any of them to a customer unless he handled all, *is not in itself illegal*", etc. (Trans., p. 2472, fol. 7414.)

(d) And again in that portion of the charge which is discussed under Point X, the Court excuses or at least paliates, the acts of the defendants in their efforts to employ railway agents to divulge the names of plaintiff's customers and the destination of shipments from its plant, by saying that (see Trans., p. 2470, fol. 7410):

> "The plaintiff was a *newcomer* in a field *already occupied.* Except as to new business, it is inevitable that in order for the plaintiff to place its output it would draw some of the custom that theretofore had been flowing to the defendant or some other competitor."

And from these premises the Court proceeded to draw the conclusion that it was lawful to "keep tab" on the trade by maintaining "a surveillance over the conduct of such new competitor."

(e) Referring to the charge that the defendant made low prices in order to destroy competition, the Court said that because it had "become possessed" of the plants of various members of the Trade Association, "it had a right to take any *usual* method known in business conducted normally to *preserve all of the trade* which these different companies brought to it" (Trans., p. 2478, fol. 7434)—and this, too, in face of fact that the most "usual" method known to the powder trade (as shown by the evidence) was by cutting prices so low that a competitor could not live outside the combination, and after its surrender raising them high enough to make up the losses. The defendant "was confined to the use of *lawful* methods of business"; but "it had a right to *underbid* its competitors with their own trade", (fol. 7435). And the rule of the "survival of the fittest" is thus announced as a *legitimate* outgrowth of these

price-cutting contests (Trans., p. 2485, fols. 7455-7456):

> "That prices are apt to lower during periods of strenuous competition is one of the usual results and that they will rise again after competition is at an end is likewise a trade axiom; and that the *survivor in the contest is the only one that gets the benefit of such a rise is inevitable.*"

After having laid down these premises, the jury were told that even if they found that the various acts charged were "steps in a general plan", the question then remained (Trans., p. 2490, fol. 7468):

> "Was such plan or purpose to merely protect the *legitimate interests* of the defendant in the trade, that is, was it for the purpose of protecting such part or all of the trade which it had *acquired theretofore* by legitimate means, or which, by reason of its capacity and ability to supply, it was *reasonably entitled to,* in free and open competition; or was it to harass and oppress its competitors so that in the end, be it near or far removed, they would cease to be independent competitors and leave it master of the market? If you find that such protection, and not oppression, was the purpose and the use made of such steps or parts of a plan, then the defendant is not liable in damages simply because as an incident to the carrying out of that plan a competitor was injured in his business or property."

But assuming for the purpose of the argument that the theory of the Court below that this instruction depends upon other and disconnected parts of the charge, is correct, we are brought within the rule that an erroneous instruction is not cured by another instruction correctly stating

the law, where the first instruction is not explicitly withdrawn from the jury.

> "When it is proposed by a further instruction to correct an erroneous charge, the purpose *should be stated* and the explanation made so clear as to leave no room for a reasonable mistake."
>
> *Louisville & N. R. Co. vs. Johnson,* 81 Fed., 679.

> "If two or more instructions are inconsistent and calculated to mislead the jury or leave them in doubt as to the law, it is a cause for reversal."
>
> *Wenning vs. Teeple,* 44 Ind., 189.

Where inconsistent instructions are given, if they cannot be reconciled, the appellant is entitled to rely upon those most favorable to him in aid of his exception.

> "Where inconsistent findings are made by a court, if they cannot be reconciled, the appellant is entitled to rely upon those most favorable to himself in aid of his exception. (*Elterman vs. Hyman,* 192 N. Y., 113, 117.) So, where the charge of the court is so inconsistent or contradictory upon a material proposition that is impossible to reconcile the different versions, the appellant should be entitled to rely upon the instruction most favorable to his appeal. Under such circumstances there is no other way to protect a defeated party from the effect of an erroneous charge. While it may be that the jury accepted the first version of the law given to them, owing to its frequent repetition and emphasis, still we have no assurance that they did not rely on the last version and hence they may have done injustice to the defendant."

Johnson vs. Blaney, 198 N. Y., 312, 317.

Where instructions are inconsistent with or contradict each other, it is usually impossible to say whether the jury was controlled by the one or the other.

Instructions which taken as a whole, are calculated to mislead the jury as to the character of the evidence necessary to prove the issue on one side are erroneous.

Rea vs. Missouri, 17 Wall, 532;
Bolen-Darnall Coal Co. vs. Williams, 164 Fed., 665;
Weiss vs. Bethlehem Iron Co., 88 Fed., 23.

It is error to give instructions that are self-contradictory or confusing.

Sweeney vs. Erving, 228 U. S., 233;
Deserant vs. Cerillos Coal R. Co., 178 U. S., 409;
Sullivan vs. Wingerath, 203 Fed., 460.

Does the instruction excepted to state only "indisputable facts."

Further analyzing the opinion of the Court below wherein it says that the language of the excepted instruction is not objectionable because "it states nothing but indisputable facts," we think that a careful consideration of what is there said will not support this position.

(a) The charge begins with the statement, "This suit is unique in many respects." In what way is it unique? Other actions have been brought to recover damages caused by the operations of unlawful monopolies.

(b) The charge proceeds with the statement that the existence of the plaintiff was due to the efforts of R. S. Waddell, who had been long associated with the Du Pont interests as an employee, and that he knew at the time of their unlawful policies and practices, of the comparative size of the defendants' capacity, and of their influence in the trade. These facts being admitted, is it an "indisputable fact" that the rights of the plaintiff to full protection, *under the law,* against such unlawful policies and practices, were in any wise different from what they would have been had plaintiff come into existence in ignorance of these facts, or before this power had been developed?

(c) The charge further recites that the plaintiff does not occupy the same position as a competitor in existence, during the period while this monopoly was being developed or built up? Is this an "indisputable fact?" If so, what was the difference in such relations, *under the law?* Was it that this supposed competitor had the right to recover for injuries sustained because it was an *unwilling* victim, and that the plaintiff could not recover because it entered the contest with its eyes open and, therefore, at its peril?

(d) The charge further recites that "to it (the plaintiff), this influence and power of the defendant, when it, the plaintiff, was launched into the powder field is not in itself actionable, even though that status is due in part to methods which are prohibited by the Anti-Trust Act". Is this an "indisputable fact"? We think it is not even the law. But assuming that it is, in what respect does this fact differ from the rights of "a competitor in existence during the period

that this influence was being developed, and who may have been during the course of such development, as well as after it had reached the height of its power, injured in its business or property by reason thereof?" Would the "influence and power of the defendant" have been "in itself actionable," on the part of the supposed competitor who was in existence while this influence and power was being developed? If not, then plaintiff stands in no different relation under the law.

(e) The charge further recites that before the plaintiff can recover it "must establish that the defendant used its power oppressively," etc. But would not such supposed competitor have been required to establish the same facts before it could recover for injuries sustained by it?

(f) The charge further recites that "the plaintiff does not occupy the same position as a competitor in existence during the period that this influence *was being developed*" and who may have been injured in its business or property "*during the course* of such development," etc., which was equivalent to saying to the jury, that nothing was done by the defendants *toward the development* of the monopoly *during the years 1903-1908*—which was the period while plaintiff was in business. This must have been in the mind of the Trial Court, otherwise the plaintiff could not have been in a different position from the supposed competitor referred to by the Court in the matter of the development of its power and influence, nor would the plaintiff be "here *as one* entering the competitive field *when such growth and influence have been established.*" By necessary implication this must have meant that nothing had been done towards the development of

this influence *during the period of plaintiff's existence,* and it was therefore virtually an instruction to the jury that the plaintiff had failed to establish a fact necessary to be established before recovery was possible. Was this an "indisputable fact"? There was abundant evidence that the development of this power and influence, and its exercise by the defendants continued during this period, and the instruction invaded the province of the jury by limiting them in their right to determine the weight and sufficiency of that evidence.

Is it not perfectly clear that the only rational theory which can be drawn from the language of the Trial Court is that the plaintiff's rights under Section 7 of the Sherman Act were different from what they would have been had it begun business before the defendants had acquired their supremacy in the powder trade, and that because it entered the field knowing the character of the competition which it would have to contend with, it did so at its peril.

It was making a distinction between classes, and in *Loewe vs. Lawlor,* 208 U. S., 274, it was said that: "The act made no distinction between classes."

The Sherman Act did not create any distinction between the rights or remedies of a person injured by an unlawful combination, whether such person or corporation was in existence before the combination had developed its power and influence, or after it had developed such power and influence; or whether it had previous knowledge of such acts and facts, or acquired such knowledge afterward?

Besides it was error to instruct the jury upon a conjectural state of facts.

It was unnecessary and improper for the Court to instruct the jury upon a supposititious case which was not in issue. The question was not what would have been the plaintiff's rights had it been in existence earlier, nor what would have been the rights of some other person who might not have been cognizant of the facts which Mr. Waddell was. The sole question before the Court was, What are plaintiff's rights now?

Chief Justice Tawney in *United States vs. Brietling,* 20 How., 252, said:

> "It is clearly error in a court to charge a jury upon a supposed or conjectural state of facts, of which no evidence has been offered * * *. It may induce them to indulge in conjectures instead of weighing the testimony."

Mr. Justice Field in *Railroad Co. vs. Houston,* 95 U. S., 697, 703, said:

> "To instruct a jury upon assumed facts to which no evidence applied was error. Such instructions tend to mislead them by withdrawing their attention from the proper points involved in the issue. Juries are sufficiently prone to indulge in conjectures without having possible facts not in evidence suggested for their consideration."

POINT V.

The exercise of a legal right cannot be affected by the motive which controls it, however unworthy such motive may be. Therefore, even if it is true, as the Court charged, that Mr. Waddell, one of plaintiff's stockholders, and its promoter and president, was aware of the unlawful policies and practices of the Du Pont Co. and its associates, with respect to competition, by reason of the fact that he had been one of its employes, and that he may have been actuated by the belief that the plaintiff's plant and business, after a severe competitive struggle with the defendants, such as he had known to be carried on in other cases, might be taken over at a considerable profit—this would not afford the slightest excuse in law for the unlawful acts of the defendants, nor affect the right of the plaintiff to secure redress for injuries suffered at their hands.

The Court instructed the jury as follows, which is assigned as error No. 6 (See Trans., pp. 3200-3201):

> "Mr. Waddell, as already stated, was well advised when he promoted the plaintiff company, of the defendant's business, capacity and policies. He had been its agent for a long period during which several severe competitive struggles took place, and he knew the outcome thereof, and which was, generally speaking, the taking over in one form and another of such new comers, and at least in one instance—that of the Indiana—at a con-

siderable profit to the owners of that company.

"Of course, Mr. Waddell, or the company which he formed had a right to go into business, and the motive for entering into such business is of little moment so far as their rights were concerned; *but if he was actuated by the belief that his company would meet with a like experience after some competitive struggles, it may have a bearing upon the question whether the plaintiff was sufficiently capitalized to engage in the struggle for the market already occupied.* Of course, if you find that it was sufficiently capitalized, or that it had sufficient financial backing to weather a struggle carried on under normal or lawful competitive conditions, that is a sufficient answer, and it would make no difference whether it was or was not sufficiently capitalized to meet a competition forced upon it by unlawful means."

The Court below apparently accepts the theory of the Trial Court as being good law, for it upholds this portion of the charge upon the ground (see Trans. 3192, fol. 9574) that the Court was dealing

> "with the question whether the plaintiff had been properly equipped and capitalized—this matter having a direct bearing on the defendants' allegation that the Buckeye enterprise was organized merely to be sold out, and was not intended to be a bona fide factory at all."

Whether the plaintiff was sufficiently capitalized to engage in the struggle was a question of fact, not of intention. It was not to be deduced from Mr. Waddell's intentions, but from what he and the other stockholders and officers of the plaintiff *actually did.* The jury was, in effect, told

that they might *speculate* concerning a question in issue, which could only be determined by facts and figures. If Mr. Waddell had *intended* to disturb the well-laid plans of his employers to completely monopolize the explosives business and to harass and embarrass them and thus force them to buy him out, it would be more in consonance with reason to infer that, knowing the power and financial strength of the competitors he would have to contend with, he would see to it that his company was *abundantly* capitalized instead of insufficiently capitalized; but this would not entitle the plaintiff to urge *this intention* to abundantly prepare himself for the struggle as any evidence of what was actually done in this respect by him and the other stockholders. And he might have intended to get together just enough capital to build a cheap plant, and make a show of competition, and yet he might have *changed his mind* and decided to build up a legitimate and permanent business for himself.

In what way, therefore, could his motives, unless expressed in action, furnish any proof of what was actually done by him? It all depended upon facts and, in the very nature of the situation, facts which were available. The plant was in existence, and the buildings, machinery and equipment were all the subject of expert testimony; the books of the company showing the amount of cash received and expended in building and equipping the plant and in operating it, are in evidence and speak for themselves; the efforts made to get business, the character of the company's salesmen, agents and employes, are all the subject of much evidence. Of all these matters the jury had rightful cognizance *as facts*, from

which they might have arrived at a conclusion, whether plaintiff's failure in business was the result of some influence other than the unlawful conduct of the defendants. But *the intentions* of Mr. Waddell, be they good or bad, worthy or unworthy, could form no basis for such a conclusion, whatever.

The Trial Court had in fact already called the attention of the jury to these pertinent issues thus (See Trans., p. 2492, fol. 7475):

> "As to the properly equipped plant: You have the testimony on the part of the plaintiff as to obtaining a favorable site, and the construction and equipment of the plant, the employment of competent salesmen and the efforts that were made to secure the trade, and the results. You have also the testimony of Messrs. Olin and Pierce as to how they found such plant, and these will be again referred to under the head of damages."

Having said this, the Court at once proceeded to a discussion of the evidence concerning the motives and intentions which actuated Mr. Waddell in organizing plaintiff, and particularly called their attention to a remark attributed to him by Mr. Rice to the effect that he had asked Mr. Rice to join him in going into the powder business for the purpose of "fixing prices"—the inference being that they would thus force the Du Pont Company to buy them out. This remark was flatly denied by Mr. Waddell, and his denial was confirmed by the fact that he and Mr. Rice had been open and avowed enemies, and not on speaking terms even, for nearly thirty years. Mr. Rice himself admitted this to be the fact (See Trans., p. 1842). This same Mr. Rice was agent of the Du Pont Company at Chicago, and assisted in

carrying on the fight against plaintiff, and who Mr. Robert C. Bruce testified had told him "that the Du Pont people could and would put the Buckeye people out of business, regardless of the amount of money to be spent;" (See Trans., p. 2409, fol. 7227) and who Mr. Bruce also testified told him he would cancel his agency for Du Pont dynamite unless he quit buying powder of the plaintiff. (See Trans., p. 2408, fol. 7224.)

The suggestion of the possibility of the mills of plaintiff having been insufficiently equipped and financed to withstand the contest which Mr. Waddell knew was ahead of him, even if well-founded in fact, **would not afford the slightest excuse in law for the unlawful acts of the defendants.**

Even if such a rule could by any construction be applied to Mr. Waddell personally—which is, of course, impossible—how could it be made to apply to the plaintiff as a corporation, and the other stockholders who owned 62 per cent. of its stock? The evidence shows that the $100,000 capital stock of the Buckeye Powder Company was held by about a dozen persons, of which amount Mr. Waddell and members of his family held $38,600 only; that while he, as president of that company, had been the leading spirit in and responsible for its affairs, and was necessarily its chief witness in this action, five other stockholders, namely, Mr. Luthy, Mr. Miller, Mr. Brechnitz, Mr. Clark and R. S. Waddell, Jr., gave their testimony.

Furthermore, it must be borne in mind that the Trial Court failed to comment to the jury upon the other and undisputed evidence in the record, which clearly establishes Mr. Waddell's

sincerity of purpose and perfect good faith to found a legitimate business.

He testified (see Trans., pp. 751-752) that after he tendered his resignation, he had a conversation with Mr. T. C. Du Pont, the then President of the Du Pont Company, in which he stated his reasons for leaving the service of the company; and that Mr. Du Pont made several other offers to him to induce him to remain with them:

> "I declined the offer and told him that I would prefer to go into business for myself and establish a business for myself and my sons and I thought it was the proper time to do it. He asked me what kind of business I was going into. I told him I thought I would build a small mill. I thought I had been with the company long enough to earn that right, to have a little business of my own. He agreed with me; said he thought I had."

Mr. Du Pont was himself a witness several times during the trial, but did not dispute this testimony, and Mr. Waddell, was also confirmed by Mr. Luthy, a stockholder, to whom he made a similar statement when Mr. Luthy subscribed for some of the stock. Mr. Luthy testified (see Trans., p. 615, fol. 1845):

> "I first met Mr. Waddell about the time he came to Peoria to locate a plant, and I had several interviews with him in which he went into the powder manufacturing business quite extensively in explaining it to me. He said he had been with the Du Pont people for many years, that he had held an important position there and received a good salary, but he wanted to start a powder plant of his own so he could leave a business to his sons when he died; that he thought his

> knowledge of the business was such it would enable him to make a success of it; he said that powder at that time was selling for, I think it was, about $1.35 a keg, and that powder could be produced in the neighborhood of 80¢ or 85¢ a keg and that there was a good margin in the business. That the Du Pont people were large makers of powder and practically controlled the situation, and it would not be likely that they would reduce prices so it would take off the margins; and the prospect looked good to me and I took some stock in the company."

The Court also failed to comment on Mr. Waddell's testimony (see Trans., p. 1556), that in the Summer of 1902—

> "On several occasions Mr. T. C. Du Pont and Mr. Moxham stated to me that the old policy of the old companies purchasing competitors was entirely abandoned, and hereafter no mill would ever be purchased by the Du Pont Company, no competitor would ever be purchased. I understood that thoroughly."

Mr. T. C. Du Pont and Mr. Moxham were both called as witnesses, but did not dispute this testimony.

The Court also failed to comment upon the further fact that Mr. Waddell testified that when he left the Du Pont Company his relations were of the friendliest sort with all of the officers, and that when he announced his purpose to build a powder plant, they offered to join him in the enterprise. Negotiations, with this end in view, were had for some time and failed only because the Du Pont interests insisted upon having stock control of the company, or the handling of the entire output of its mills.

These negotiations are fully described in the testimony of R. S. Waddell (Trans., pp. 751-756, also 1405-1463); also T. C. Du Pont (Trans., pp. 221-228); also A. J. Moxham (Trans., pp. 675-677); also Plaintiff's Exhibits 42 to 51 (Trans., pp. 2565 to 2587).

The following extract, from Exhibit 42, shows the estimate placed upon Mr. Waddell by his employers, at the time of these negotiations, when they were about to go into partnership with him, the same being a portion of an approved memorandum to be executed by Mr. Waddell and T. C. Du Pont (see Trans., p. 2565):

> "WITNESSETH, that whereas R. S. Waddell has been associated with the Powder Company for a great many years past, and whereas his associations with said Powder Company have been entirely satisfactory, and whereas, he recently moved from Cincinnati to accept the position of General Sales Agent of said Powder Company on trial, and whereas that position is not entirely agreeable or congenial to him, and whereas said R. S. Waddell is desirous of building a powder plant and is further desirous of having associated with him the Powder Company with which he has been so long connected, and he is also desirous of owning 51% of the stock of said (————) powder company (hereinafter called the New Company), in his own name and right, and whereas the Powder Company does *recognize the ability and appreciate the long and faithful service of R. S. Waddell*", etc.

The Trial Court also failed to comment on Mr. Waddell's testimony that he had not the slightest suspicion that he would be attacked in the conduct of his business, when he left the service of the Du Pont Company, and that no inkling

of their purpose to fight him reached him until he found that detectives were following him—which information first came to him through the finding of a letter from the Pinkerton Detective Agency to one of its representatives in Cincinnati, which disclosed the fact that he was being shadowed. (See Point VII.)

If the alleged blackmailing scheme was ever in contemplation by Mr. Waddell it certainly never materialized, for the proof is totally lacking that he or anyone for him ever attempted to dispose of plaintiff's property and business until in 1907, *after it had been practically driven* out of business. At this time Mr. Luthy, a stockholder, acting upon his own initiative, made the attempt to induce the Du Pont Company to purchase the property as a means of realizing something on his stock. (See Trans., p. 617, fol. 1851.)

Mr. Luthy describes his experience in the several interviews he had with T. C. Du Pont, P. S. Du Pont and A. J. Moxham, the two latter displaying much vindictiveness toward Mr. Waddell (Trans., pp. 617-619).

The exercise of a legal right cannot be affected by the motive which controls it.

> "The propriety of such an instruction may well be doubted. What the jury would understand by it is certainly questionable. It may well be that some jurymen would understand, that, even if the plaintiff had a valid claim against the defendant, still if his only object in bringing the action was to hinder and oppress the defendant, and otherwise the action would not have been brought, the plaintiff could not recover. This is not the law. **The motive of the plaintiff cuts no figure, if**

he is doing a lawful act, and the bringing of an action on a valid claim is an entirely lawful act."

Sullivan vs. Collins, 107 Wis., 291; 83 N. W., 310.

In *Connolly vs. Union Sewer Pipe Co.,* 184 U. S., 540, a similar question was raised. Connolly was sued to recover on certain promissory notes given by him in purchase of sewer pipe. He set up a special defense that the plaintiff was a trust or combination acting in restraint of trade, contrary to the provisions of the Sherman Act.

Justice Harlan quotes from *Strait vs. National Harrow Co.,* 51 Fed. Rep., 819, the following language which aptly states the point involved here:

"Such a combination may be an odious and a wicked one, but the proposition that the plaintiffs, while infringing the rights vested in the defendant under letters patent of the United States, is entitled to stop the defendant from bringing or prosecuting any suit therefor, because the defendant is an obnoxious corporation, and is seeking to perpetuate the monopoly which is conferred upon it by its title to the letters patent, is a novel one, and entirely unwarranted. The party having such a patent has a right to bring suit on it, not only against a manufacturer who infringes, but against dealers and users of the patented article, if he believes the patent is being infringed; and the motive which prompts him to sue *is not open to judicial inquiry,* because, having a legal right to sue, it is immaterial whether his motives are good or bad, and he is not required to give his reasons for the attempt to assert his legal rights. **'The exercise of the legal right cannot be affected by the motive which controls it.'** "

Judge Gray, speaking for the Circuit Court of Appeals of the Third Circuit, followed the authority of the *Connolly* case in *Northwestern Consolidated Milling Co. v. Callan & Son,* 177 Fed., 786. The complainant was a corporation engaged in the manufacture of flour under the name of "Ceresota," which was a registered trade-mark, and had expended a large sum of money in advertising the name, and had built up a large trade. The defendants also operated a flour mill and began to use the word "Certosa" as a trade-mark. In an action by the complainant against the defendants for infringement of their trade-mark the defendants answered that the complainant was organized and operating in violation of the Sherman Act, and was therefore not entitled to any relief. The Court said:

> "The matters referred to in the petition of defendants have no relevancy here. The Sherman Act has its own penalties for violations of any of its provisions. It contains nothing that sanctions the argument that an offender against it shall be deprived of redress for a civil injury on *the plea that he has been guilty of an infraction of that Act which gives a remedy to one injured in his business or property against the transgression of the law,* and does not suggest that one who has taken the property, infringed the trade-mark or patent of another, or refused to pay debts because of an alleged transgression of the Sherman Act by the creditors, can invoke that Act as a defense to liability either in suits in tort or contract."

Independent Baking Powder Company v. Boorman, 130 Fed., 726, also tried before Judge Gray in the Circuit Court, was an action for infringement of a trade-mark, and the defendant set up

that the complainant had acquired the trade-mark as the result of a conspiracy in violation of the Sherman Act. Judge Gray, after stating that the issue with which the Court must be finally concerned was the right of the complainant to an exclusive property in the trade-mark, said:

> "So far as the portions of the answer excepted to charge a conspiracy between complainant and the Royal Baking Powder Company and others, if others there be, for the purpose of erecting a monopoly in restraint of trade between the states, and in alleged violation of the act of Congress, known as the 'Sherman Act,' the same are clearly impertinent and irrelevant. They throw no light upon the real issue, but by introduction of the collateral issue, *tend to embarrass and to confuse* a consideration of the same."

This instruction implied a scheme of blackmail on the part of Mr. Waddell, and if believed by the jury, they could, on its authority alone, easily have made it their basis for determining their verdict. It was the introduction of a "collateral issue," and as was said by Judge Gray, it tended "to embarrass and confuse a consideration" of the real issues. It rose to the dignity of being itself the real issue to be determined by the jury, and was, no doubt, so regarded by them.

POINT VI.

The law of competition does not mean a "fight" of extermination between dealers, in which the victor is entitled to the "spoils," but encourages individual traders to engage in fair rivalry to the end that each may receive a fair profit, and the public be protected from excessive charges.

The Court gave the following instruction, which is assigned as Error No. 7 (see Trans., p. 3201, fol. 9603):

> "No one who enters into a competitive field is guaranteed that he will get any particular share or even a share of the business at a profit, nor does the mere fact that the largest competitor is able to prevent a smaller one from getting a profitable share of the business make it liable in damages to such other. Competition, as it exists *under the laws* at this date, has within it *the element of fight.* It permits fighting so long as it is fair and it permits the fair fighter *to go away with the spoils,* even though some one in that fight *has been injured,* and perhaps *irretrievably injured* in consequence; so that it is not the mere fact that a competitor suffers injury through severe competition that makes the other competitor who may have come out of the fray successfully, liable to compensate for the losses sustained by the injured party."

In this brief paragraph we find "fight," "fighting" "fighter," "spoils," and "irretrievable injury" not only excused, but described as being within the law as it exists to-day.

It hardly seems possible that the Court could have used words which would have more certainly carried the conviction to every juror's

mind that competition, as understood *in the law*, meant ruthless warfare in which the belligerents might plunder each other without limit, and that, as legitimate booty and loot, the successful party could retain the supremacy in the trade which his strength in overcoming the enemy enabled him to acquire, if he but observed certain established rules and fought "fair."

To say that the law "permits the fair fighter to go away with the spoils, even though some one in the fight has been injured, and, perhaps, irretrievably injured, in consequence," carries with it the idea of the prize ring, where the contestants give and take blow for blow, in an effort to administer the final "knockout." If the successful antagonist has but "fought fair"—that is, has observed the Marquis of Queensbury rules—the prize money, the gate receipts, the moving picture royalties, and all the other "spoils" are his, under the law of the prize ring.

Such an idea, as applied to business conduct, is repugnant not only to the spirit of the times, but is unsound in law and morals. It is to set at naught the whole object and purpose of the anti-trust laws.

The language of the Court is more especially susceptible to the injurious effect which we claim for it because some of the methods followed by the defendants in acquiring their supremacy in the trade, and in forcing competitors out of business, come within the accepted understanding of the words "fight," "fray" and "spoils". And its harmful character was accentuated by the fact that it was given at the end of a lengthy review of some of these acts. (Trans. pp. 2489-2490.)

Competition is necessarily a contest, but it is

not a "fight," in any just sense, nor a contest for "spoils," nor, under the law, is either contestant permitted to inflict "irretrievable injury."

Such an instruction is entirely out of place in an action of this character, which is based upon a statute that provides a remedy for all injuries whatsoever, which have been caused by a *combination* of competitors, and the very object and purpose of which is to protect the weak from attacks by the strong. The mere *inequality* of the contest means the certain overthrow and extinction of the weaker of the two contestants, no matter how "fair" the fighting is. But this instruction gives legal sanction to the rule of the "survival of the fittest," which as now understood means the survival of the *strongest.*

The word "competition" has not been often judicially defined. But in *United States vs. Union Pacific R. R. Co.*, 226 U. S., 61, 87, Mr. Justice Day said:

> "To compete is to strive for something which another is actively seeking and wishes to gain."

The legitimate advantages of competition have often been pointed out in the decisions, and none of these bear any semblance to "spoils," nor do the methods by which they may be obtained, under the law, take on any of the aspects of a "fight."

Among these may be instanced: Rivalry between competing manufacturers to improve the quality of their goods; between competing common carriers, in superiority of service, and accommodation of the public.

In *United States vs. Union Pacific R. R. Co.*, 226 U. S., 84, 87, Mr. Justice Day, speaking of

the kind of competition, which *under the law,* should obtain between rival common carriers, said that it did not consist only in making rates—

> "But includes the character of the service rendered, the accommodation of the shipper in handling and caring for freight and the prompt recognition and adjustment of the shipper's claims. Advantages in these respects were the subjects of representation and the basis of solicitation by many active, opposing agencies. The maintenance of these by the rival companies promoted their business and increased their revenues. The inducement to maintain these points of advantage—low rates, superiority of service and accommodation—did not remain the same in the hands of single dominating and common ownership as it was when they were the subjects of active promotion by competing owners whose success depended upon their accomplishment."

Is there any "element of fight" or "fray" in these advantages which the law encourages for the benefit of the shipper? Are the benefits which might accrue to the carrier who most nearly succeeds in furnishing those advantages to the shipper, in any just or commonly understood sense, "spoils?" It is a perversion of the English language to say so.

Furthermore, the instruction entirely overlooked the rule that what the law permits, or does not forbid, an individual to do, it expressly forbids a combination of individuals doing.

This distinction between the privileges which the law allows to an individual competitor and which it denies to a combination of individuals, was one which was entirely lost sight of by the Court during the trial, and is expressly repudiated in its instructions to the jury.

A combination of individuals engaged in interstate commerce is a veritable outlaw. It has no right to exist. And whatever it does "by reason" of which any person suffers injury, must be compensated for. If Section 7 of the Sherman Act does not mean this, what does it mean? It says:

> "Any person who shall be injured in his business or property by any other person or corporation by reason of *anything* forbidden or declared to be unlawful by this act, may sue therefor," etc.

We submit, that, as a matter of law, in a suit where the whole contention is that any and all injuries which may be suffered by reason of the competition induced by a *combination* of individuals engaged in interstate commerce, such injuries must be compensated for regardless of whether the acts which caused them were "fair" or "unfair," and regardless of whether such acts might have been in themselves lawful.

Its very existence is "forbidden" and "declared unlawful." If, by reason of *such existence* alone any person suffers an injury, no matter how "fair" its methods may be, he is entitled to compensation therefor.

That the doctrine above contended for is the doctrine of the cases, does not admit of a doubt. It has been several times held by this Court that it is not alone the actual *doing* of the prohibited thing which the anti-trust acts strike at, but the *power* to do it.

For example, in the *National Cotton Oil Company vs. Texas,* 197 U. S., 115, 129, Mr. Justice McKenna said:

> "It is the power to control prices which makes the inducements of combinations and

their profit. It is such power that makes it the concern of the law to prohibit or limit them."

In *Swift v. United States,* 196 U. S., 375, it was said:

> "Where acts are done with an unlawful intent and an unlawful combination results, the offense is committed, *even though the acts done are in themselves perfectly innocent and lawful.*"

Mr. Justice Peckham in the *Trans-Missouri case,* 166 U. S., 290, 322, said:

> "It is true the results of trusts, or combinations of that nature, may be different in different kinds of corporations, and yet they all have an essential similarity, and have been induced by motives of individual or corporate aggrandizement, as against the public interest. In business or trading combinations *they may even temporarily, or perhaps permanently, reduce the price of the article traded in or manufactured,* by reducing the expense inseparable from the running of many different companies for the same purpose. Trade or commerce under those circumstances may, nevertheless, be badly and unfortunately restrained by driving out of business the small dealers and worthy men whose lives have been spent therein, and who might be unable to readjust themselves to their altered surroundings. Mere reduction in the price of the commodity dealt in might be dearly paid for by the ruin of such a class, and the absorption of control over one commodity by an all-powerful combination of capital."

In *Monarch Tobacco Works v. American Tobacco Company,* 165 Fed., pp. 774, 780, it was said:

> "But whatever is done by those engaged in

the scheme or plot with the motive and intent to carry out the unlawful purpose itself becomes tainted with the illegality of the scheme, however innocent it might otherwise have been, the separate acts becoming thereby so interwoven with the unlawful scheme as to cause the injury 'by reason' of the combination, within the language of Section 7. It, therefore, seems that a series of acts, each of which may be innocent in *itself* may be wrongful if the direct object, purpose, and result thereof be to carry into effect a combination agreement whereby the free flow of commerce between the states, *or the liberty of a trader to carry on his business, be obstructed.*"

POINT VII.

Evidence relative to the purpose of the defendants in the employment of detectives to shadow Mr. Waddell while he was selecting a site for plaintiff mills, even though it may have been of a circumstantial nature, should have been received by the Court.

The allegations of the Amended Declaration are that the defendants placed detectives on Mr. Waddell's track for the purpose of carrying out their plan to retain their monopoly of the powder trade, they having failed in their efforts to dissuade him from starting his plant "to shadow him throughout the United States as he should journey from place to place in search of a location, to keep them advised of his movements and to enable them through their emissaries to forestall him in obtaining a location; and to create opposition to the location of plaintiff's plant in such place as might

be decided upon, by instilling fear into the minds of the people thereabout, and also, if need be, by entering into competition with the plaintiff for the purchase of sites and bidding up the price of said property, not, however, with any purpose to make use of the same themselves, but to prevent the entrance of an independent competitor for the powder trade in the states, territory and foreign country aforesaid, and with a view of altogether preventing plaintiff from finding a site for its mills and plant; that by reason of the matters and things set forth in this paragraph the said Waddell was compelled to travel from place to place with great secrecy, and sometimes under assumed names and to adopt various disguises to avoid being interfered with" (See Trans., p. 10, fol. 30).

The Court instructed the jury as follows, which is assigned as Error No. 8 (Trans., p. 3202):

> "There is no evidence whatever which would justify you in finding that the defendant hired detectives to track Mr. Waddell for the purpose of forestalling him in the purchase of a site, and to create opposition among the people to the location of plaintiff's plant in any place by instilling fear or otherwise, or by bidding up the price of any property plaintiff might have desired to acquire so as to prevent the entry of a competitor into the black powder business. The fact, however, that detectives were employed by the defendant to shadow Mr. Waddell after he had severed his connection with the defendant, and after his declaration to embark in a competitive business, is a circumstance to be considered by you in connection with the other testimony in the case upon the alternative questions whether it shows a hostile purpose upon the part of the defendant against Mr. Waddell's con-

templated enterprise with the view of suppressing competition, or whether it was but a step taken by the defendant in the protection of its legitimate interests, namely, to prevent their employees from being taken from them by this prospective competitor, which latter is the explanation offered on behalf of the defendants."

There was sufficient evidence in support of these allegations to show that they were well founded.

Mr. A. J. Moxham, a Vice President of the duPont company and at the head of the "Development Department," while testifying as a witness for plaintiff, on direct examination, stated that when Mr. Waddell came to leave their employ detectives were put on his track upon the order of William S. Dwinnelle, his assistant, since deceased; and that he caused them to be discharged after they had been in service for a few weeks. (See Trans., pp. 676, 677.)

Mr. T. C. duPont testified that these detectives were sent out by the *Pinkerton Agency* and were employed from Feb. 3 to Feb. 26, 1903. On cross-examination he was asked why they were employed and he answered:

"It was done because our people felt that some of our employees were trying to be gotten away from us by Mr. Waddell, and after three weeks they found that it was not true and they took them off." (See Trans., pp. 244-245.)

Upon redirect the following occurred (See Trans., p. 278):

"Q. You say some of your people thought that Mr. Waddell would endeavor to entice your employees away. Who were those people that thought this thing about these employees?

A. I don't remember just who it was said that to me.

"Q. Can you tell who the employees were that these people thought he was going to try to entice away? A. No, I can not.

"Q. Do you know where these employees resided that they thought he was going to entice away? A. I said I didn't know who they were, so I could not tell you where they resided.

"Q. Do you know whether any of these employees resided in the State of Illinois? A. I do not know.

"Q. Do you know whether any of them resided in the State of Ohio? A. I do not know.

"Q. I ask you whether any of them resided in the State of Missouri? A. I don't know who they were."

It must be remembered that at this time Mr. Waddell had not found a site, had made no preparations even to begin business, and had no need of Du Pont employes.

That the reason given by Mr. duPont was not the real reason is established by the fact that Mr. Waddell left Wilmington on the 5th of February, went direct to York, Penn.; from there he went to Chicago, and from there to Cincinnati. At Cincinnati he was handed the letter set out below; it was signed by J. H. Schumacher, a Superintendent of the *Pinkerton Detective Agency,* which accorded with the testimony of T. C. duPont that the detectives whom the duPont Company employed were sent out by that agency. Mr. Waddell further testified that after he received this letter he went down to the Stratford Hotel in Cincinnati and found the party referred to in the letter; that he then slipped away quietly from Cin-

cinnati, leaving his trunk at the hotel and his hotel bill unpaid for a couple of days, so as to throw the detectives off the scent, but directing his son his to pay the bill and giving him an order for his trunk to be forwarded later; he then travelled through Illinois, and part of Missouri under his middle name of W. R. Stewart, looking for sites, and avoided all public appearance as much as possible and finally arrived at Peoria, Ill., where he found the site afterward used by him (See Trans., pp. 756-761).

It was a proper question to be submitted to the jury whether the fact that Mr. Waddell disguised himself and travelled under assumed names and in this manner eluded the detectives, was the reason why they were unable to carry out their intention to obstruct him in the manner alleged in the Declaration it was their intention to do.

Mr. Waddell did not know that he was being shadowed until the following letter was fortuitously picked up in the Post Office in Cincinnati, and turned over to him. The Court refused to receive the letter, which is assigned as Error No. 9. (See Trans., p. 3203.)

"Chicago, Feb. 13, 1903.

"H. A. Koach, Esq.,
"c/o Stratford Hotel,
"Cincinnati, Ohio:

"Dear Sir—This will be handed to you by Capt. H. R. Saville of the Philadelphia Agency, who has been engaged in shadowing the party I wired to you about in cipher, as follows:

"'Wire immediately if R. S. Waddell of Wilmington, Delaware, is now in Cincinnati; think can be found South East corner Third and Broadway. Want to place shadow; therefore, inquiry carefully.'

"and to which you replied as follows:

" 'Mail at party's office Union Trust Building indicates he will arrive tomorrow. He has home and family in this city.'

"Will you kindly assist him as much as possible in locating the party, and just as soon as he locates him, he is to wire to Chicago for assistance.

"Yours truly,

"(Signed.) J. H. Schumacher,
"Sup't."

It was for the jury to say whether the facts above recited constituted *any* evidence that these detectives were placed on Mr. Waddell's track for *any* of the purposes stated. The reason given by Mr. T. C. duPont, in view of the fact that these detectives followed Mr. Waddell over so wide a territory, and that the evidence fails to show who the alleged employees were that they were afraid he would entice away, or that any employees of the Du Pont Company were in that territory, is unreasonable and unbelievable; and the reasons stated by plaintiff why the detectives were employed is much more in keeping with the other facts in the record. The whole question, including the letter, should have been submitted to the jury instead of their being told that there was "*no evidence whatever*" for them to consider.

POINT VIII.

Wherever necessary to drive a competitor out of business the defendants sold their products below cost.

The plaintiff alleged that, as one of the means adopted by the defendants to obtain and maintain a monopoly in the powder trade, in those states, territories and foreign countries where they were in full control of the powder trade their prices were always fixed *so as to leave substantial and sometimes excessive margins of profit,* but that in those states, territories and foreign countries where they were doing business in competition or in danger of competition their prices were regulated with a view of preventing other manufacturers from obtaining a fair proportion of the powder trade and not with a view of obtaining a fair profit, so that when their competitors should be compelled to retire from business they could make any price they should thereafter see fit; and further that it was continuously forced to meet the prices thus fixed by the defendant duPont Powder Company during the entire period of its existence, and that it "was unable to offer to supply such powder at any price below which said defendant would not go, and wherever and whenever the business of the consumer was submitted for bid, or to competition, in almost every case, the said defendant would underbid plaintiff by persistently reducing its price at from five to ten cents per keg, and thus not only depriving plaintiff of said business *but sometimes making sales at an actual loss;* that in this manner, plaintiff would ultimately be compelled to surrender the business of such consumer and leave the said defendant a clear field to make up its loses by fixing

any price it might thereafter see fit." (See Amended Declaration, Trans., pp. 24-25.)

The court instructed the jury that there is "*no evidence* that would sustain the allegations made by the plaintiff that the defendant * * * sold its product below actual cost; * * * and you will therefore *disregard them entirely* in your further consideration of the issues here being tried."

This instruction is assigned as Error No. 12. (See Trans., p. 3204, fol. 9611.)

It is difficult indeed, to understand how the court reached this conclusion in view of the record as follows:

Mr. Waddell, the President of the plaintiff, testified that the duPont Company sold black blasting powder at less than cost. (See Trans., pp. 812-813, fols. 2436-2437.)

> "Q. Do you know of any instance, of your own knowledge, where the duPont Company sold its powder to any consumer of black blasting powder at less than cost? (After argument.) A. Yes.
>
> "Q. Now will you give the circumstances by which you know that to be the case? A. In the cases where they sold powder at ninety cents—ninety-two cents—in all cases of that kind, and in many cases where they sold at ninety-five cents delivered, where the freight rate was high and in the district in which I operated."

This testimony of Mr. Waddell is supported by the testimony of the defendants' own officers and employees and by various exhibits which were received in evidence. Foremost of these is Plaintiff's Exhibit No. 1248, (See Trans., pp. 2735-2745) known as the "95 cent price list" (described supra, p. 92) which was made up from the

files of the Du Pont Powder Company, and brought in by Mr. Coyne, its Directors of Sales, shows that that Company between the 5th day of May, 1905, and the 8th day of October, 1907, *made a price* of 95 cents per keg for blasting powder, to *four hundred and forty-five* consumers of black blasting powder in the States of Ohio, Indiana, Illinois, Kentucky, Missouri and Kansas, and that it actually made *sales,* at that price, to 154 such consumers. (See Trans., pp. 1601-1602.)

Furthermore this exhibit shows that the duPont Company made or renewed *eighty-six contracts* at 95 cents per keg, so that they not only made *one* sale to each such customers, or filled one order at 95 cents, but they sold such customer many orders for a *period* of years at this price.

In the case of Mr. Brechnitz, a merchant of Bellville, Ill., who had a large trade in explosives among the mine owners in that region and who was a customer and stockholder of plaintiff, the Du Pont Company finally secured his business and got him to enter into a long-time contract by offering him a price which was equivalent to 91¾ cents. The price was *nominally* 95 cents, but the use of its magazine was given to him, which meant, as he testified, 3¼ cents a keg to him in saving of drayage. (See Brechnitz, Trans., p. 551, fol. 1653.)

Mr. Waddell testified that black powder could not be made and sold at a profit at 95 cents per keg (See Trans., p. 2424.) and Mr. Haskell, speaking authoritatively for the duPont Company as its Vice-President having actual charge of determining all questions of cost and price (see Trans., pp. 1937-1940), stated that prior to 1907 and early in 1907, he learned that the plaintiff

was selling its nitrate of soda--which is the principal ingredient of blasting powder—and that the duPont Company thereupon ceased to have any further interest in Buckeye Powder Company's competition, because it "preferred to do a nitrate business more than powder business, and that it was not worth while to consider their quotations at all". Thereupon the following occurred (See Trans., pp. 1938-1940):

> "Q. The fact is, however that at the then price of nitrate of soda it was impossible to make powder and sell it at a profit of 95 cents? A. *Yes;* but the Buckeye was not buying nitrate of soda. It had nitrate of soda which it had bought at much lower prices, at which it could make a profit.
>
> "Q. I understood that to be your answer. But exclusive of your conclusion in the matter my question is whether powder could be sold at a profit at 95 cents at the then price of nitrate of soda, regardless of the other conditions which you state in your answer? A. Under certain conditions, yes.
>
> "Q. Tell me what those conditions were? A. Provided the business was sufficiently close to the mill and a fair volume of output was maintained.
>
> "Q. But you think it would have been possible for a company to have manufactured powder and sold it in a normal, natural way, in the normal natural market, and have made money at 95 cents? A. At that time the market was not normal.
>
> "Q. In your judgment, could the Buckeye Powder Company have made powder at the then price of nitrate of soda and sold it at 95 cents, at a profit, anywhere within the district which it would have normally reached? A. If it had accumulated a *near-by business* through having won the regard of its customers, and by making good powder, it could

have sold trade near Peoria at the then existing price of nitrate of soda and made some money.

"Q. You think it could have done all those things and made a profit provided it could have sold it to a little near-by trade, where it could have carted; is that the idea? A. No; there is a large trade around Peoria.

"Q. Then your contention is that if it had confined itself to a *narrow area within which it could sell, without much expense in the way of freight, it might have made some profit at 95 cents*? Just answer that question yes or no, will you, and then explain it. A. I think it could have made some profit.

"Q. Do you wish to explain it? A. I would assume that if the conditions of the Buckeye Powder Company had been normal, it could have continued as an active business concern for the purpose of manufacturing and selling powder, when the 95 cent prices were being made by us and others in exceptional cases *it would have possessed certain other trade at higher prices* which would have enabled it to have manufactured at such a rate that it could have sold *a portion* of its output at 95 cents without loss."

Mr. Waddell's testimony that he "could not make powder and sell it at a profit within the Peoria District at 95 cents," was based on actual experience and the theory here advanced by Mr. Haskell which would confine the Buckeye Powder Company to "nearby business" is fully answered by the evidence which shows that within the entire Peoria District, there is a total consumption of black blasting powder of only 85,000 to 95,000 kegs per year, and that the greater part of this was *under contract* to the duPont Powder Company. (See Trans., pp. 2423-2424.) So that if the plaintiff could have secured all of this

trade, it would not have been able to operate its plant at more than about one-third of its capacity. Furthermore, it was in this District that miners of several operators who were not under contract were kept in a ferment of opposition to the use of Buckeye Powder by the paid representatives of the duPont company. (See discussion of this subject elsewhere in this brief, infra, Point IX, and particularly at pp. 202 et seq.)

Mr. Brewster, a former employee of the duPont Company, in its Competitive Division, testified that Mr. Haskell told him, just before the 95 cent price was authorized in 1905, that *"Competitors could not make powder at a profit at 95 cents."* (Trans., p. 2401, fol. 7203.) Mr. Haskell was afterwards called as a witness but did not deny that statement.

Mr. Patterson, also one of the Vice Presidents of the duPont Powder Company, while a witness for plaintiff and under cross-examination, was interrogated with respect to the competitive policy of his Company in meeting the prices of others. He stated that their policy was to *meet* prices, but not to make *lower* prices than others, their managers and salesmen believing, as he stated, "that they could hold their own if they had equal prices." And thereupon the following occurred (Trans., p. 186.):

> "Q. Now, in the matter of meeting prices, supposing the competitor went away down, was there a point at which it stopped following him? A. Yes.
>
> "Q. What was that point? A. Well, we fixed the limit, and we lost a great deal of business, from my recollection.

"Q. What were the considerations that fixed that limit, below which you would not go? A. Well, the limit of profit.

"Q. In other words, you would not sell below cost; is that it? A. That was our aim.

"Q. And so far as you know, you never did, did you, Mr. Patterson? A. *Over the whole country,* do you mean?

"Q. Yes. A. No, sir.

"Q. During this period? A. No, sir; taking the country *as a whole,* I think we never did."

Upon redirect examination he was questioned further in regard to this statement as follows (Trans., pp. 188-189):

"Q. You stated a moment ago that taking the country *as a whole* you thought you never had sold below cost? A. That is my impression, Mr. Abbott.

"Q. Will you state in what particular portions of the country you may have sold below cost? A. In what?

"Q. In what particular portions of the country do you think you may have sold below cost? A. Well I think it was a pretty close question whether they would run on the prices made, considering the business that we had *in the anthracite district.* I think including *the rest* of the country we made money.

"Q. Can you give any particular instance in which you sold below cost? A. No, sir; I cannot.

"Q. Can you give any particular state in which you sold below cost? A. No, sir.

"Q. Can you give any particular customer to whom you sold below cost? A. No, sir.

"Q. Upon what do you base your impression that you did sell below cost at some time or some place? A. I think my recollection is that from the *net result of the business in 1906,* Mr. Abbott, we made a *very small margin of profit,* but we did not lose money.

"Q. That was on your *whole* business? A. On the *whole* business, yes, sir.

"Q. That was on the business where you sold *at a profit* as well as on the business that you sold *at a loss*? A. Taking it *as a whole*; yes sir.

* * * * *

"Q Were any of those cases in the State of Illinois? A. *I think that district was very close to cost, because of the competitive conditions; yes, sir.*"

This directly supports plaintiff's allegations that the defendants maintained lower prices in competitive districts, even to selling at a loss, making up the loss in those districts where competition did not prevail.

That it was a long-established policy to sell below cost in every contest with competitors if it became necessary to do so in order to get the business is overwhelmingly shown by the evidence adduced by the defendants themselves. Instances of sales made below 95 cents are given and appear in the correspondence over and over again during the long cross-examination of Mr. Waddell.

During the contest which prevailed from 1891 to 1896, just before the "Round-up" prices were cut from $1.45 to 80 cents. (See Trans., p. 1047, fol. 3141; p. 1098, fol. 3292; p. 1136, fol. 3408; p. 1147, fol. 3440; p. 1156, fol. 3468; pp. 1157-1163; p. 1200); and before it ended in 1896 it sold as low as 75 cents. (Trans., p. 1011, fol. 3032; pp 1048-1049, fols. 3144-3145; also p. 1074; fols. 3221, 3222; p. 1174, fol. 3521.) Offers were made as low as 76, 75 and 67 cents (p. 1173, fol. 3518).

The competing companies were "see-sawing" and alternating 5 or 10 cents all the time, and the "associates" had the business at the end of

the fight, in 1896 when the "round-up" came. (Trans., p. 1058, fol. 3173; pp. 1074-1075, fols. 3221, 3223; p. 1090, fol. 3270; p. 1116, fol. 3348; p. 1138, fol. 3414; pp. 1194-1195.)

The general summary of several day's testimony in which counsel for defendants clearly established these prices as having prevailed in various districts appears at pp. 1206, 1210, fols. 3618-3629 of the Transcript.

Mr. Haskell also testified that the contest which prevailed in 1895 brought the price down to 78 cents a keg, and that there was *no profit in it at that price.* (Trans., p. 1618, also pp. 1751-1752, fols. 5253, 5255.)

POINT IX.

The evidence showed that the greater part of black blasting powder was used in coal mining operations, and that the mine operators purchased it in quantities and resold it to the miners as needed, receiving a considerable profit therefor; that the miners reserved the right to select the grade or brand of powder to be used; that for some years it had been the practice on the part of some manufacturers of powder to employ influential miners to circulate among the men in the mines and induce them to reject competitive brands; that cash, intoxicating liquors, etc., were sometimes used with the miners to accomplish this purpose; that this practice was used very effectively by the defendant Du Pont Company through its employes and agents, to drive plaintiff out of business, and at least five specific instances were furnished (one of which resulted in a general strike against plaintiff powder due to misrepresentations made by a salesman of the Du Pont Company), and much general evidence was produced from which this inference necessarily resulted. Notwithstanding all this evidence, the Court withdrew the whole question from the jury, on the ground that there was no evidence to support it.

The Court instructed the jury as follows, which is assigned as Error No. 12 (See Trans., p. 3204, fol. 9610).

> "There is *no* evidence, gentlemen, that would sustain the allegations made by the plaintiff, that * * * cash, intoxicating liquors, household goods and clothing were distributed among miners to secure their influence with their fellow workmen to effect boycotts, * * * and my instructions to you are, as to these particular allegations, that they have not been established, and you will therefore disregard them *entirely* in your further consideration of the issue here being tried."

To make the matter stronger, when the exception was taken to this instruction, the court stated:

> "You may take an exception. *I withdraw that question* from the jury." (See Trans., pp. 2518, fol. 7554.)

Allegations of the Declaration.

The allegations of the declaration recite that the business of producing coal in the Middle West was conducted primarily under an agreement which existed between the Association known as the Coal Operators Association and another Association known as the Miners' Union; that by the terms of this agreement the Operators Association were to keep on hand a supply of powder which was to be used by the miners in conducting their mining operations and that this powder was to be supplied to the miners from time to time as they might require it at $1.75 per keg; that this price was fixed and unchangeable during the life of the agreement; that the Miners reserved the right under the agreement,

to select the grade or make of powder that the Operators must purchase; that the defendant Du Pont Powder Company, at various times after plaintiff's plant went into operation, employed evilly disposed persons to enter the mines of Operators who had made purchases of black blasting powder of plaintiff, for the purpose of stirring up discontent among the miners and to instill in their minds prejudice against said powder, and to cause them to refuse to use it, and thus compelling the operator to cease his purchases of plaintiff, intending and planning thereby to secure the business for itself; and that this sometimes led to the discontinuance of its use by operators through fear of shut-downs and idleness; that in order to foment unjust opposition and strife "influential miners were employed to make use of their influence with their fellow-workmen to induce them to boycott such powder; that in some cases intoxicating liquors were distributed among said miners, sometimes clothing, food and household articles were distributed among said miners and their families, and sometimes cash was paid to various of said miners to obtain their co-operation and influence with their fellow-workmen as aforesaid". (Trans., p. 19.)

The Court placed the burden very emphatically and unmistakably on the plaintiff, of catching the defendants in the very act of passing the money to the miners, as, for example, the following extract from the record shows:

Mr. J. G. Miller, a broker in Chicago who handled powder manufactured by plaintiff, was testifying concerning the factors which operated to prevent him from selling such powder, when the following occurred. (See Trans., p. 310):

"Q. Now, coming down to the other matters which you found operated to prevent you selling powder, if there were any, will you state what you learned of your own knowledge with reference to any influence which was used with the miners to induce them to object to the use of Buckeye powder? (Objected to.)

"Q. Let me ask you whether you had any personal knowledge of anything done by anybody to influence operators against the use of your powder other than what you obtained from such persons? A. You mean someone in the act?

"THE COURT: Yes.

"A. No, sir.

"MR. ABBOTT: Will your Honor confine us to that line of inquiry from the witness?

"THE COURT: At this time, yes."

But this burden was so well sustained that it is very difficult to know how to summarize it briefly. To us the evidence seems overwhelming, and we are at a complete loss to understand the reason for the above instruction.

The testimony was both of a general and specific character in support of these charges.

The *general* evidence is summarized and discussed below under the following heads:

(a) Relating to the employment of "Howlers" as a long-established policy and practice of the duPont Company—these "Howlers" being influential miners who were employed in mines where competition to duPont powder prevailed, for the purpose of "setting up a howl" against the use of competitive powders.

(b) Relating to the general opposition which was stirred up against the use of Plaintiff's powder on the part of the miners, particularly in mines located in the Springfield and Peoria dis-

tricts in Illinois—the evidence covering incidents at many mines in each of these districts.

The *specific* evidence is summarized and discussed below under the following heads:

(a) Relating to the Clark Coal & Coke Company Mines at Peoria, Ill.

(b) Relating to the Howarth & Taylor Mines at Edwards, Ill.

(c) Relating to the Maplewood Coal Company's Mines at Cuba, Ill.

(d) Relating to the Applegate & Lewis Mines at Hanna City, Ill.—known as the "Thrush Incident", because of the activities among the miners at this mine against plaintiff's powder on the part of a miner named William Thrush.

(e) Relating to the Great Northern Fuel Company's Mines at Novinger, Mo.—known as the "Spicer Incident", because of the activities of Mr. C. B. Spicer, a DuPont salesman, in bringing about a strike among the miners at these mines to force the owners to cease the use of Plaintiff's powder.

Comments by the Court on this Evidence.

After having given the broad and positive instruction that there is "no evidence" to support these allegations, and withdrawing the entire question from the consideration of the jury, the Court commented at length on the evidence involved in the "Thrush Incident" and in the "Spicer Incident", (See Trans., pp. 2463-2470, fols. 7389-7409) but made no reference to the other evidence above outlined.

The reason for these comments is not clear. It would seem that having told the jury that there was "no evidence" to support these alle-

gations, and having withdrawn the whole question from the jury, the Court would have avoided making any further reference to the evidence relating to any of these matters.

These comments are the more difficult to understand for the reason (as will be seen below) that the evidence in the "Thrush Incident" was conclusive that Mr. Thrush was paid *in cash* five cents per keg as a commission on every keg of duPont powder used at the mines, his business being to influence the miners not to use plaintiff's powder, which the owners of the mine were desirous of using because of the good results which it produced, and for other business reasons. By reason of his influence among the miners, he was able to create so much opposition to the use of Buckeye powder that the mine owners were compelled ultimately to abandon their efforts to use it.

In the matter of the "Spicer Incident", the evidence was also conclusive that the "union" sentiment among the miners employed at the Great Northern Fuel Company's mines was very strong; that the plaintiff had a contract with the Fuel Company to supply all the powder required for its uses; that this powder proved satisfactory in its use, both to the mine and to the men; that Mr. Spicer, a duPont salesman, sought to obtain the business of the Fuel Company by making a bid of a lower price than plaintiff was receiving, to Mr. McCaull, the President of the Fuel Company; that plaintiff was unwilling to meet this price; that the owners of the mines were desirous of seeking a pretext to break their contract so as to take advantage of the price offered by Mr. Spicer; that Mr. Spicer undertook to furnish this pretext and this he did by making

use of the "union" sentiment which prevailed; that he caused certain influential leaders among the miners to circulate the story that plaintiff's powder was a non-union powder, whereas the fact was otherwise; that as a result of these charges a strike among the miners was called against the use of plaintiff's powder, and plaintiff lost this business. There is some evidence that intoxicating liquors were distributed among some of the influential men at this time, to acquire their support to this movement.

By commenting upon these two "incidents" after having withdrawn the entire subject, the jury was left to draw but one conclusion, viz., that the methods used with the miners were proper competitive methods; and that the cash which was admittedly paid to Thrush was a proper exercise of competitive rights.

The jury might readily and properly have inferred from the evidence, that where an *individual* miner objected to the use of plaintiff's powder, he did it wholly for personal reasons. He might prefer DuPont powder for his own uses and no inference would necessarily arise that he was actuated by any outside influence. But the situation would be entirely different when miners left their work and gave their time to creating a feeling of dissatisfaction among their fellows against plaintiff's powder. In such a case, where there was no direct evidence that "cash" had been paid to them, the jury would have the right to infer that "cash" was the inducing motive for their activities. And if cash was paid the proper legal inference would be that such cash was paid by the person or concern who benefited by their activities, namely, the Du Pont Powder Company.

The individual miner might be actuated by blind prejudice merely, as was the case at the Willis Coal Mining Company's Mines at Willisville, Ill., as testified to by Thomas Jeremiah, the mine superintendent, (See Trans., p. 522, fols. 1566-1567) who stated that after he began using plaintiff's powder it proved to be very satisfactory to the miners and that he had had trouble about it with only one man:

> "He noticed there had been a change and he come to me personally, and said the powder wasn't as good as the one we had been using, so I went to the mine committee and told them that he had registered a kick, and I told him to send his powder out and I would send him another keg. The mine committee and myself took the powder that he sent out, poured it into another keg of a different brand, sent it back into the mines and I asked him the following day how the powder was working and he said that it worked fine."

It is impossible to believe that some of the things that the evidence shows were done by the defendants to influence the miners against plaintiff's powder, were done without the distribution of "cash". The jury were at least entitled to draw their *own inferences* from the facts presented.

In *Hale vs. Hatch and North Coal Company,* 204 Fed., 431, it was shown that Hale had a successful and growing coal business; that other coal dealers formed the Coal Dealers Association, and that shortly afterwards Hale found that he could not buy coal and one difficulty after another confronted him until he was forced into bankruptcy. The Court said:

> "We have then a successful and growing

business destroyed. A large number of coal dealers whose interests were hostile to those of Hale. Inability on Hale's part to purchase coal except at ruinous prices.

"In looking for the causes responsible for Hale's ruin, we naturally turn to those persons who were being injured by his success, viz., the local coal dealers of Hartford. * * * Without considering the entire testimony which points to the defendants, or some of them, as parties responsible for the destruction of Hale's business, we think enough has been stated to make it clear that the question was one of fact which should have been submitted to the jury."

The instruction of the Court necessitates a review of all the evidence, and we proceed to do so as follows:

I. General Evidence of Improper Influence Exercised by the Defendants with Miners to Induce Them to Reject Other Brands of Powder.

There is much evidence in the record which shows the *general* influence exercised by the defendants with miners concerning the kind of powder which should be used in the mines where they were working and particularly to reject other brands of powder except duPont or allied brands.

(A) Evidence Concerning Miners' and Operators' Agreements Relating to Powder.

The testimony shows that these agreements between the Coal Operators and Miners first came into existence in the early nineties. (R. S. Waddell, p. 923, fol. 2767.)

They were in existence at the time when the plaintiff was conducting its business; that biennial conventions were held between the operators and the miners; that the miners often exercised their right to select the grade or brand of powder

they desired, and that they made demands and used their influence with the operators from time to time affecting the trade which the plaintiff had for black blasting powder with the various operators (Ibid, pp. 796-803).

(B) PIT COMMITTEES.

The interests of the miners under this agreement are taken care of or represented by a "Pit Committee," sometimes called a "Mine Committee." through whom miners make their demands known and effective. The Pit Committee voices the result of a vote taken by the miners on any topic or if a vote is not taken the Pit Committee decides the matter itself unless there be a protest. In fact, it speaks for the miners in all respects. A request made by the Pit Committee for a certain kind of powder is a request made by the miners themselves. (R. S. Waddell, Trans.. p. 799.)

(C) EMPLOYING "HOWLERS."

Mr. R. S. Waddell testified that while he was in the employ of the Hazard and duPont Companies at Wilmington he had knowledge of the employment of "howlers," a term used to designate miners who were engaged to raise a disturbance against some brand of powder which the Operator was using or trying to use. He related a conversation which took place between himself and T. C. duPont with respect to the activities of one P. H. Donnelly, a salesman employed by the Chicago office of the Hazard and duPont Companies. He said:

> "Mr. duPont came to my department and asked me what I could suggest be done with reference to stopping Donnelly from hiring

> howlers in coal mines, and explained that he had howlers who were paid to raise trouble if any other than duPont brand came in the mines at Springfield and in Northern Illinois and in Iowa. Mr. duPont said that complaint had been made by our associates of this practice and wanted to know if we could not stop it. I told him that I had no control over the Chicago office, it was not under my care as general sales agent, and he would have to look after that matter himself." (Trans., p. 744.)

The occasion for this concern on Mr. duPont's part was that—

> "The Oriental Powder Mills had a contract that had been authorized and that had been made and enjoyed for a couple of years with the Smoky Hollow Coal Company of Avery, Iowa. Complaint had been made by the Oriental Powder Mills that they were unable to supply powder to a customer with whom they had a contract, the Smoky Hollow Coal Company at Avery, Iowa, because the duPont Company through Mr. Donnelly had howlers in the mines in Smoky Hollow Coal Company and they would raise a disturbance when the Oriental powder went into the mines and they asked us—asked the duPont Company to stop that method. That the Oriental was entitled to the trade, that was conceded and that was what Mr. duPont was trying to stop" (Trans., pp. 744-745.)

This circumstance is important as showing, not only that the duPont Company was familiar with the practices of its employees in hiring "howlers," but it is also important, because this same P. H. Donnelly is still in the employ of that Company, and that during the period of the existence of the plaintiff, he was an active agent and representative of that Company in the Peoria and Spring-

field districts where the trade of the plaintiff naturally came from. The evidence tends to show, if it does not conclusively show, that he was instrumental in influencing the miners to refuse plaintiff's powder in the Clark Coal & Coke Company's mine and in Howarth & Taylor's mines to refuse to use Buckeye Powder. (See discussion infra, pp. 202-207.)

(D) General Conditions in Peoria and Springfield Districts.

Mr. Thomas J. Reynolds was a miner of long experience and wide influence in the Miners' Union; he was employed by the plaintiff as a salesman and demonstrator; he went into the mines where Buckeye powder was being used to see how it worked and to attend to any complaints that might be made; he covered a good deal of the State of Illinois, being occupied most of the time in Peoria and Springfield districts; he acted in this capacity for about ten months when he ceased his relations with the company. (Trans., pp. 361-364.)

He testified that whenever he could get a fair test of Buckeye powder, he found little opposition to it on the part of the miners, but this was very difficult to get in the Peoria and Springfield districts, because of the constant "bowling" of the powder out. (See Trans., pp. 364, 366.)

Mr. Reynolds also testified concerning the results of his efforts to get plaintiff's powder introduced into Dugan Brothers' mines at Pekin, Ill. He says (See Trans:. pp. 367-368):

> "The Dugan Brothers, I think, were running that mine at that time and they said if the miners would take the powder they could do

some business with us; so I took the matter up with the miners and took some powder there for them to try; went down the mine after they shot it and saw that it done nice work; everybody was satisfied with it, and they also reported that to the Local Union, and they agreed to use the powder, provided the company would buy it; the company had given assurance that if it was acceptable to the men, they would. After the men had taken that action, there was somebody went down there and went around with the committee of the miners around the mine, and they had them sign up to continue the use of the powder they were using before."

II. Specific Instances of Influencing Miners against Plaintiff's Powder.

(a) The Clark Coal & Coke Co., Mines Peoria, Ill.

This was an important mine using about 22,000 kegs per year. Mr. Horace Clark was the President of the Company, and was a stockholder of the plaintiff holding $1,000 worth of the stock during the entire period while it was in business (Trans., p. 798).

Mr. Clark gave his testimony and stated that he was not able to use Buckeye Powder at his mines because the miners would not use it. (Trans., p. 445.)

On December 28th, 1908, he wrote a letter to plaintiff in which he said (Trans., p. 446):

> "We only wish it was in our power to use Buckeye Powder exclusively, but as you know our miners positively will not use anything but duPont, and as much as we would like to help out our friends, it seems as if we cannot do it."

Now note how quickly these same miners chang-

ed their attitude with respect to using "anything but Du Pont" powder. Mr. Clark also testified that after the plaintiff sold its plant to Mr. Olin the preference of these miners for Du Pont powder immediately ceased, and he immediately began using the powder manufactured by Mr. Olin at this same plant without opposition from the miners and has continued to use it ever since (Trans., p. 446).

Mr. Waddell testified as follows (Trans., pp. 797-798):

> "I know that the Clark Coal & Coke Company, Mr. Horace Clark, president, who was a stockholder in the Buckeye Powder Company and desired to use Buckeye Powder in his mines. I went in to the mines myself and witnessed the shooting of the powder and the test of the powders in comparison with duPont and Buckeye. I saw the results of the shooting. The miners, independent of the results they obtained, decided they would not use Buckeye Powder."

The reason why the miners at this mine would not use Buckeye Powder is indicated in a Trade Report dated June 30th, 1908. (See Plaintiff's Exhibit 151—not printed.)

This Trade Report was made by Mr. P. H. Donnelly, a salesman of the duPont Powder Company, on the business of the Clark Coal & Coke Company and contains the following significant statement:

> "These people are stockholders in the Buckeye Powder Company but have never been able to influence their miners into using that powder. The miners insisted on duPont. Mr. Jno. Theissen, Gen. Supt., *is a good friend of ours* and the trade is all right."

This is the same Donnelly already referred to as having employed "howlers" for the duPont Company. (See supra, pp. 199-200.)

Mr. Haskell's testimony as follows should be remembered in this connection. As the active official of the duPont Company in charge of sales, he is authorized to speak; and he speaks very *conservatively* to say the least (see Trans., pp. 1730-1731):

> "Q. From time to time when your agents were endeavoring to secure custom or business from various consumers of black blasting powder were they at any time authorized to use any influence with the managers of the coal mines to induce them to recommend your powder to their employers? A. As a rule the only way of getting the trade of a coal company, getting them to purchase powder, was to get the good will of the manager and to get him to use, if he would, his influence, which would lead either to the continuance of the purchase or its adoption, if it was not then being sold.
>
> "Q. Did not that effort sometimes extend to the point of giving the mine manager a commission or making a payment to him in some way upon the powder which his employer would use? A. I have no recollection of any payments of commissions to anyone, although at times *cases of shells were given.*"

(b) Howarth & Taylor Mines, Edwards, Ill.

These mines were located about two miles from the plant of the Buckeye Powder Company. They consumed about 3,000 kegs of powder annually. A considerable amount of Buckeye powder was used from time to time. Finally however, as the testimony shows, serious opposition among the miners sprung up against further use of Buckeye Powder.

Mr. Waddell testified that he met members of the Pit Committee of this mine upon many occasions; that they represented some eighty to one hundred and twenty-five miners; that upon a certain occasion Wm. Kingbush, one of the members of the Pit Committee made a proposition to him with reference to the use of Buckeye Powder in these mines. Witness was not permitted to state what this proposition was but he was allowed to say that about the time this conversation occurred, Howarth & Taylor ceased their purchases of plaintiff's powder. (See Trans., pp. 800-802.)

By reference to Plaintiff's Exhibit 1163—the same being copies of two Trade Reports made to the duPont Company and called "Government Exhibit 455," and found at pages 2885-2888 of Plaintiff's Identification P-13 (not printed in the Transcript but in a separate printed volume)—it may be inferred what the proposition to Mr. Waddell, was and how it came to be made. One of these reports is made by a salesman and is marked as received by the Du Pont Company at its offices in Wilmington on July 23, 1904, and states that the firm of Howarth & Taylor are using Buckeye powder "because of a better price and also because *the miners wanted it.* This report was sent in to the Chicago office and *six days later* (on July 29, 1904), a report from that office on Howarth & Taylor's Mines was received at the Wilmington office of the Du Pont Company stating as follows (See Ibid, p. 2886):

> "Understand they had a L. & R. contract, but miners objected to using the powder and *demanded* Buckeye Powder. Mr. Taylor stated that he was buying Buckeye Powder for much less than we had offered him. Mr. Taylor personally favors duPont Powder, but will buy

> what miners decide on using. *If the miners could be induced to demand duPont* we might be able to secure a contract with Mr. Taylor, provided the price was anywhere near what he was paying for Buckeye."

That the suggestion here made had the desired effect is shown by the testimony of Daniel Taylor, one of the members of the firm of Howarth & Taylor, and his wife, Olive Taylor, who acted as bookkeeper for the firm.

Both were called by the defendants for the purpose of showing that the reason they ceased to purchase powder of plaintiff was, that upon a test of the two powders Buckeye Powder failed to produce as good results as duPont, and therefore that the miners *demanded* duPont powder. But from their testimony it appears that this particular "test" was held immediately after the above Trade Report was sent in by the Chicago office stating that "Mr. Taylor personally favors duPont powder," and suggested that *"if the miners can be induced to demand duPont,* we might be able to secure a contract with Mr. Taylor."

Mr. Taylor testifies that this "test" was made in 1904 and lasted about three months. It was not a regular "test", such as is prescribed by the Agreement between the Miners and Operators, no particular committee was in charge of it. At the end of the time miners complained that they were not satisfied with Buckeye powder, and he thereupon changed to duPont. (Trans., p. 2085.)

On his cross-examination, Mr. Taylor admitted that the only persons he knew or had met relative to powder interests were "those that came from the Du Ponts", viz., Mr. Dooley, Mr. Moffatt, and Mr. Donnelly (p. 2090, fol. 6268); that he

was under contract with the Du Pont Company at this time (fol. 6276); and that the "Pit Committee *came to me and asked me to make a change from Buckeye to Du Pont*" (p. 2094, fol. 6282).

It is apparent from the foregoing that the results of this test were somewhat colored by the *preferences* of Mr. Taylor as the same were indicated in the Trade Report above referred to, and the testimony given by Mr. Taylor and his wife Olive Taylor, as defendants witnesses displays an earnest effort to support these preferences. But whether this be so or not it was for the jury to determine whether the demand made by Wm. Kingbush of the Pit Committee upon Mr. Waddell as testified to by him, had any relation to the action of the Chicago office of the duPont Company in suggesting to its principals that if the miners *could be induced* to make a demand for duPont powder the business of this firm could be secured, and Mr. Taylor's own personal desires thus carried into effect.

The suggested "inducement" was forthcoming the demand was made, and the Du Pont Company "secured a contract with Mr. Taylor"—all just as the salesman had predicted in his report. (See the contract dated Nov. 1, 1904, Plaintiff's Exhibit P-36; Trans., pp. 2559-2561.)

(c) Maplewood Coal Company's Mines, Cuba, Illinois.

Messrs. McElwee & Diteweig, the owners of the Maplewood Coal Company's property became stockholders in the Buckeye Powder Company at the time of its organization and continued to be such down to the time when it retired from business; they desired to use Buckeye Powder in their mine. Mr. Waddell testifies "that the Pit Commit-

tee at the Maplewood mines in my presence notified Mr. McIlwee that they would not have Buckeye Powder and demanded duPont." (Trans., pp. 799, 800.)

Mr. McElwee was called as a witness for the defendant and endeavored to show that his inability to get the powder in use at his own mine was because there was something the matter with the grain. He stated that the first powder which was sent to the mine for test was first-class and did good work, but that subsequent orders did not produce as good results. (Trans., pp. 2127, 2128.) But he was compelled to admit that he had this same difficulty with duPont powder and had had to return a carload of it for the same reason. (Trans., p 2138.) This did not, however, cause him to stop using duPont powder nor did it cause the miners to refuse to use it. So that, as an explanation of the reasons why plaintiffs powder was refused it does not satisfy.

He admits, however, that the influence of the miners was very powerful, and the fact that he as a stockholder of the Buckeye Powder Company did not even dare to make a trial of the powder at his own mines *for nearly two years* after the Buckeye plant started, is a strong circumstance going to show that the miners had much to do with it (Trans:. pp. 2135-2136).

His further testimony confirms this view (Trans., p. 2140):

> "We wasn't afraid of breaking our contract with the duPont Powder Company, *but we were afraid of having trouble with our men* and we wanted to work the matter diplomatically, *so we wouldn't have a strike,* because the coal business was a very peculiar thing You couldn't tell what the miners

were going to do, and in many ways it was a financial loss to us to have a day off. It was a question of producing coal."

It is noticeable also that, as in the case of the Clark Coal & Coke Company and other mines, *after the sale of the Buckeye Plant* to Olin the miners at this mine found no objection to using some other powder than duPont, for this company soon after began using the product of the Western Powder Company's plant—the successor of the Buckeye Plant, and this too in spite of the fact that it had a contract with the duPont Company.

(d) APPLEGATE & LEWIS MINES, HANNA CITY, ILL. —KNOWN AS THE "THRUSH" INCIDENT.

The evidence in the record concerning what transpired at these mines is conclusive upon the subject whether there was any evidence in the record concerning cash paid to miners by the defendants to influence them to refuse to use Buckeye powder. The owners of this property were Messrs. Applegate & Lewis, of Peoria, Ill. The mines were located a short distance from plaintiff's plant. They consumed about 4,000 kegs of blasting powder per year. The owners were under contract with the duPont Company at the time of the plaintiff's advent, but for several reasons desired to make use of plaintiff's powder. (R. E. Lewis, Trans., pp. 628, 629, 632, 633.)

These reasons are stated by Mr. Lewis as follows (Trans., p. 630, 631):

"Q. Did you have any special desire or special reason why you desired to use Buckeye powder? A. Yes, sir. At the Cuba plant we *were getting a great many screenings* and the desire to secure a powder that would re-

duce the percentage of screenings in our coal was the reason for our using the Buckeye powder at that plant; and at the Hanna plant our reasons for using it—well, it was two-fold. In the first place, the duPont powder had to come to us in carload lots while we could get the Buckeye powder in 100 keg lots, and getting 800 kegs, or carload, from the duPont people necessitated our holding about $1,000 worth of explosives on the premises, while the other amounted to very much less than that and we could get deliveries by the wagon load from the Buckeye people at any time we needed it and it was always fresh. Also, at the Hanna plant, another reason for our wanting to use Buckeye powder was because we thought the *duPont powder was shattering our roof more than was necessary.*"

Mr. Robert Morton, superintendent of this mine, also testifies to the same effect. (Trans., pp. 638-639.)

Mr. Lewis also testified that in order to determine whether plaintiff's powder would overcome the difficulty of screenings, he caused some tests to be made of it. Some of these tests were made by giving it out to practical men and getting their report on the results. (Ibid, p. 630.)

"Q. State what was the result of such efforts as you made? A. We made an attempt to use it at our Cuba plant first and we failed to get it in use.

"Q. Why did you fail? A. Well, that is a pretty hard question to answer. It seemed to be a prejudice against the powder.

"Q. What was the nature of that prejudice so far as you could discover? A. Well, I don't know that I could state the exact prejudices. The fact of the matter was this. We attempted to get it started and did use it in some places with good results and at other

places the results were reported adverse, and, *so far as I could see, there was no good reason for the adverse opinion.*" (Ibid, pp. 629, 630).

In order to determine the merits of the powder finally and authoritatively he decided to have a *formal* test, in accordance with the regulations established by the contract between the Miners' Union and the coal operators.

Mr. Robert Morton, the Superintendent, under whose direction this test was conducted, testified as follows (Trans., pp. 640-641):

"We agreed to make a test of a keg of Buckeye powder and a keg of duPont powder, and it was understood if that test was not conclusive we would go on with several kegs until we did reach a conclusion. So I selected two men from among the miners and the Pit Committee, representing the miners, selected two others, and together with the Pit Committee we entered the mine and selected two places adjoining one another—what is called rooms, where we would try the powders—they were to try the duPont powder in one room and we were to try the Buckeye powder in the other, and, to start with I took personal charge of the placing of the shots of the Buckeye powder, because I was representing the company's side and naturally I wanted to see the powder given a fair test; so for two or three days I made it my business to go in there every day, probably two or three times a day, and instruct the two men—Parry was the man, who was really in charge of the work and was doing the work, while another man, named Kepper, was helping him. I instructed them in the placing of the shots, the angle the holes should be drilled at, and the depth of the holes and the amount of powder that should be given to each shot. We proceeded along very nicely for, I think, about

four or five days, when one day I went in there, as usual, and having a natural inclination to know what the other boys were doing in the adjoining room, I had been in the habit of going in there every day where they were using the duPont powder, and this day, when I went into their place, *I discovered they were undermining the coal;* they had two shots undermined from 18 inches to 2 feet deep, clear along the length of the shots; I said, 'Now, if you boys are so anxious to show that duPont powder can produce more coal than the Buckeye that you are going to mine and wedge this coal, we will quit right now', and I stopped the test right there."

The advantage of undermining is shown by the fact that in that same mine where undermining by machines has been done they have produced about 125 tons of coal to a keg of powder, whereas when shooting "off the solid" they have been able to produce only 18 tons of coal with a keg of duPont powder, and 22 or 23 tons of coal per keg of Buckeye powder. (See Trans., p. 643.)

It is not possible to believe that these miners would have been enough interested in the triumph of Du Pont powder at these tests, to perform the extra work necessary to be performed in *undercutting* the coal, and in committing a fraud on the other miners at the same time, unless they were paid to do so by the interested party.

Mr. Morton further testified (Trans., p. 652):

"Q. What action did they take after the test had been commenced and stopped? A. The thing went along, as I have stated, we continuing to use both the Buckeye and duPont powders, for I think a month or two, *but a great deal of agitation kept up against the Buckeye powder* until it resulted in the calling of the officials there; by that I mean they called John Walker and Mr. Spenney and I

think, Mr. Edwards, who was at that time Board Member from this District, and after a discussion of the case the whole affair, *they demanded that we discontinue the use of Buckeye powder on behalf of the miners,* and Mr. Lewis had gotten so sick and tired of the whole controversy, one way and the other, and I had myself become fully disgusted with the whole business, and I advised Mr. Lewis to drop the whole thing, and let them use any kind of powder they pleased, that if they did not want any more Buckeye powder to go down in the mine to let it go by the board; *there was such an agitation and uproar every a man had a bad shot who was using Buckeye powder,* and if the shot did not work exactly as it ought to, it was the fault of the Buckeye powder; if it blew the coal all out the damned powder was too strong; if it left it stand the damned powder was not strong enough, and if it happened to break the slate the damned powder went into the roof."

And again (Trans., pp. 653-654):

"Q. What would have been the result of a disobedience of that order in the natural course of things? A. If the company had insisted upon the use of Buckeye powder, the mines would have been thrown idle, because the miners *would have refused to work in it.*

"Q. *Do you mean by that, a strike?* A. *Yes, sir.*"

The testimony of Mr. Morton that the quality of Buckeye Powder in comparison with Du Pont was not the reason for the complaints made by the miners is well supported by the testimony of four practical miners who used both brands of powder in the Applegate & Lewis mines, all of whom testified that they got from three to six tons of coal per keg more out of a keg of Buckeye Powder than they did from a keg of Du Pont powder, under the same general conditions.

See testimony of Seth Whites, Trans., p. 1587.

See testimony of David S. Thrush, Trans., p. 1583.

See testimony of David Harris, Trans., pp. 1577, 1578.

See testimony of Charles A. Parry, p. 1569.

Even the defendants' own witness, Alec Thrush, testified that he got good results from Buckeye powder. (Trans., p. 1876, fol. 5626.)

Wm. J. Thrush, who lives at Hanna City Illinois, testified that he had been a coal miner for about 43 years, and was employed at the mines of Applegate & Lewis. That he was an influential miner is indicated by the fact that he was related to about one-fifth of the miners who were engaged in that mine; he was also a member of the Miners' Union, and during 1907, 1908 and 1909 he was a member of the Pit Committee of the Local Union (Trans., pp. 681-682).

Mr. Thrush was selected to represent the Du Pont Powder Company in the test which had been arranged to be held between the Du Pont powder and the Buckeye powder as above referred to in the testimony of Mr. Lewis and Mr. Morton. He acted as one of the judges at that test, having been selected by Samuel Edwards, the sub-district President of the Miners' Union (Trans., p. 682), and was also a member of the "Pit Committee" at that time (Trans., p. 683).

While thus occupying a position of trust, and having a responsibility to the miners to see that their interests were safeguarded, in the selection of the best powder available, Mr. Thrush was at

the same time *in the employ* of Dooley Brothers, the agents of the Du Pont Company at Peoria, and through whom this mine was being furnished with Du Pont Powder.

The agreement was that Mr. Thrush was to receive five cents a keg on all Du Pont powder that was delivered at the shafts of these mines (Trans., p. 695).

He tells the story of his relations to Dooley Brothers, as follows (Trans., pp. 683-684):

> "Q. Do you know who furnished the Du Pont powder that was furnished to you at that time for use in that test? A. Yes.
>
> "Q. Who was it? A. It was an agent of the Dooleys.
>
> "Q. And where are the Dooleys located? A. In Peoria.
>
> "Q. Do you have any personal acquaintance with members of that firm? A. Yes, sir.
>
> "Q. Do you know both of the members? A. Yes.
>
> "Q. How long have you known them? A. About 30 years.
>
> "Q. Do you know any person who was acting for or representing the Dooley Brothers at that time? A. I was representing them for one.
>
> "Q. You say you were representing Dooley Brothers; in what capacity were you representing them? A. As a sub-agent.
>
> "Q. At what point? A. At Hanna City.
>
> "Q. What were your duties as sub-agent at Hanna City for the Dooleys? A. It was to sell their powder as much as possible.
>
> "Q. By whom were you employed to represent the Dooley Brothers? A. I was employed by Mr. Moffatt.
>
> "Q. What are his initials, if you know? A. Edward."

Mr. Moffatt himself was called as a witness and

testified that he had been in the employ of Dooley Brothers as a salesman of powder, dynamite and miners' supplies since April 1, 1898 (Trans., p. 656).

He was a practical miner and was formerly a member of the Miners' Union at Bernardsville, Ill., the membership of which union was very large and gave him a wide acquaintance among the miners in that district (*Ibid.*).

Among the mines embraced in this union was one of considerable importance owned by Sholl Bros.

Lester D. King, a demonstrator and salesman for Buckeye powder, testified that he attended a meeting of the miners employed in Sholl Bros.' mine to urge the merits of Buckeye powder. Mr. Moffatt appeared at the same meeting representing the Du Pont powder direct, and made an address to the miners in which he told them that the owners of this mine had a contract with the Du Pont Company, and he did not see how a change of powder could be obtained, at least until this contract had expired. (See Trans., pp. 438-439.)

The Relation of Dooley Bros. to Defendants.

That Thrush did make the arrangement with Mr. Moffatt which he testifies to and that he did perform the services at the mine of Applegate & Lewis and did go to the office of Dooley Brothers and receive money at the hands of Moffatt, is conclusively established by the evidence; but it is claimed that neither Mr. Moffatt nor Dooley Brothers had any connection with the defendants and that whatever they did in this matter was without the authority of that company. (See Trans., p. 695.)

This necessitates an examination into the relations sustained by Dooley Brothers to the Du Pont Company, it being admitted that Moffatt is an employee of that firm.

Plaintiff contends that Dooley Brothers were the agents of the defendants, through whom it conducted the greater part, if not all, of its business in black blasting powder in the Peoria district.

The record is full of evidence which conclusively establishes this contention, and, so far as we are aware, there is nothing to controvert it. Nevertheless, the defendants repeatedly contended during the progress of the trial, that Dooley Brothers were not agents but merely customers of the Du Pont Company, buying and selling explosives on their own account, and that this view finally impressed itself upon the Court is shown by the rulings during the trial and by that part of the charge which we are now discussing.

There were three kinds of agents recognized in the Powder trade (see R. S. Waddell, Trans., p. 830)—

> "There was the salaried agent, who received a salary, usually a general agent in charge of an office, and then there was a commission agent who received a percentage on his sales, usually ten per cent. or on carloads five per cent., and then there was what we knew as the net price agent, to whom we made a net price, allowing him to make his own profit above that net price. Also an agent to whom a selling price was given and a commission, or an allowance for his services below that general selling price."

James B. Dooley, one of the partners, testified that during the years 1903 to 1909, his firm

handled Du Pont powder exclusively; previous to that time they handled the Phenix powder (Trans., p. 607). The Phenix was in reality a Du Pont powder, for it was manufactured by the Phenix Powder Company, which was owned by the Du Pont Company.

He also testified that he had *exclusive use of the magazine owned by the Du Pont Company* (Ibid., p. 609); and before that magazine was built they used the magazine owned by the Phenix Powder Company; that they never paid any rent for it (Ibld., p. 610).

That Dooley Brothers held themselves out as agents of the Du Pont Company, *with the full knowledge and consent of that company,* is shown by the testimony of customers of the Du Pont Company, who were under contract with that company.

See testimony of Daniel Taylor, of Howarth & Taylor (Trans., pp. 2090-2091).

Also of W. E. Foley (Trans., p. 2350).

Also of R. E. Lewis, of Applegate & Lewis (Trans., p. 632, fol. 1895).

Also of Horace Clark, President of the Clark Coal & Coke Co. (Trans., pp. 444-445; also p. 447, fol. 1339).

A series of contracts entered into between various consumers of black blasting powder, in the Peoria district, are found in the record as exhibits which were produced by the officials of the Du Pont Powder Company, under subpoena duces tecum, which unmistakably show that Dooley Brothers were the agents of that company.

Plaintiff's Exhibit 901 (see Trans., p. 2614) is a contract made on August 1, 1906, between the E.

I. Du Pont Company, and A. Reents & Brother, of Kramm Station, Ill. Signed "E. I. Du Pont Company, *by Dooley Bros., Agts.*"

Plaintiff's Exhibit 732 (see Trans., p. 2590) is a contract made on August 1, 1906, between E. I. Du Pont Company and Clark Coal & Coke Company of Peoria, Ill. Signed "E. I. Du Pont Company, *by Dooley Bros., Agents.*"

The contract with this very firm of Applegate & Lewis shows that Dooley Bros. were acting as the agents of the Du Pont Company in making the contract. (See Plaintiff's Exhibit 762; Trans., p. 2598.) The contract is dated Nov. 30, 1907. It is made between Du Pont Co. and Dooley Bros. for blasting powder "for use of Applegate & Lewis Coal Co." Attached to same is a letter from the Du Pont Company to its agent at Chicago, which says: "*Our* contract with the Applegate & Lewis Coal Co., Peoria, will expire Nov. 30 next. Please advise them that it is not our desire to continue this contract," etc. (See p. 2600, fol. 7800.) There was no contract between the duPont Company dated Nov. 30, 1907, except the one made through Dooley Bros.

Plaintiff's Exhibit 740 (see Trans., p. 2591) the contract of the Clark Coal & Coke Company is renewed *through* Dooley Brothers, instead of directly, as before. The contract is made between the E. I. Du Pont de Nemours Powder Company, as party of the first part, and Dooley Brothers as party of the second part, who agree to purchase "all the black blasting powder required by the party of the second part, during the period of this contract, *for use of Clark Coal & Coke Company*, Peoria, Ill." Attached to the contract is a letter from the Director of the Sales of the Du Pont

Company to its Secretary, reading as follows (see Trans., p. 2593, fol. 7777):

> "Please note that due notice has been given of our desire to discontinue *our* self-renewing contract No. 762 with the Clark Coal & Coke Company, Peoria, Ills., running from January 1, 1908, to January 1, 1909."

The same situation applies to the business of Howarth & Taylor of Edwards, Illinois. See contract made Nov. 25, 1907 (Exhibit 741, p. 2593). Two letters are attached thereto—one to the Secretary of the Du Pont Company and the other to its Chicago manager, in whose district Peoria lies —notifying them of the discontinuance of *"our* contract with Howarth & Taylor." (See Trans., p. 2595, fol. 7785.)

The same situation applies to the business of Sholl Brothers, Peoria, Ills. See contract made Nov. 27, 1907 (Exhibit 745, Trans., p. 2596). See letter notifying discontinuance of *"our* contract with Sholl Bros." (Trans., p. 2598). See also contract made Nov. 27, 1908 (Exhibit 1247-AA, Trans., p. 2724).

See the long list of contracts summarized and partly set out at the Transcript, pp. 2601-2609, all of which are similar in form to the Applegate & Lewis contract, which precedes the list, as Exhibit 762. See also another large list at Transcript, pp. 2728-2731. These contracts are all made *between* E. I. du Pont de Nemours Powder Company as the first party, and Dooley Bros. as the second party; but each provides that it is for supplies to be used by a third party. Then there follows a letter which describes the contract as *"our* contract with" the *third* party—not *our* contract with Dooley Bros. for supplies to a third party. Most of these third parties were at one time under con-

tract *direct* to the Du Pont Company and it is beyond doubt that the change is a change of *form* only.

That Dooley Brothers were acting purely as agents, and solely for the benefit of the Du Pont Company in *making* these contracts, is beyond all doubt, and as soon as executed they were turned over to their principal.

If it is possible to assume that Dooley Brothers were not previously authorized by the Du Pont Company to employ Thrush it is unquestioned that it profited by their acts and, therefore, being beneficiaries of these acts, it should have been held to be bound by them.

In *Cliquot's Champagne,* 3 Wall., 114, 140, it was said:

> "Whatever is done by an agent, in reference to the business in which he is at the time employed, and within the scope of his authority, is said or done by the principal, and may be proved as well in a criminal as in a civil case, in all respects, as if the principal were the actor or the speaker."

In *Stockwell vs. United States,* 13 Wall, 531, 548, it is said:

> "The tortious act of the agent is the act of his principals, if done in the course of his agency, though not directly authorized. And this is emphatically true when the principals, as in this case, have *received and appropriated the benefit of the act.*"

Employment of Miners by Plaintiff at Applegate & Lewis Mines—Assignment of Error 13.

Some effort was made by the defendants to show that plaintiff also employed miners to im-

properly influence their fellow-workmen to reject Du Pont powder.

And yet, notwithstanding the absolute absence of any evidence to justify the slightest inference to this effect, and the manifest impropriety of any such instruction on the part of the Court, we find the Court incorporating this very suggestion in its charge to the jury, as follows (see Trans., p. 2465, fol. 7394):

> "*While this test was going on* each of the powders had a paid representative among the working miners, one acting in the interest of the plaintiff's powder and the other in the interest of the defendant's Alec Thrush representing the plaintiff's powder, received $1.00 a day for a period of time. The period is in dispute between Mr. Thrush and Mr. Waddell. William J. Thrush, a relative of Alec Thrush (I understand he was a relative, although he may have been a distant one), working in the interest of the Du Pont powder, received five cents for each keg of such powder that was used there. Both of these Thrushes were members of the Pit Committee and therefore in an influential position."

That portion of this charge which says that:

> "While this test was going on each of the powders had a paid representative among the working miners, one acting in the interest of plaintiff's powder, and the other in the interest of the defendants" is assigned as Error No. 13. (See Trans., p. 3204, fol. 9612.)

There is no evidence whatever that Alec Thrush was acting as a representative or in the interest of plaintiff's powder at the time of this test. On the other hand, he was called as a witness for the defendants, and testified positively that he *was*

not there at that time (see Trans., p. 1870, folio 5610):

> "Q. In this case, as this test progressed, do you remember that Mr. Morton made some objection to the way the Du Pont powder was used there? A. I understood he did. *I was not there.*
>
> "Q. You had charge of the immediate test there in the mine, what committee? A. I don't know which committee; I don't know who the committee was that was put on that test."

Furthermore, his testimony shows that the inference carried by the Court's charge that he was employed for some improper purpose, that is, to secure the installation of plaintiff's powder by unfair means—such as undercutting the coal—was clearly unwarranted. On his direct examination the following occurred (see Trans., pp. 1865-1866):

> "Q. What did Mr. Waddell say to you? A. Well, he had some samples of powder along with him showing them there and wanted to introduce them and get his powder established in the mines, if possible, and wanted somebody to kind of look after the matter in a way, so he would have a fair show with the other powders.
>
> "Q. Did he propose any method of doing it, and, if so, what? A. He wanted me to take the powder and use it in a practical way to see if we could not produce more good lump coal with his powder than what we could with the Du Pont powder."

And again, on cross examination, he testified that he followed up the results obtained by the miners with the use of Buckeye powder, and many of them did not get as good results as they got with Du Pont (see Trans., p. 1876):

> "Q. Was not that the only part of your

business for the purpose of introducing the powder in that way, explaining how it was to be shot, and so forth? A. Yes, sir.

"Q. What results did you yourself obtain—good results? A. Yes, I obtained good results from the powder I shot.

Q. And so reported to Mr. Waddell? A. Yes.

"Q. Do you know of any reason why the others should not have obtained as good results as you did? A. I do not think they took the pains to get their shots in proper condition before it was used, with that or with any other powder."

Mr. Waddell testified (see Trans., p. 2420, fol. 7259):

"I employed Mr. Thrush at $1.00 a day to go about the mines of Applegate & Lewis after his day's work was done, to assist other men, other miners, in the proper use of Buckeye powder. He was a very successful miner with that powder. I agreed to pay him a dollar a day. He was employed for thirty days. I paid him $30. for that work."

It is proper to say that the effort to show that plaintiff had employed miners for an improper purpose signally failed. Alec Thrush, like the other miners employed by Plaintiff, at different times was employed solely to *demonstrate the shooting qualities* of Buckeye powder; that is, to show the miners how to handle it, in order to get the best results. There is not a word of evidence in the entire record which even *tends* to show that anyone was ever employed to decry the qualities of other brands of powder, or to "howl" against them, or to conduct *unfair tests* (such as *undercutting* the coal to increase the effectiveness of the powder), or to stir up strikes against its use (as was done at the Great Northern Fuel Company's mines).

(e) GREAT NORTHERN FUEL COMPANY MINES AT NOVINGER, MO.—KNOWN AS THE "SPICER INCIDENT."

On the 25th day of May, 1905, the Great Northern Fuel Company made a contract with the plaintiff, for supplying power to its mines at Novinger, Missouri. (See Plaintiff's Exhibit 1314, Trans., p. 2694.)

A total of 1,000 kegs of powder was delivered by plaintiff under that contract. (See Plaintiff's Exhibit 1936, Trans., p. 2906.)

The miners were well pleased with it and the results obtained were satisfactory. On a comparative check of tonnage more coal was produced with Buckeye powder than with Du Pont powder (Testimony of Stephens, Trans., p. 461).

It had reduced the slack in the coal at one of the mines about 15 per cent. (Plaintiff's Exhibit P-57, Trans., p. 2375, fol. 7125.)

The powder manufactured at the mills of plaintiff was made by workmen who were members of the United Powder Worker's Association and hence was known as a "union" powder. (See Plaintiff's Exhibit P-1112, Trans., p. 2630.)

Mr. McCaull testified that sometime after he made the contract with plaintiff, he found that the Du Pont Company was selling its powder to other operators in the same field at ten cents a keg less than his company was paying to the plaintiff; and that he had tried to get plaintiff to meet this price without success; that he decided that he would try to get away from his contract so that he could get the benefit of the lower price; that he instructed the mine superintendent, Mr. Grant, to get hold of the Du Pont people; that afterwards

he (McCaull) had an interview in Kansas City with Mr. Spicer, a representative of the Du Pont Powder Company, who made him an offer of better prices than he was paying the plaintiff, and he told Mr. Spicer that if he knew of any way he could get the miners to ask for Du Pont powder, he would be glad to sign a contract with the Du Pont Company; that Spicer replied that he would go to Novinger and see what could be done; that—

> "When we were discussing how to get the miners to ask for a change of powder, so that we could break our contract, our Buckeye contract, the question came up about the *union powder,* and I stated to Mr. Spicer that I understood Buckeye was a union and Du Pont was a non-union powder and *it would be up to him to get hold of the boys at the mine and show them that the Buckeye had since become a non-union powder, and that Du Pont was operating some union mills, and he said that could be easily fixed,* and he would explain it to the boys that Du Pont could furnish them with union made powder, and I told him if he couldn't furnish union made powder he might persuade the Pit Committee that the Tinners' Union label on the keg might be sufficient, and he said he would see what he could do" (Trans., pp. 493-494).

That shortly afterwards he received advices that the miners had made a peremptory demand on the company to supply them with Du Pont powder, and that they had called a strike until their demand was complied with; that they even refused to use up what Buckeye powder was on hand and that he had to get rid of it by jobbing it out to small users. "I didn't expect the miners to call a strike; I expected them to ask us to

change, and it took me by surprise when they struck, and no Du Pont powder in sight, and I couldn't get it under a week, and that they would not use up the other powder" (Trans., p. 494, fol. 1482).

Mr. McCaull, not being in Novinger, was not able to relate of his own knowledge what happened to bring about the change; but this is related by four witnesses, two of whom were mine foremen at the company's mines, one a member of the Pit Committee and another the secretary of the local union at Novinger.

Mr. Stephens, one of the mine foreman, best describes what was done and the occasion of this strike in his own words (see Trans., p. 449-452):

> "Q. State according to the best of your recollection *what was the occasion of this strike* to which you have referred? A. Well, just previous to the time we had this strike our manager called me on the 'phone and said—
>
> "Q. Just state what you yourself know and omit any reference to what the general manager said to you. A. Well, the district foreman of the Mine Works and another gentleman came down there—
>
> "Q. Who was the district foreman? A. Mr. Phillips.
>
> "Q. Who was the other gentleman? A. I can't recall his name; *he was a representative of the Du Pont Powder Company, introduced to me as such.*
>
> "Q. State what occurred at that time? A. Well, *Mr. Spicer, or Spencer,* and a man by the name of Phillips, who was a sub-district president for the Mine Workers in that district, they came down there and I introduced them to Mr. Hayes and Mr. Jackson and Mr. Bisby, was the Pit Committee at that time

and they were talking about the Buckeye Powder.

"Q. This conversation occurred in your presence? A. Yes, sir.

"Q. Can you relate what you heard at that time? A. Well, Mr. Spencer and Mr. Phillips, I knew they were coming, of course, and I took them down and introduced them to the committee, and I was of the understanding that it was relative to the use of powder; that was my understanding of it, that it was regarding the fact that we were using Buckeye powder and we were going to use Du Pont powder.

"Q. You introduced these men to the committee for what purpose? A. For them to instruct the committee as to the fact that *this was a non-union powder* and that the Du Pont's was; and that we were willing and anxious for a change.

"Q. How did you learn that the Buckeye powder was a *non*-union powder; where did you get that information? A. That was the information I got from *Mr. Spicer and Mr. Phillips;* I got that information through the conversation we had at the time of the committee—

"Q. What occurred after that? A. I left the committee and went down about my work and the next thing I knew I saw a notice—a written notice at the top of the mine that there would be a meeting called at Novinger that evening to discuss non-union powder at Union Hall.

"Q. Do you recall whose name was signed to it? A. Yes.

"Q. Whose? A. Joseph Rutherford.

"Q. Who is he? A. The secretary for the local union and check weighman for Mine 31.

"Q. After that was posted, what occurred? A. I know that all the miners went to Novinger and the next morning they didn't come to work.

"Q. What do you mean? A. *They went to the local meeting and the next day we had a strike on.*

"Q. How did you receive that information? A. As foreman of the mines I had my engineer and my day man blow the whistles and get up the steam and the following A. M. none of the miners reported, and I went to the boarding house adjacent to the mine and Mr. Hayes informed me, as committee of the miners, that they had ordered a strike, and that there would be no more work done until we had Du Pont powder at that mine.

"Q. At that time did you have any Buckeye powder on hand? A. Yes, sir, about 250 kegs.

"Q. Did you succeed in using any of that powder afterwards? A. Not at that mine; I sold the powder to a small individual company that was digging coal for farmer trade located close to where 31 was.

"Q. How long did that strike continue? A. I am not positive as to the exact time, but the best I can remember about a week or ten days.

"Q. It lasted a week or ten days? A. Yes.

"Q. How did it terminate? A. Well, I was instructed to get Du Pont powder and I got a team and went up to No. 2 Rombauer.

"Q. What did you do with the powder you got of Mr. Rombauer? A. Sold it to the miners.

"Q. From whom did you afterwards obtain your powder? A. I don't know; it was sent down there in a car and I unloaded it; I don't know anything about it.

"Q. Did you continue to use Du Pont powder from that time on? A. Yes.

"Q. Did the miners come back to work and continue to work as soon as you supplied them with Du Pont powder? A. Yes; I think it was about a week until we got Du Pont powder, and then they went back to work; it might have been ten days.

John Kelly, another mine foreman of the same company, testified concerning the part he had in the matter as follows (see Trans., pp. 466-467):

> "Q. After you ceased the use of Buckeye powder, what powder did you begin to use? A. We had to use the Du Pont then.
>
> "Q. What was the occasion, if you know, of your ceasing the use of Buckeye powder and beginning the use of Du Pont powder? A. Yes, it was because of a strike in the mine.
>
> "Q. How did that strike occur? A. The strike occurred, that they wouldn't use any more Buckeye powder on account of not *being union made powder.*
>
> "Q. How did that information come to your attention? A. Through the Pit Committee at the mine.
>
> "Q. What was the Pit Committee? What were its particular duties with reference to the mine operators? A. Well, sir, they looked after the interest of their men, of the union miners.
>
> "Q. And what authority did they have to speak for them? A. They had full authority. The Pit Committee has full authorities from the mine workers.
>
> "Q. Do you know anything about any meeting held by the miners in your mine for the purpose of considering the question as to what powder they use? A. Yes, sir.
>
> "Q. State what you know about that. A. Well, sir, they had a meeting to that effect; that's what brought up the trouble; they held their meeting in their hall, and they decided they wouldn't use any Buckeye powder on account of being a 'scab' powder; that's all I understood about it.

Mr. Hayes, a miner in the mines of this company, and one of the three members of the Pit Committee, testified that in the fall of 1905 a strike occurred at the mine, which came about by

reason of the powder question; that they were using Buckeye powder just previous to the strike; that he remembered being called upon as a member of the Pit Committee just previous to the strike by some person who talked to him in regard to powder, but he could not recall who the man was, or what was his name, or how he looked (see Trans., pp. 472-474):

"Q. What was it that he called for; what did he say to you? A. I don't remember what the conversation was, only in regard to powder.

"Q. What did he say to you in regard to powder? A. I can't just remember.

"Q. You say he said something to you in regard to powder; state your best recollection. (Objection overruled.) A. To my best recollection, it was something in substance to the effect that the powder we were using was not union made powder, *and the powder he represented was;* that's the best of my recollection.

"Q. Did he ask you to do anything with reference to that question? (Objection overruled.) A. I don't remember; I'll answer it in this way: That our sub-district representative brought it up to us and requested us to take action.

"Q. Who was he? A. John Phillips.

"Q. What did Mr. Phillips say to you about it? A. I don't just remember what he did say.

"Q. Did you take any steps in answer to the request that Mr. Phillips made of you? **A. We did.**

"Q. What steps did you take? A. *Posted a notice, and had a special meeting, and the consequence was, we had to strike to get the Du Pont powder.*"

On cross examination, this witness testified as

follows, which controverts the instruction of the Court that "there is *no evidence* that intoxicating liquors were used" to influence the miners (See Trans., pp. 475-476):

> "Q. I take it from the way you answered these questions—this being a long time ago, your recollection is rather vague, isn't it? A. Well, yes; in some instances; I don't just recall things like—that is, like I could at an earlier date.
>
> "Q. And it comes to this, doesn't it, that you recollect there was some disturbance between these two powders, and you had a meeting and a strike? A. Yes.
>
> "Q. How many saloons were there around there *where they had this beer?* A. None, now.
>
> "Q. How many were there at that time? A. I don't remember.
>
> "Q. It was more than one? A. Yes.
>
> "Q. This meeting at the saloon wasn't a formal meeting? A. It wasn't at the saloon.
>
> "Q. Where was it? A. About a quarter or half a quarter out of town, about three blocks.
>
> "Q. Was this a formal meeting at that local? A. No, sir.
>
> "Q. Some of the miners gathered there and had a keg or two of beer? A. *The men working for the Great Northern Fuel Company implicated in this.*
>
> "Q. They were not all there? A. I don't suppose so.
>
> "Q. It is not an unusual thing for miners to drink beer? A. Not any more than anybody else."

Joseph F. Rutherford, another miner at this company's mines, and also the recording secretary of the Local Union, testified that he had used Buckeye powder and kept tab on the coal produced with it, and that he was very much in favor of it;

that he was called upon by Mr. Phillips, the sub-vice-president of the Local Union, accompanied by another man; he did not know the man's name, but he identified Mr. Spicer, who was in the room at the time the witness gave his deposition, as being the man with Mr. Phillips.

> "Q. What was said to you by Mr. Spicer, *the gentleman whom you have identified,* at that time, with regard to the use of Buckeye powder? A. The main talk I had with Mr. Phillips and Mr. Spicer, to the best of my recollection was *not* in regard to the *quality* of the powder—
>
> "Q. State the conversation as near as you can recall. A. They both represented to me or made me believe—
>
> "MR. BUTTON: (Interrupting) That is objected to as a conclusion:
>
> "Q. State as near as you can what they said? A. (Continuing) That the Buckeye Powder people was not *authorized,* and it wasn't a *union made* powder.
>
> "Q. And what did he say with reference to the *Du Pont* powder, if anything, as to whether it was union or non-union? A. That it *was union* powder; that it was organized or reorganized.
>
> "Q. What, if any, effect did that have upon your subsequent conduct in relation to the use of Buckeye powder? A. Just as much as it would on any other subject; I would be *very favorable to organized labor;* if the results were anywhere near equal.
>
> "Q. Was or was not a meeting held by the miners to consider that question of whether they would use, or continue to use, Buckeye powder, or adopt Du Pont powder? A. Yes, sir" (pp. 479-480).

In order to contradict what these witnesses testified to and to make it appear that the strike was against Du Pont instead of Buckeye powder,

Mr. Spicer, himself, was called as a witness for the defendants. But, instead, the correspondence which he presented, written at the time, confirms plaintiff's witnesses. He produced a letter written by himself in the name of the Du Pont Company at St. Louis to Mr. McCaull at Kansas City, dated August 17, 1905, suggesting that the Du Pont Company would like to figure with him on a contract and he would have their Mr. Spicer call upon him wherever he might suggest (see Defendants' Exhibit A-513, Trans., p. 1887); and he produced a reply to this letter from Mr. McCaull, dated at Kansas City the following day, stating "that owing to action of the Miners' Union, *your powder was boycotted and we were compelled to sign a contract for another brand of powder.* Would be pleased to do business with you at some future time, should the *miners change their mind* and be willing to use Du Pont powder again (see Defendants' Exhibit A-372, p. 1889); he also produced another paper, dated August 21, 1905 (see Defendants' Exhibit A-515, Trans., pp. 1890-1892), in the form of an application written by himself to the Du Pont Company stating that he had had an interview with Mr. McCaull and that—

> "Mr. McCaull stated that recently the miners in their employ made a demand for Buckeye powder because of its having union labels, and rather than bring on a fight with the miners, they consented to this and bought some Buckeye powder and made a contract with them. He would not state the price, *and when we suggested to him that we might have been able to overcome this had he let us know about it,* he referred to matters of the past, particularly when their company was a buy Du Pont powder the Du Pont Company new one, and said at the time they tried to

was not willing to sell them for some reason or other, and for this reason they did not feel like making a fight in favor of Du Pont as against Buckeye and for that reason made no effort to overcome the demand for Buckeye powder. This matter was discussed quite a little and Mr. McCaull stated that if later on the miners changed their minds, which they frequently do, they might be quite willing to try Du Pont powder, but as long as matters remain as they are, they will probably use Buckeye, unless there is *some inducement* for them to change the brand."

It is apparent from the foregoing that Mr. McCaull was referring to a *previous* period, and to some other boycott, for the testimony clearly shows that the boycott and strike of the Buckeye powder was between the 1st and 15th of September, 1905, (see Trans., p. 453, fol. 1358). The contract of the plaintiff with this company is dated May 25, 1905. (See Plaintiff's Exhibit 1314, Trans., p. 2694.) The contract with the defendants is dated November 1, 1905. (See Plaintiff's Exhibit 785, Trans., p. 2609.) This accords with what Mr. McCaull says in his testimony that he ceased using Buckeye powder as the result of this strike about the 15th of October, 1905 (see Trans., p. 489, fol. 1467).

If there was at any time a boycott in *favor* of Buckeye powder it must have been *before* the contract with plaintiff was made—not afterward.

This is also confirmed by Mr. Spicer's further testimony that he again called on Mr. McCaull, *in September, 1905,* at which time Mr. McCaull informed him that he had learned that other users of powder at Novinger were enjoying better prices for Du Pont powder than he was paying under his contract with plaintiff, and wanted to

know if the Du Pont Company could make him the same price (see Trans., p. 1896):

> "Q. What did you tell him? A. I told him we could probably arrange it.
>
> "Q. What else was said? A. Mr. McCaull said that if that was the case he would see what he could do towards switching over to Du Pont powder, and he said he would get some of his company men to make a demand for Du Pont powder, and that he would see me later."

The following *Trade Report* made by John E. Carroll, a salesman on November 14, *1904*, on the business of the Great Northern Fuel Co., also shows that there was a former controversy at this mine, having unionism as its basis, but that at that time the Fuel Company was using Austin powder, not Buckeye.

> "I learned from Mr. Kelly, pit boss at one of the the company's mines, that this company is under contract with the Austin Pdr. Co. until the end of the Miner's Scale, which is about March 1st, 1905. Mr. Kelly told me the men were dissatisfied with Austin because they say it is a non-union powder and are demanding Du Pont. He said the company would furnish Du Pont at once if they could be released from their contract with Austin Company." (See Plaintiff's Exhibit 331—in files, not printed in Transcript.)

Other evidence in the record shows that Mr. Spicer was well acquainted with the methods by which the miners were induced to demand Du Pont powder. That he was experienced in dealing with them himself is virtually admitted by him in the following testimony (Trans., pp. 1900-1901, fols. 5700-5701):

> "Q. Did you ever approach any person or

persons with reference to influencing miners in the mines of persons to whom you were trying to sell powder, to accept your powder in that mine and make a demand for it on the operator? A. I cannot recall at the present time.

"Q. Will you state you did not? A. *I think I will let the answer go as it stands.*"

In view of the above evidence, the following testimony of Mr. Donk, President of the Donk Coal and Coke Company, also furnishes ground for the fair inference that Mr. Spicer was responsible for the opposition to Plaintiff's powder which finally developed at the Donk mines. Plaintiff sold Mr. Donk's Company 17,400 kegs of Buckeye Powder, during a period of about six months—from July, 1904, to January, 1905 (See Plaintiff's Exhibit 1434, Trans. 2933, fols. 8799-8800). Mr. Donk testified (Trans. p. 2355, fols. 7064-7065):

"In the main it proved satisfactory. I didn't have much trouble with it; and as it went along, I had more grouches and more trouble and more kicks than a little; and then I changed to the Egyptian; and then they had a powder committee over there, and they said Du Pont Powder would suit them better than any other. 'All right, I will see about it,' I said, and we had *Mr. Spicer*, or some representative of the Company, arrange for Du Pont powder."

It should be remembered that the "Egyptian" powder referred to by Mr. Donk was manufactured by the Egyptian Powder Company, which was owned by the Equitable Powder Company, in which the Du Pont Company had 49 per cent. of its stock (see supra, Point II, p. 109).

POINT X.

The Court committed error in refusing to receive evidence concerning the statements made by Plaintiff's customers relative to the receipt by them, from sources other than Plaintiff, of information relating to consignments made to them from Plaintiff's mills; and it also erred in refusing to receive evidence concerning the result of an investigation made by officials of the C. B. & Q. Railway (the initial line of shipment from Plaintiff's mills) relating to the giving out of such information by its employes; and also erred in instructing the jury that one who is already established in business, may lawfully "keep tab" on the business of a new competitor by maintaining a "surveillance" over the conduct of such new competitor.

Plaintiff alleged that the Du Pont Powder Company succeeded in enlisting the services of certain employes of the Chicago, Burlington & Quincy Railway Company to furnish said company with daily telegraphic reports of shipments from its mills, agreeing to pay in consideration therefor one dollar for each telegram and five dollars for each letter carrying such information, and sometimes a stipulated salary; and that in this manner, it received advance information of shipments from the plaintiff's mills, which it made use of to induce the consignees to reject shipments and abandon plaintiff. (See Trans., pp. 19-21.)

The consideration of this question involves three assignments of error, namely, Nos. 14, 15, 16.

Error No. 14 (See Trans., page 3205, folio 9613) relates to the action of the Court—

> "In refusing to permit R. S. Waddell, a witness for the plaintiff, while on direct examination, to state what it was that caused him, as president of the plaintiff, to make an investigation for the purpose of ascertaining how it was that advices were received by him from persons to whom consignments of black blasting powder had been shipped from the shipment office of the Buckeye Powder Company —giving the definite car number of the car in which shipment was made and all the details of the shipment—before notice of that shipment had been received at the business office of that company."

And Error No. 15 (Ibid, folio 9614) relates to similar action by the Court—

> "In refusing to permit John G. Miller, a witness for the plaintiff, while on direct examination, to answer the following question —he having already been permitted to testify that he called the attention of the Burlington Railway Company officials to the situation relative to information concerning the shipments made by Buckeye Powder Company to its customers coming to him from sources other than the Buckeye Powder Company, and that said officials made an investigation:
> "Q. Now, do you know what the result of that investigation was."

The first ruling here complained of was preceded by the testimony of Mr. Waddell that when shipments were made to customers, they were billed out from the plaintiff's mills at Edwards, Ill., and bills of lading and advices of shipment were mailed to the Company's business office in Peoria, on the same day, where they arrived the following day; that on numerous occasions, before

the consignees could possibly have received any information from the plaintiff concerning these shipments, and even before the bills of lading and advices had been received at the plaintiff's business office in Peoria, he (Mr. Waddell) had received advices from the consignees themselves giving the definite car number of the consignment made to them on the previous day, with all the details. (Trans., page 808, folio 2424.)

This fact caused him to make an investigation of the source of the leak. He suspected the Railway employes at Edwards and made complaint to Harry Paige, the general agent of the C. B. & Q. Ry. Company at Peoria.

The plaintiff then offered to show that Mr. Waddell caused a certain investigation to be made by the Railway officials of the C. B. & Q. Ry., and to show what he ascertained from these Railway officials as to the means used through the Railway Company and its employes, for giving out this information, which offer was refused; and this action of the Court is the first error now under consideration. The next error arose as follows:

Among the persons named by Mr. Waddell as one of the consignees from whom he had received advices in the manner indicated, was Mr. John G. Miller of Chicago, (Trans., page 805, folio 2415). Subsequently, Mr. Miller was himself called as a witness for plaintiff and testified that he was a stockholder of the Buckeye Powder Company, and handled its product during its existence, on a net price basis; that during this time he received information concerning the business in which he was interested from sources other than the Buckeye Powder Company.

He further testified as follows (See Trans., p. 322, folio 966):

"Q. Did you at any time make any investigation or institute any investigation as to the reasons for information coming to you in this manner that you have indicated? (Objection overruled.) A. Yes, sir.

"Q. Now, state what that investigation was. A. I saw the Burlington officials and called their attention to the situation and they made an investigation.

"Q. Now, do you know what the result of that investigation was?"

Upon objection, the Court refused to allow Mr. Miller to answer the last question, which constitutes the second error under consideration, (No. 15).

After Mr. Waddell complained to Mr. Paige, as above stated, he (Paige) was approached by one W. H. H. Piatt who was *an employee of the Du Pont Company at that time,* and offers were made by Piatt to employ Paige to obtain this information. Mr. Paige himself was a witness, and his testimony relating to this matter may be summarized as follows:

He testified that *all* shipments from plaintiff's mills originated on the line of the C. B. & Q. Railway at Edwards Station, Illinois, as this was the only line having access to the mills; that he had an interview with Piatt at a hotel in Peoria, in which Piatt said that he was desirous of obtaining information of the destination of the shipments, especially carload shipments, from plaintiff's mills, and that he understood Paige's line handled their rates, and that the copies of billing for all their shipments came to his office, and that if he was willing to furnish Piatt with the information, Piatt would pay him $5.00 a letter for one letter a week. (See Trans., pp. 346-347.)

Mr. Paige testified further as follows (Trans., pp. 347-348):

> "I told Piatt that was a little new for me, that I hadn't been selling out on a proposition; that I was human, and probably had a price, but I felt quite sure that it wasn't $30 a month; but that I would take the matter under consideration and let him know a little later in the day. I then telephoned to Mr. Waddell, that I wanted him to meet me; he did, and I laid the proposition before him, more as an evidence of good faith with him, as he *had previously complained that somebody was giving out information to his competitors as to his business,* and I took that means of assuring him that, at least our office, or the people that he was dealing with directly, were trying to be honest and square with him, and that we would not lend ourselves to anything of that kind without his knowledge and consent. He advised that I pass the matter over and have nothing to do with it. I then called on Mr. Piatt and told him I couldn't do it."

At this second conversation of Piatt with Paige, Mr. Waddell was present by arrangement with Paige (unknown to Piatt) and saw Piatt and heard the conversation between them, and subsequently recognized him as the same man who called upon him a few days later. (R. S. Waddell, Trans., p. 771, folio 2313.)

The evidence, however, shows that Piatt's efforts to employ Paige were only a part of his activities in this direction; that he represented one W. B. Dwinnelle, of the Advisory Counsel of the head office of the Du Pont Company, at Wilmington, Delaware; that three or four days after Piatt's efforts to employ Paige, he called at the office of plaintiff in Peoria, where the following conversation took place between himself and Mr. Waddell, its President (see Test., R. S. Waddell, Trans., pp. 770-771):

"Mr. Piatt said that Mr. Du Pont, knowing that he was going to call at Peoria, asked him to call on me and presented Mr. Du Pont's regards. I asked Mr. Piatt when he came to the city. He told me that morning. I asked him if he had ever been in the city before. No, he had never been there. He said that it was not the custom of the Du Pont people to allow the employees in their offices to visit their mills and said that he would like very much to visit a powder mill and asked if he could go to my mills that day. I did not then reply to the question. I asked him if he had not been to my mills before? He told me he had not, and I then told him that I knew that he had been in the city the preceding week, and that he had had a conference with Harry Paige and tried to hire him at $50 a month and $5 for each letter and a dollar for each telegram, to betray my business in shipments on the C. B. & Q. Railroad. *I also knew* that he had hired a man by the name of O. D. Head to do some spying and make some drawings of the machinery in my mills. *I also knew* that he had attempted to hire Fred Nagel, agent of the C. B. & Q. Railroad at Edwards, who did the billing of the powder shipments from the Buckeye Mills. *He admitted all those things.*

"Mr. McCarter: We object to that.

"The Court: Yes, what did he say?

"Q. Say what he said when he admitted that. A. *He said he knew that he had done so.* And I told him then that in reply to his request to go to my mills, to say to Mr. Du Pont that I wanted to send a message to Mr. Du Pont by him, and to say to Mr. Du Pont that my latch string hung out and that I extended a cordial invitation to Mr. Du Pont or any of the officers of the Du Pont Company to come to Peoria and to be my guest, and to go to my mills and inspect them, but that I drew the line at a contemptible shyster lawyer that was engaged in the kind of business

he was—Piatt. I advised him, I told him if there was any manhood in him he should stand by the profession he claimed to belong to, and not dishonor it. I told him to say to Mr. Du Pont that if they did not cease hiring spies chasing me with detectives, and hiring spies in my mills, hiring railroad agents to betray me, and furnish information of the shipments from my mills and hiring miners to refuse to use my product, that I would take him into the United States Court and shake him out, and I thought I could keep the Advisory Counsel pretty busy. Mr. Piatt then left the office."

In its instruction to the jury, the Court commented upon some of the evidence above referred to, viz., that which related to the visit of Piatt to Paige, and then charged the jury as follows, which is assigned as Error No. 16, (See Trans., page 3205, folio 3206):

"This, of course, was a reprehensible act. What does such an act, in the light of all the circumstances surrounding it, and keeping in mind other facts in the case bearing upon the keen competition that took place between the defendant's and plaintiff's powders in that district, indicate? The plaintiff was a **newcomer** in a field **already occupied.** Except as to new business, it is inevitable that in order for the plaintiff to place its output it would draw some of the custom that theretofore had been flowing to the defendant or some other competitor. All of them had a right to compete for such business. None of them had the right, however, to use any but lawful methods. To retain one's own customers obtained by lawful means or to secure new ones is lawful, provided no unlawful means are used. **The mere ascertaining to what person or place a competitor's product is being shipped is a legitimate means of keeping tab on the trade, and if a particular**

> **competitor has been making inroads upon the established trade of another, such other may properly keep a surveillance over the conduct of such new competitor**; but, while this is lawful, it may be readily noted that an unlawful use of such information may be made."

It is difficult to understand what the Court meant when it denominated Paige's conduct as "reprehensible", for the further remarks of the Court would seem not only to excuse such conduct, so far as the defendants were concerned, but to justify it.

The Court said:

(a) It must be judged in the light of the "keen competition" between the plaintiff and defendants.

(b) "Plaintiff was a newcomer in a field already occupied",—the same idea of defendants' pioneer or prescriptive rights which everywhere pervades this case and which is discussed supra, page .

(c) None but "lawful methods" should be made use of to retain one's customers and obtain new ones, but this was a lawful or "*legitimate* means of keeping tab on the trade."

(d) "If a particular competitor has been making inroads upon the established trade of another such other may *properly* keep a *surveillance* over the conduct of such *new* competitor" —again the idea of the defendant's prescriptive right to the trade.

The Court's conclusion that, "while this is lawful it may readily be noted that an unlawful *use* of such information may be made," does not help to a correct understanding of the matter, for

what this unlawful use may be was not explained. The jury could not, therefore, know whether the Du Pont Company used it lawfully or unlawfully. **But it is difficult to understand why, if it was lawful for the defendants to obtain the information, it was unlawful for them to use it.**

In *State vs. Standard Oil Company,* 218 Missouri, 1, the evidence showed that efforts to obtain information of shipments by independants were made through bribery of "tank station agents and railroad employes". Instead of condoning these acts as "lawful" and "legitimate", unless some unexplained "unlawful use" was made of such information, the Court said (page 285):

> "The *plainly evident purpose* of this system of espionage was to prevent the sale of the products of petroleum by the independent dealer."

Surveillance and spying on another's business is almost universally condemned by publicists and courts. In fact, we have no knowledge of any other authority of importance, besides the Trial Court in this case, that has condoned and excused such offences as being lawful and legitimate for any purpose.

It has been made a criminal offence in Connecticut, Iowa, Massachusetts, Michigan, Nebraska, Nevada, New Jersey, New York, North Carolina, Rhode Island, South Carolina, Virginia, Washington and Wisconsin.

In *Sirkin vs. Fourteenth Street Store,* 124 App. Div., 384, Judge Laughlin said that the New York statute was but declaratory of the common law, and that "the Court should not be astute to discover a theory upon which" it could not be enforced.

The act to create a Commerce Court, (36 U. S. Stats. page 553), prohibited the disclosure by common carriers of information concerning shipments in interstate commerce.

Senator Burton explained the reason for this provision as follows:

> "It has developed in judicial proceedings in two instances that certain great industrial combinations maintain information bureaus. Those engaged in the work of these bureaus, by divers methods, none of which I think, can be rated as commendable, obtain from railway corporations, or through their agents, information relating to the business of their minor competitors. For example, a great establishment ascertains that a competitor intends to ship into the State of Ohio, Indiana, or Texas a consignment of merchandise. The amount of that merchandise becomes known to the information bureau, and the name of the consignee is also ascertained. Using this information, a strenuous effort is made to prevent the competitor from disposing of his merchandise, from making any sales in the locality to which the shipment is made. An unfair advantage is thus given to the larger establishment, which enables it, in a measure, to crush out competition. I have a mass of information on this subject, if there is a desire that I should read it." (Congressional Record, June 1, 1910, vol. 45, Pt. VII, p. 7207.)

It has formed the basis of some of the most serious charges and proofs in connection with the government prosecutions of the Standard Oil Company, the Reading Company, The Eastern States Retail Lumber Dealers Association; and in several "consent decrees" these practices have been admitted to exist and were enjoined from continuance.

Mr. Waddell's experience and knowledge of the methods of the Du Pont Company brought forcibly home to him the true situation with respect to the purpose of that Company in obtaining information as to plaintiff's customers; for he knew that Piatt's visit to Paige, and the resultant advices which he received from his customers, was but the repetition of practices which had long been a part of the policy and practices of that Company. He testified that this knowledge first made him realize that the plaintiff must fight for its existence, and that it was this that finally prompted him to file a petition with the Attorney General of the United States for the dissolution of the defendants and their co-conspirators as an unlawful combination; he delayed doing so, however, until in May, 1906, when he found that plaintiff was losing all its customers, and to protect it from further loss, he filed a petition with the Department of Justice (Trans., p. 829), giving as his reason for the delay as follows (Trans., p. 1543):

> "I knew, of course, that when I took any open, public action against the Du Pont Company in defense of the Buckeye Company that it meant a fight to a finish and bankruptcy for the Buckeye, and I hesitated as long as I dared and until we had reached the final stages of dissolution of our company before I made a fight in self-defense."

POINT XI.

The reasons given by customers for ceasing to do business with plaintiff, as shown by their letters and by their statements to the officers and agents of plaintiff, should have been received.

Akin to the error just discussed is the theory of the Court as further expressed in the five Errors (Nos. 17, 18, 19, 20, 21) relating to the rejection of testimony concerning the reasons given by plaintiff's customers to its officers and agents for refusing to begin doing business with it, as well as ceasing to continue such business after having once begun.

These relate to:

(a) The rejection of the testimony of John G. Miller, a powder broker of Chicago, concerning the reasons given by his customers to him, for not purchasing plaintiff's powder. (See Assignment of Error No. 17, Trans., page 3207.)

(b) The rejection of two letters from the Central Coal and Coke Company of Kansas City. (See Assignments of Error Nos. 18, 19; Trans., pages 3207-3208.)

(c) The rejection of a letter from the Waverly Coal and Mining Company of Kansas City. (See Assignment of Error No. 20; Trans., page 3208, folio 9624.)

(d) The rejection of six letters from J. H. Somers & Company of Cleveland, Ohio. (See Assignment of Error No. 21; Trans., pages 3209-3213).

The question of the admissibility of the evidence embraced in these five assignments is no longer an open one, since the decision in Lawlor v. Loewe in 235 U. S., 522.

The opinion is quite brief in its recital of the facts shown by the record, but an examination of the briefs in that case shows that the Trial Court, over the objection of the defendants—

(a) "Admitted testimony of a number of witnesses for the plaintiff as to the reasons given by wholesale dealers in hats, who bought hats from jobbers or wholesale dealers who purchased their goods from Loewe & Company, for withdrawing their patronage from these jobbers and wholesale dealers." (See Appellant's Brief, p. 206.)

(b) Allowed to be read in evidence certain letters written by parties to Loewe & Co. informing them of statements by other persons not under oath (Ibid., p. 213).

(c) Received newspaper articles giving reports of boycotts, etc. (Ibid., 216).

The opinion is by Justice Holmes, and upon this point he says:

> "The reason given by customers for ceasing to deal with sellers of the Loewe hats, including letters from dealers to Loewe & Co., were admissible."

Citing 3 Wigmore Evidence, Sec. 1729 (2), which says:

> "A declaration of a present existing *motive* or *reason* for action is admissible—assuming, of course, that the declarant's motive is relevant. * * * The typical instances in which motive becomes material are actions for loss of service or of custom in which it is necessary to show that the customer's or servant's abandonment of the plaintiff was mo-

> tivated by the defendant's persuasion or threats; and actions in which the reliance of a person on another's representations becomes a part of the issue. The use of declarations of this sort is fully recognized in numerous precedents."

Among the authorities cited by Wigmore is *Elmer v. Fessenden,* 151 Mass., 161, an action for loss of services of workmen who were caused to leave plaintiff's services by the defendant's false statements that the plaintiff's goods, on which they worked contained poison. Justice Holmes delivered the opinion:

> "If, as may be assumed, the excluded testimony would have shown that the workmen, when they left, gave as their reason to the superintendent that the defendant had told them that the Board of Health reported arsenic in the silk, the evidence was admissible to show that reason in fact. We cannot follow the ruling at *nisi prius* in *Tilk v. Parsons,* 2 C. & P., 201, that the *testimony of the persons concerned* is the only evidence to prove their motives. We rather agree with Mr. Starkie, that such declarations made with no apparent motive for misstatement may be better evidence of the maker's state of mind at the time than the subsequent testimony of the same persons."

In *Mutual Life Ins. Co. vs. Hillmon,* 145 U. S., 285, 295, the rule is established that the existence of a *particular intention* at a certain time is better expressed in *letters* written at that time than by the *memory* of the witness concerning his then state of mind. Also that intent may be proved by contemporaneous oral or written declarations to others made at the time rather than by recollection.

The testimony rejected by the Trial Court all touched upon the vital issue whether the acts charged against the defendants and their co-conspirators had really accomplished the object of "inducing" consumers not to use plaintiff's product.

This testimony related to the effect of the Contract System in tying up the trade; to the policy of making low prices in competitive districts; to the influence on the freedom of the consumer due to fear of retaliation on the part of the Du Pont Company against its contract customers who might venture to patronize a competitor; to the specific attack made on the plaintiff's business, by making it a condition of better prices to the consumer that he would not do business with the plaintiff; and to the actual damages suffered by the plaintiff.

(*a*) *The rejection of testimony of John G. Miller.*

Error No. 17 relates to the refusal of the Court to allow John G. Miller, a witness for plaintiff, while on direct examination, to answer the following questions—he having already been permitted to testify that he had endeavored to sell Buckeye Powder to certain persons whom he knew to be under contract to purchase powder from the Laflin & Rand Powder Company, and that he failed to sell to such persons, and that they gave him reasons why they did not or would not purchase powder of him (Trans., p. 3207):

> "Q. State what those reasons were as given by them.
>
> "Q. Did any of those reasons which were given to you involve the question of these contracts which were in existence?
>
> "Q. Did any of the reasons which were given to you by these parties or any of them

involve the question of special prices that had been made to them by any other manufacturer of powder?"

(*b*) *Rejection of Letters from Central Coal & Coke Co.*

Errors 18-19 both relate to the refusal of the Court to admit letters written by the purchasing agent of the Central Coal & Coke Company of Kansas City to the Buckeye Powder Company. The first of these letters states that the company will soon be ready to enter into a contract for its powder requirements for the next two or three years and asking for a proposition; and the second acknowledging the receipt of prices quoted by plaintiff, but that it was not the successful bidder, (See Trans., pp. 3207-3208.)
(See Trans., pp. 503-506.)

These letters were important to show that the plaintiff's prices were higher than those of its competitors, and as showing an *actual loss* by reason of price cutting of an amount of business which would have been almost sufficient of itself to have absorbed the capacity of its plant, for it was a consumer of between 150,000 and 300,000 kegs per year. (Keith, Trans., p. 506, fol. 1518.)

(*c*) *Rejection of Letter from Waverly Coal & Mining Co. No.* 20.

Error No. 20 relates to the refusal of the Court to receive a letter written by J. W. Ferguson, President of the Waverly Coal & Mining Co. of Kansas City, Kansas, to the Buckeye Powder Company, reading as follows (see Trans., pp. 509-510):

"I wired you to-day cancelling car of CC Special Powder. I am somewhat *tied up with the Du Pont Company* and I am *obliged to do*

this. If you have invoiced this car and it is shipped or if you consider that the powder belongs to us, ship it at once and date your invoices Feb. 16th. Ship by as slow freight as you please, as I do not care for it before the 1st of March, or even the 10th of March. I say this because I do not wish to pay for it until, say, 90 days. If you are willing to do this, ship it as directed, *but don't give me away to the Du Pont powder people. I will be clear of them in a few months.*"

This company was *under contract* with the Du Pont Company, and consumed about 4,000 or 5,000 kegs of powder annually. (See Trans., pp. 507-508.) This letter is very important, therefore, in that it shows—

(a) The *influence* of the *contract system.*

(b) The *fear of retaliation* on the part of the Du Pont Company.

(c) The actual loss of profits sustained by plaintiff on a cancelled order for one carload.

(d) The actual loss by plaintiff of a substantial business of 4,000 or 5,000 kegs per year.

(*d*) *Rejection of Letters from J. H. Somers & Co.*

Error No. 21 relates to the rejection of a series of six letters written by the Purchasing Agent of J. H. Somers & Co. of Cleveland, Ohio, to the Buckeye Powder Co. (Trans., pp. 3209-3213.)

The first of these letters states that the writer's attention had been called to Buckeye powder by other large users whose offices were in that city; that the samples of Buckeye powder which he had seen were beyond question as to quality; that some of these other companies were not *tied up by contracts* for their powder and *consequently* could start doing business with plaintiff at once;

that it was a little different with his company, as it was *tied up with a contract* for the next few months, but that it expects to make some change if it can be better taken care of (see Trans., pp. 3209-3210, folio 9628).

The letter of March 8, 1905, reads (see Trans., p. 3211, fol. 9632):

> "We have purchased 7,200 kegs of FF powder since October 1st for these properties and you can tell by these figures about how much we will use per year, especially as the coal business in this particular district last winter was not very good.
>
> "We might say in conclusion that we expect to buy powder a little cheaper this year than last, and this business, no doubt, will be yours if you quote the right price."

The letter of March 25, 1905, says (see Trans., p. 3212, fol. 9634):

> "We have a much better price than the one you have quoted and while we are very anxious to give our friend Mr. Corvin this business, yet we cannot see our way clear to pay a higher price for your powder than we would have to pay for the powder we have been using in the past."

The letter of April 15, 1905, says (see Trans., p. 3212, fol. 9636):

> "In your letter you state if any powder company made us a better price than $1.05 delivered, they were entitled to the business. We have the better price, all right—same being $1.02½, but we had not decided definitely in regard to the Michigan business. As we use a great deal of powder and have always been well taken care of, we want to know positively if we can get powder promptly after we have placed our order for

> the same. We have been *signed up* for some time for our powder in Ohio, and have included the Michigan properties in *this contract* in a way that we can purchase powder from the *same company* we purchase our Ohio powder, *providing we do not give you the business.*"

The letter of Aug. 23, 1905, says (see Trans., p. 3213, fol. 9638):

> "We herewith enclose our order No. 1248 for one carload of FF blasting powder, price to be *$1.02½* delivered, as per letter of Aug. 21st. You no doubt have been advised by Mr. Corvin that we are buying our powder for *$1.00* per keg at the present time. We are willing to pay you 2½ per keg on this order, as we are anxious to give your powder a trial."

The foregoing letters were all material as evidence to establish the following issues:

1. The influence of the Contract System in preventing plaintiff from obtaining business.

2. That the prices quoted by plaintiff were *higher* than those quoted by its competitors—plaintiff's price being $1.05 and its competitors' price $1.02½.

3. The *direct* attack made on the plaintiff by its competitors involved in the following extract from the letter of April 15, 1905:

> "We have been signed up for some time for our powder in Ohio, and have included the Michigan properties in this contract in a way that we can purchase powder from the same company we purchase our Ohio powder, *providing we do not give you the business.*"

4. The actual loss of profits on one carload of powder at $1.02½, due to the *cut prices* made by its competitors.

POINT XII.

The Decrees in the "Government Case" which adjudged the defendants guilty of violation of the "Sherman Act" upon an almost identical state of facts, with those presented in this case, and directed their dissolution, should have been received by the Trial Court.

The 22nd assignment of error relates to the refusal of the Court to admit the interlocutory decree and the final decree of the United States District Court for the District of Delaware, in the case of United States of America, petitioner, against E. I. du Pont de Nemours & Company, *et al.*, the same being the equity proceeding brought by the Government for the purpose of dissolving the unlawful combination of which the defendants formed a part.

See assignments and decrees fully set forth at Transcript, pages 3103, 3116. See also 188 Fed., 127.

Erroneous Understanding of the Issues by the Court of Appeals, and Grounds upon which it held the Decrees to be Inadmissible.

The Court of Appeals falls into the error of saying (fol. 9546):

> "The defendants *admitted* their participation in the illegal trade assocation as late as June 30, 1904, but *denied* that such participation continued thereafter."

And again, (fol. 9555):

> "Two distinct defences were therefore set up: (1) A *denial* that the Anti-Trust Act

had been violated by the defendants after June 30, 1904," etc.

The Pleas of all the defendants to the Declaration were general denials of *every charge* (Trans., pp. 36-41); and they strenuously insisted at the trial that at *no* time were they connected with any unlawful combination or association. It was due to their attitude in this respect, and to the obstacles and difficulties which were placed in the way of obtaining the necessary evidence to establish their connection therewith, that the trial occupied so long a period of time.

The record shows that it occupied 72 days (See docket entries Trans., pp. viii-x); but in reality it covered a period of nearly five months.

Three times the Court below refers to "this five months trial" (See fols. 9543, 9561, 9578); as though this fact in some way limited plaintiff's right of review. "No record," it said, "could come unscathed through such an ordeal after a five months trial." And it lightly passes over some of the objections raised by the plaintiff upon the theory that because the trial occupied so long a time plaintiff must have had its day in court.

Indeed, so little merit did the Court below attach to the assignment under consideration, that it questioned whether "the plaintiff is *seriously* insisting that the Court erred in refusing to receive the decrees in evidence" (fol. 9561-9562).

If these decrees had been received, the burden of one issue would at least have been shifted to the defendants, and the length of the trial would have been materially reduced.

The Court below also says that the plaintiff, being a stranger to that proceeding, "could not avail itself in the present suit either of the evi-

dence then given or of the decree," for the reason that "the parties in the two suits were different; the subject matter was different; and the Trial Judge's ruling is so fully justified by the well-established law then existing, that no supporting authority need be cited."

Undoubtedly the general rule is that unless the parties and the subject matter are the same, a former judgment may not be pleaded as an estoppel.

But this rule does not apply here for the reason that there are well-recognized exceptions to the general rule thus stated, and these exceptions exist in the present case.

The exceptions to the general rule are fully discussed by Judge Van Devanter in *Portland Gold Mining Company vs. Stratton's Independence,* 158 Fed., 63. He cites many authorities and a careful examination of these will show that they clearly support his conclusions.

It was strenuously urged in that case that the rule of mutuality of estoppel should apply, that is, "that one may not have the benefit of an adjudication as an estoppel unless he would have been prejudiced by it had it been the other way." To this Judge Van Devanter replied:

> "But it is quite generally held that these objections do not prevent an estoppel where, as here, the one exonerated was the immediate actor and his personal culpability is necessarily the predicate of the plaintiff's right of action against the other, and we think that upon principle this ought to be true."
>
> "Thus it is settled by repeated decisions that the general rule that one may not have the benefit of a judgment as an estoppel unless he would have been bound by it had it

been the other way is subject to recognized exceptions, one of which is that in actions of tort, such as trespass, if the defendant's responsibility is necessarily dependent upon the culpability of another, who was the immediate actor, and who, in an action against him by the same plaintiff for the same act, has been adjudged not culpable, the defendant may have the benefit of that judgment as an estoppel, even though he would not have been bound by it had it been the other way. And we think it could not well be otherwise, for, when the plaintiff has litigated directly with the immediate actor the claim that he was culpable, and, upon the full opportunity thus afforded for its legal investigation, the claim has been adjudged against the plaintiff, there is manifest propriety, and no injustice, in holding that he is thereby concluded from making it the basis of a right of recovery from another who is not otherwise responsible. To such a case the maxim, 'Interest reipublicae ut sit finis litium,' may well be applied."

The authorities cited by Judge Van Devanter are so much in point that we refrain from occupying the attention of the Court with a discussion of them, except the case of *Anderson vs. West Chicago Street Railroad Company,* 200 Ill., 329, which was a negligence case, and in which it was stated that where the "gist of the action in *each* suit" was the same acts of negligence, the judgment may be pleaded as res adjudicata.

In the present case the acts upon which the *criminal* liability of the defendants depended were the same criminal acts upon which the plaintiff depended to establish the first necessary element of its case—namely, the doing of the things forbidden by Sections 1 and 2 of the Sherman Law, whereby they became an unlawful monopoly and

whereby they monopolized and attempted to monopolize interstate commerce, and "by reason of which" plaintiff was injured in its business.

The Court below claims support for its conclusion that the decrees were not admissible, because the "Clayton Law" has been enacted since the trial of this case, Section 5 of which provides that such decrees, "hereafter" entered, shall be received in actions similar to the one at bar.

But we think that this section only enacted into positive statute, the rule which had already long existed, unless perchance, it weakened the existing rule by making the decree prima facie only, whereas before it might have been *conclusive* evidence of the facts therein recited. It may well be argued that Section 5 of the Clayton Law took away from the private litigant, under the Sherman Act, some of the rights which he before had with respect to the effect of the former decree.

Grounds of Admissibility of Decrees as Contended for by Plaintiff.

The grounds upon which plaintiff relies to sustain the admissibility of the decrees are as follows:

1. As evidence of the *fact* that the defendants had been adjudged guilty of forming the *same* combination and conspiracy in restraint of trade which was in issue.

2. As an *admission* of guilt.

I. As Evidence of a Pertinent Fact.

There is a great difference between the force of a decree or judgment when considered as to its form, or as to the regularity of the proceedings in

which it was obtained, and when considered as evidence of the *fact* which it declares. In such respect a judgment is conclusive not only upon the parties, but it cannot be impeached collaterally even by strangers.

In *St. Louis Mutual Life Ins. Co. v. Cravens,* 69 Mo., 72, it was said:

> "It is insisted that the decree was not proper evidence, because the plaintiff in this suit was not a party to the suit in which the decree was rendered. It may be conceded that when a judgment is offered in evidence 'both the litigants must be alike concluded, or the proceedings cannot be set up as *conclusive* against either.' (1 Greenleaf Ev., Sec. 524.)
>
> "While this is an established principle it is also settled that the verdict and judgment in *any* case are always admissible to the fact that the judgment was rendered, or the verdict given. It is conclusive evidence of the *fact* of the rendition of the judgment, and *all the legal conclusions resulting* from that fact, *whoever may be the parties to the suit in which it is offered.*"

See also 1 Greenleaf Ev., Sec. 538 (16th Ed.).

In the *National Cash Register* Case, 222 Fed., 599, 629, which was a suit by the government under the Sherman Act, the admission of a decree of infringement of a patent, although reversed on appeal, was upheld as being prima facie evidence of probable cause that improper use of the patent laws had been made against the rights of competitors.

The authorities are unanimously to the effect as stated by Van Fleet Coll. Attack, page 86, that:

"A decree made by a Court of Equity is conclusive in a Court of Law, and vice-versa."

See also 23 Cyc., 1222 and 1223 and citations from almost every state and many U. S. courts.

A judgment or sentence in a criminal action is admissible in a subsequent civil suit, which is civil in form, but penal in character to enforce a penalty or forfeiture of property against the same defendant, on the same state of facts.

Coffey vs. United States, 116 U. S., 436.

It was not denied in the trial of the present case, but was freely conceded, that the prosecution of the government case was begun upon a petition filed by Mr. Waddell, and that he was active in assisting in the prosecution of the case till the final decree. He freely stated that he did not file his petition with the government until he realized that the plaintiff had been practically forced into bankruptcy by the conduct of the defendants, and freely admitted that his ultimate object in so doing was to secure redress for the injuries sustained by the plaintiff, and that he always had in contemplation the bringing of the present suit, as soon as the status of the defendants should be ascertained in the government proceeding.

He was virtually treated as the plaintiff in the equity suit as well as in the present case, and the admission of the decrees would have been an exceedingly appropriate exercise of the discretion of the Court, if it was a matter which was discretionary with it, for the reason that the Trial Court gave the defendants unlimited opportunity, which was seized with avidity, to impress their theory upon the jury that Mr. Waddell was the

real plaintiff in the government suit; that he was the one that inspired it; that he furnished the government with the necessary evidence which he had obtained while in their employ; that he did it maliciously to force the defendants to buy him off. **This theory was further accentuated by the Court, as though fully approved, in the instructions which it gave to the effect that the plaintiff stood in a different relation in its right of recovery under the Sherman Act, by reason of the knowledge which Mr. Waddell had of the illegal methods and policies long carried out by the Du Pont Company and its associates.** (See supra, Points IV, V.)

Assuming all this to have been true, the jury was entitled to know the *result* of that proceeding, **not merely that the defendants were decreed to be an unlawful monopoly, but what the defendants had been found guilty of doing.** This knowledge would, at least, have gone a long way to remove from the minds of the jury any impression of bad faith on the part of Mr. Waddell. It was not fair to the plaintiff that its founder, chief officer, and principal witness, should have been discredited with this suspicion, and the result of the proceeding which he caused to be instituted kept from the jury. It must have had the effect of justifying him in their eyes.

2. As an Admission of Guilt.

The decree should have been received by the Court, because it constitutes an *admission of guilt,* which was *a pertinent fact* in issue and should have been received by the Court as evidence to the same effect as any other admission of the defendants might have been received.

The final decree was a "consent decree" entered after months of negotiation between the parties.

The interlocutory decree declares that twenty-eight corporations and individuals (including the defendants) "are maintaining a combination in restraint of interstate commerce of powder and other explosives," and enjoins them from continuing. It directs that the defendants be dissolved and that a further hearing be had to enable the petitioner and the defendants or any of them to submit further information "to the end that this court may ascertain and determine upon a plan or method for such dissolution which will not deprive the defendants of the opportunity to recreate out of the elements now composing said combination a new condition which shall be honestly in harmony with, and not repugnant to, the law." (Trans., p. 1816, fol. 5447.)

The final decree recites that a plan for the dissolution of the combination and monopoly has been presented by the petitioner "to which said plan the twenty-seven defendants *do not object.*" The plan is thereupon set forth and the "defendants are respectively directed to proceed forthwith to carry said plan into effect" (p. 1819, fol. 5457).

By accepting the privilege of the interlocutory decree to present further information to the court, and by *consenting* to the plan submitted by the petitioner to create "a new combination which shall be honestly in harmony with and not repugnant to the law" the defendants admitted their guilt.

This Court, speaking through Mr. Justice Brewer in *Last Chance Mining Co. vs. Tyler Mining Co.*, 157 U. S., 683, 691, announced the rule which we contend for in the present case in the following clear language:

> "The essence of estoppel by judgment is that there has been a judicial determination *of a fact,* and the question always is, has there been such determination, and not upon what evidence or by what means was it reached. A *failure to answer* is taken as an admission of the truth of the facts stated in the complaint, and the Court may properly base its determination on such admission. Suppose the defendant files a denial, and on the trial the only evidence is the testimony of a witness *to an admission made by the defendant out of court,* and upon such testimony the judgment is rendered. Is it any the less a judicial determination because resting simply upon proof of the defendant's admission, and yet in principle what distinguishes that case from this? In each the judgment is resting upon an admission of the party against whom the judgment is rendered, and does it make any difference *in what form* that admission is presented to the judge?"

The case of *United States vs. Parker,* 120 U. S. 89, is an authority in support of our contention that by the acquiescence of the defendants in the final decree which was entered against them, they are *concluded* to the same extent that they would be by making any other admission of *a fact.* It finally established their *status* in the eyes of the law as an unlawful combination when raised in any other proceeding, whether they are parties thereto or not.

In the Parker case there was a judgment of dismissal which recited "that the subject matter in suit had been *adjusted and settled* by the proper parties in Washington."

The Court said:

> "This recital, together with the judgment founded on it, was entered *by the consent* of

the attorney representing the United States, who thus in open Court officially admitted the *effect of the evidence* to be as claimed."

To the same effect is *Nashville, etc. Ry. Co. vs. United States,* 113 U. S. 261.

POINT XIII.

Where a part of a conversation is put in evidence by one party, the other party is entitled to explain, vary or contradict it.

The Court refused to permit plaintiff's witness, R. S. Waddell, while under redirect examination, to state what the information was which he gave to plaintiff's attorneys upon which the allegations set forth in paragraph 11 of the plaintiff's amended declaration were based—counsel for defendants on cross-examination having already been permitted to read the said paragraph to the said witness and thereupon to ask him whether he gave his attorneys the information upon which said allegations were based, to which the said witness replied that he did and would be glad to state them to the jury, and such refusal is assigned as Error No. 23. (See Trans., p. 3213, folio 9639.)

Paragraph 11 of the Amended Declaration recites the history, form, purpose and effect of the Contract System. It is impossible to understand the motive or purpose of the Defendants' counsel in reading this paragraph to the jury, and following the reading by an inquiry whether the witness had given plaintiff's attorneys the information upon which the allegations were based, unless it was to show—

(a) That the allegations were framed by counsel recklessly and without any information upon which to base them.

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(b) That they were extravagant and unfounded in fact.

(c) That the witness gave the information, if he gave it at all, knowing that it was unfounded in fact, and that his character as a witness would be impeached thereby.

That the last of the three motives above suggested was probably the correct one, is consistent with the whole policy of the defense, namely, to make a personal attack on Mr. Waddell and weaken his standing as a witness before the jury.

Furthermore, the jury were entitled to know all the facts relating to all of the allegations, and the witness should have been permitted to give them the benefit of all the information he possessed on the subject, and plaintiff was entitled to take advantage of the opening thus afforded to submit evidence which it might not otherwise be able to offer.

> "It is a familiar rule that one who induces a trial court to let down the bars to a field of inquiry that is not competent or relevant to the issues cannot complain if his adversary is also allowed to avail himself of the opening."
>
> *Warren Live Stock Co. v. Farr,* 142 Fed., 116.

The prompt response of the witness that he had given the information to his attorneys, and would be very glad to state it to the jury, evidently came as something of a surprise to the examiner for he at once dropped the subject and did not permit the witness to state it to the jury. (Trans., p. 1248.)

The relation of the defendants to the Contract System, and the effect of that system upon the plaintiff, was one of the most important issues in the case, and the defendants hotly contested every

attempt upon the part of plaintiff to sustain the theory of the Declaration.

Stanley v. Beckham, 153 Fed., 152, is a case as nearly in point as a case can well be. The plaintiff on his cross-examination was asked concerning a certain conversation which he had had with the defendant, and the questions were allowed and he answered such questions as were put to him. Upon redirect he was asked to state his further recollection about what was said at the conversation, and an objection thereto was sustained by the Court. The opinion which was delivered by Judge Van DeVanter says:

> "Error is assigned upon the rulings preventing the plaintiff from giving in rebuttal his version of the conversation mentioned, and we entertain no doubt that in this there was error, for, where the whole, *or a part of a conversation is put in evidence by one party, the other party is entitled to explain, vary or contradict it* (*Carver v. United States,* 164 U. S., 694; 17 Sup. Ct., 228, 41 L. Ed., 602; *Home Benefit Association v. Sargent,* 142 U. S., 691, 12 Sup. Ct., 332, 35 L. Ed., 1160; *Chicago City Railway Co. v. Bundy,* 210 Ill., 39, 44, 71 N. E., 28; *Hoggson, etc., Co. v. Sears,* 60 Atl., 133, 136, 77 Conn. 587). * * *
>
> But it is said there was no offer to show the substance of the testimony proposed to be elicited by the questions propounded and excluded in rebuttal, and therefore it does not appear that their exclusion was reversible error. The premise is correct, but not the conclusion. The controlling rule, applicable where the witness testifies in person at the trial, and not by deposition, as stated by Mr. Justice Harlan, in *Buckstaff v. Russell,* 151 U. S., 626, 637, 14 Sup. Ct., 448, 452, 38 L. Ed., 292, is this:

"'If the question is in proper form, and clearly admits of an answer relevant to the issues and favorable to the party on whose side the witness is called, it will be error to exclude it. Of course, the court, in its discretion, or on motion, may require the party in whose behalf the question is put, to state the facts proposed to be proved by the answer; but, if that be not done, the rejection of the answer will be deemed error or not, according as the question upon its face, if proper in form, may or may not clearly admit of an answer favorable to the party in whose behalf it is propounded.'

"And this rule is recognized in other cases. *Oriegt v. Hedden*, 155 U. S., 228, 235, 15 Sup. Ct., 92, 39 L. Ed., 130; *Atchison, Topeka & Santa Fe Ry. Co. v. Phipps*, 60 C. C. A., 314, 316, 125 Fed., 478, 480."

POINT XIV.

A hypothetical question not embracing all the facts upon which the hypothesis is based, or upon which an expert opinion is asked, is inadmissible.

The declaration alleged that the defendants had "induced" its customers to abandon it, specifying the manner in which this was done and the character of the "inducements" made use of, as follows:

(a) By the employment of evilly disposed persons to enter the mines of plaintiff's customers to stir up discontent among the miners and to instill into their minds prejudice against plaintiff's powder, so as to cause them to refuse to use it, thereby to "*induce*" the customer to reject it. (See Trans., p. 18, fol. 54.)

(b) By the employment of influential miners to circulate among the miners of the various coal mines of plaintiff's customers and distribute cash, liquors, etc., among them to "induce" them to believe that it was for their interest to boycott plaintiff's powder, and that these "inducements" succeeded in forcing customers to abandon plaintiff. (Trans., p. 19, fol. 56.)

(c) By "inducing" each customer of black blasting powder to enter into *contract* with the defendants to give them their exclusive trade for a term of years (Trans., p. 21, fol. 62).

(d) By making and increasing *rebates* on such contracts. (Trans., p. 22, fol. 65.)

(e) By persistently *underbidding* plaintiff until it was compelled to surrender the trade of the customer and leave the defendants a clear field, as a result of which, in most cases, the defendant succeeded in "inducing" the customer to enter into contract with it (Trans., pp. 24-25, fols. 72-74).

With a view of disproving these allegations, defendants submitted the depositions of about 75 persons who had been customers of the plaintiff, (many of these being insignificant customers, not having made more than one purchase of from two to a dozen kegs) and to whom they propounded a question similar to the one set out below. All these were objected to and the objections overruled by the court. The following question propounded to Olive Taylor, one of these witnesses, is selected as typical of the others. (See Assignment of Error No. 24; Trans., p. 3214):

> "Q. Now, Mrs. Taylor, in a suit instituted in the United States District Court for the District of New Jersey, by the Buckeye Powder Company against the E. I. Du Pont de

Nemours Powder Company and two other companies, known as the International Smokeless Powder and Chemical Company and the Eastern Dynamite Company, the Buckeye Powder Company, in answer to a demand for the names of customers of the Buckeye Powder Company induced by the defendants, or by the other persons or corporations I will name to you, the Buckeye Powder Company has given the name of Howarth and Taylor as one of the customers of the Buckeye Powder Company which was induced by these defendants and persons which I will name, to abandon the purchase of powder from the Buckeye Powder Company. The names of these persons are: Thomas Coleman Du Pont, Pierre S. Du Pont, Alexis I. Du Pont, Alfred I. Du Pont, Eugene Du Pont, Eugene E. Du Pont, Henry E. Du Pont, Irene Du Pont, Francis I. Du Pont, Victor Du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmund G. Buckner, Frank L. Connable, Jonathan A. Haskell, and the following corporations: International Smokeless Powder and Chemical Company, E. I. Du Pont de Nemours and Company, E. I. Du Pont de Nemours and Company of Pennsylvania, Du Pont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin & Rand Powder Company, Fairmont Powder Company, and Judson Dynamite and Powder Company. Will you now state whether or not any of the persons that I have mentioned here, or any of the corporations which I have mentioned in this question, or any agent or representative of those persons or corporations, ever induced you, as purchasing agent for your husband, Daniel Taylor, trading as Howarth & Taylor, not to purchase powder of the Buckeye Powder Company?

"A. No, sir."

It will be seen by the foregoing digest of the al-

legations of the declaration concerning the *inducements* charged to have been the cause of the loss of plaintiff's customers, that the question propounded by the defendants as above set forth has no relevancy or bearing whatever upon any of them.

The answer as given states a pure conclusion of the witness without the slightest knowledge on his part what the real grounds of complaint were.

It may be said that this could all have been cleared up by cross-examination. The answer to this is that a party is not bound to cross-examine a witness in order to protect himself against an irrelevant and improper question propounded by his adversary. Nevertheless, some cross-examination was had and many of the witnesses did, in fact, testify to the presence of the very "inducing" motives charged.

The cross-examination also shows that most of them knew none of the persons, firms or corporations whose names were stated to them in the question; and that they could think of no possible means of "inducement" except *personal importunity* on the part of some of the parties named.

This very witness testified that she did not know the persons whose names were read to her (Trans., p. 2081, fols. 6243-6244):

> "Q. Then, how were you able to answer so promptly that question in the negative, as you did? A. Had a gentleman *come* to influence us not to buy Buckeye powder, I should certainly have known it.
>
> "Q. You are basing your statement that no one influenced you, upon the fact that no person *came to you personally* and asked you to abandon Buckeye powder in so many words? A. They didn't.

> "Q. And that is the reason you made that statement? A. Yes, sir."

While we do not believe that any question could be framed which would cover the grounds alleged in the declaration, unless it included all of the "inducements" alleged in the declaration there might have been some rational basis for presenting a hypothetical question to the witness providing he was first qualified upon the subject of who were the "agents" or "representatives" of the defendants named in the question.

The question as generally understood by the witness is one which suggests a reflection upon his intelligence and it is not to be supposed that he would admit that he could be moved by personal importunity. His sense of pride would naturally prevent such a confession.

The answer of Mr. Donk, President of the Donk Coal & Coke Co. of St. Louis, displays resentment. He said (see Trans., p. 2354, fol. 7061):

> "I would say there is nothing to that. There ain't nobody induced me to quit that, unless I choose it. I never allow myself to be bamboozled with anybody, or by any concern or individual."

But on cross-examination he admitted that he had been "induced" to buy Du Pont powder by the very methods which plaintiff charged, viz., (a) by better prices (fol. 7061, also letters from the Donk Coal Co., pages 2357-2358), and (b) by the Contract System (fol. 7062), (c) by trouble with his miners over the use of Buckeye powder, notwithstanding he used over 17,000 kegs and that the powder itself proved satisfactory (fols. 7064-7065), (d) that the only representative of the Du Pont Company whom he knew was Mr. Spicer (fol. 7065)—the same Mr. Spicer who

brought about the strike among the miners of the Great Northern Fuel Company against Buckeye powder, and who, it is fair to infer, was the influence who "induced" the Powder Committee at Mr. Donk's mine to demand Du Pont powder (fol. 7065).

Furthermore, all the witnesses who were under contract with the Du Pont Company to purchase all their explosive requirements of it, were, in reality, parties to the combination in restraint of trade, and it was not to be expected that they would testify against their own interests.

This very witness, Olive Taylor, and her husband, Daniel Taylor, were conducting the business of Howarth & Taylor, where the evidence shows that nearly all of these inducing motives were operating in their own mines. (See supra, pp. 204-207).

The case of Emil Brechnitz of Belleville, Illinois, illustrates very forcibly the folly and impropriety of the question. He had already testified on his direct examination that one of the reasons why he left the Buckeye Company and went to the Du Pont Company was that they offered him a contract at a *lower* price than the Buckeye Company would make, and that "I was gradually losing out on the trade and, in thinking it over with my brother, I decided to tie up with the Du Pont people, and in that way retain the trade we had at the time." (See Trans., p. 549, fol. 1647.) Mr. Brechnitz testified on his cross examination by Defendants' counsel as follows (see Trans., pp. 570-571, fol. 1710):

> "Q. After you purchased Buckeye powder, were you induced in any way by the Du Pont Powder Company or any of its agents or

representatives to cease the purchase of powder from the Buckeye Powder Company? A. No."

On redirect examination the following occurred (Trans., p. 571, fol. 1713):

"Q. Now, in answer to the last question which was propounded to you by counsel for the defendants, which you answered in the negative, how did you arrive at that conclusion? A. I answered 'No.' There was no one *come* and induced me to quit buying from the Buckeye.

"Q. Do I understand you to mean that no one came and *personally* asked you to stop buying? A. Yes, sir.

"Q. But you don't wish to retract anything you said about *these other methods* as to competitive prices? A. *Those were the main reasons.*"

It should be remembered that Mr. Brechnitz was a merchant and that he bought powder to resell. (See Contract with Buckeye Powder Company, Trans., p. 2961.) He gave the names of a number of his customers that he had lost in this manner (Trans., pp. 549-550), and by reference to the "95-cent List" (Plaintiff's Exhibit 1248, Trans., p. 2735) we find that some of these customers were given the 95-*cent rate and went to Du Pont Company*, Trans., p. 2691.) He gave the names of a

The Harmful Effect of the Frequent Repetition of This Question.

The evil of this method of attempted disproof of the charge made by plaintiff that the defendants had driven it out of business by "inducing" its customers to abandon it, was the more noticeable because of the numerous repetitions of the same question and answer within the hearing of the jury, which must have made its impress on their minds as a complete refutation

of the allegations of the declaration. Most of the customers whose depositions were thus presented were insignificant, and the sum total of their trade could have had no effect on plaintiff's business. But this fact might well be lost sight of in the minds of the jury by the constant reiteration of the broad denial of something which was not charged as an "inducement"—namely, the *personal* solicitation and importunity of plaintiff's customers on the part of defendants.

The opinion of the Court below shows that even it has been misled by this line of examination, just as the jury was. It says (see Trans., page 3185, folio 9554):

> "Many witnesses testified that the defendants did not interfere with the plaintiff's customers or entice them away."

There is no support for these remarks on the part of the Court, unless it be found embraced within the question and answer now under consideration. If this was a proper method of eliciting the facts concerning the various means by which the defendants "induced" them to abandon plaintiff, then the above remarks of the Court are supported by the record. Otherwise not.

How much the more easily must the jury have been misled when this same question was repeatedly presented in their hearing. **No amount of subsequent explanation by the witness on cross-examination, that he did not have in mind the kind of inducement charged by the plaintiff, could efface the constant repetition of this long and formidable-sounding question and answer.**

POINT XV.

Plaintiff was entitled to recover *nominal* damages, in any event, and besides, all damages resulting as the natural and proximate consequence of the unlawful acts of the Defendants, whether such acts were directed against the Plaintiff or not, and such damages were recoverable not only for the loss in value of physical assets, but also for the value of the good will, and for loss of profits, both actual and future.

Questions of damages become important here because the jury might have determined all the other issues in favor of Plaintiff and yet, under the erroneous instructions of the Court, have found that plaintiff had suffered no damage whatever.

THE DAMAGES CLAIMED BY PLAINTIFF.

(a) Plaintiff alleged that the true and fair value of its plant, mills, business, and *good will* was $500,000, and that it was compelled to dispose of the same for $70,000; and therefore claimed damage for the difference, amounting to $430,000. (See Trans., page 30, folio 90.)

(b) Plaintiff also alleged that its plant and mills had a total capacity of 300,000 kegs of powder per annum; that its inability to keep its plant working at its full capacity was "due to and was the *natural and proximate consequence* of the wrongful and unlawful acts of the defendants"; that it was prevented from manufacturing and selling, during the period of the five years it was in business, a total of 937,376 kegs; that the fair

and reasonable profit, after deducting all expenses connected with the manufacture, sale and transportation, was thirty cents per keg, and plaintiff therefore claimed damage at 30 cents per keg on 937,376 kegs, amounting to the sum of $281,212.80. (See Trans., pages 32-33, folios 96-98.)

(c) Plaintiff also claimed damage for the loss of *future* profits, that is, after it *had ceased* to do business, because "it was unjustly and unlawfully interfered with in its right to *continue* in business." This claim was made at the rate of thirty cents per keg on 300,000 kegs per annum from September 19th, 1908, (when it ceased to do business) to the time of beginning suit, which amounted to a total of $270,000 more. (See Trans. page 33, folio 99.)

(d) Plaintiff further claimed damages for the difference between what it actually received, and what was "the fair profit on the powder which it actually manufactured and sold", and which it wholly lost by reason of the unlawful acts of the defendants—that is, at the rate of thirty cents per keg on 467,167 kegs; making a total of $139,149.10, less the amount already received, after deducting the actual cost thereof including transportation. (See Ibid.)

The claims of damages above summarized amounted to a total of $1,020,361.90, and when trebled as prayed for pursuant to Section 7 of the Sherman Act, amounted to $3,061,085.75.

The opinion of the Court below tends to give a wrong impression regarding plaintiff's attitude with respect to this subject of damages, thus (See folio 9543):

> "Treble damages were asked for amounting to nearly $4,000,000, although this demand was much reduced at the end of the trial."

There were only two claims of damages other than those above enumerated. One of these amounted to $5000, which plaintiff alleged it was compelled to pay in excess of the fair value of certain powder-making machinery which it required, by reason of the monopoly which the Du Pont Company had acquired in such machinery. The defendants pleaded the Statute of Limitations, which plea was upheld by the Court, and thus cut off all losses suffered previous to September 18th, 1905. This carried with it the $5000 claim, as well as such loss of profits as had occurred during the two years previous to this date.

The only claim which was not insisted upon by the plaintiff, was the claim of $500,000 as punitive damages. This was for purely legal reasons based upon the fact that the conclusion was reached by plaintiff's counsel during the trial that this claim was not properly set up, and plaintiff did not desire to involve the verdict in any question of legality.

Questions of Damages as Submitted to the Jury.

The Assignments of Error concerning the subject of damages relate almost entirely to the instructions.

The Court instructed the jury—

(a) That because the evidence tended to show that during the period previous to September 18th, 1905, (which was the only period during which Plaintiff made any actual profits at all), its profits were only three and one-seventh cents per keg, this must serve as the sole basis for a determination of any recovery for loss of profits for powder *actually* manufactured and sold. (Error No. 26.)

(b) That there was no evidence to support the allegation that thirty cents per keg was a reasonable profit. (Error No. 25.)

(c) That plaintiff could not recover for any loss of profits on account of powder which it was *prevented* from manufacturing. (Error No. 27.)

(d) That plaintiff could not recover for the loss of *good will* (Error No. 28).

The Court submitted the question of damages claimed on account of loss of value of the physical assets (that is the real estate, buildings and machinery); but instructed the jury that cost was not, in itself, a test of value, and that while it might be considered as a circumstance, it could in no event be taken as "very persuasive" evidence. (Trans., page 2499, folio 7497.)

From the foregoing it will be observed that the Court withdrew from the jury, the consideration of every claim of damage except that based on powder actually manufactured, and on the value of the physical assets. As to the former, it limited the recovery to not to exceed 3-1/7 cents per keg and as to the latter, the jury may have reached the conclusion, under the court's caution against accepting "cost" as any evidence of value, that plaintiff had suffered no damage from this source.

I. Plaintiff was entitled to nominal damages in any event.

In any view of the facts, the jury should have returned a verdict for at least nominal damages. This has been specifically held in the following cases:

Thomsen vs. Union-Castle Mail Company, 166 Fed. 251;

Reaffirmed in *Pennsylvania Sugar Refining Company vs. American Sugar Refining Company*, 166 Fed. 254, 260.

In the latter case it was said:

> "A person has a legal right to engage in a lawful business. If he is unlawfully excluded from exercising this right, when he is prepared and intends to exercise it, he suffers an injury for which the law awards damages—he is 'injured' within the meaning of the Federal Statute. He may be unable to prove specific compensatory damages, but in stating the infringement of his legal rights he states a cause of action at least for *nominal* damages and may perhaps so state it as to call for exemplary damages."

In *Lowry vs. Tile, etc. Association*, 106 Fed., 38, 47, it was said:

> "If the evidence in the case in the matter of damages to the business of the plaintiffs has not shown any real and substantial damage to their business by reason of the association, apart from conjecture or mere speculation, then they are not entitled to any substantial compensation, and no verdict in damages should be rendered in their favor, except in the *sum of the dollar or other trifling amount.*"

II. One who has been forced by an unlawful combination in restraint of trade to sell his merchandise at a small profit or at no profit at all, is entitled to have his loss of profits estimated according to what is a fair profit thereon, and is not confined to an estimate based on his actual earnings.

Assignment of Error No. 26 (See Trans., pp. 3215-3217), is very lengthy but for the purposes of this brief it can be summarized in a few words.

The Court instructed the jury that plaintiff was seeking to recover anticipated profits and that it claimed to have made a profit in its business for the first twenty-two months, previous to September 18, 1905, amounting to 3 1-7 cents per keg; that if they should find that this claim was sustained by the evidence it might be made to serve as a basis for allowing damages for loss of profits, subsequent to September 18, 1905, and, in that event—

> "You will allow as profits upon the kegs manufactured during such subsequent period all or so much of such 3 1-7 cents per keg as you shall find was the profit per keg on the 224,683 kegs as is shown were made during the three years following September 18, 1905."

There was, however, a controversy between the parties as to whether any actual profit had been made by plaintiff; and the jury may have found that the defendants' contention was the correct one, in which event, under the Court's erroneous instruction, no allowance would have been possible on account of loss of profits.

The testimony shows that the plaintiff actually manufactured and sold from September 19, 1905, to September 18, 1908, a total of 224,683 kegs of powder. By reference to plaintiff's exhibit 1396, (Trans., pages 2895-2931), a complete summary of the powder sold during this period, giving the name of the customer, the number of kegs sold, the price received, etc., is fully set forth. From this it appears, as shown by the summary of the exhibit on page 2895, that the average price per keg received after deducting freight, rebates, etc., was 92.1 cents per keg.

The rule adopted by the Trial Court attempted to confine the jury to the hard and fast doctrine,

which has been applied to the ascertainment of the loss of profits growing out of a breach of contract:

> "Until the Congress gives a different rule to estimate damages in such cases, as this the old rules are applicable" (Trans., p. 2506, fol. 7518).

The Trial Court makes the right to recover anticipated profits depend altogether upon whether there was an established business as will be seen from the following extract from its charge to the jury. (See Trans., page 2506-7, folios 7518-7521):

> "Were it not for the fact that the plaintiff claims that in the twenty-two months preceding September 18th, 1905, it had made a profit notwithstanding the unlawful restraints that it says were then being exerted upon the powder trade, I should be compelled to withdraw the question of profits from you in toto; but this contention of plaintiff requires me to submit the evidence that bears upon that to you upon this question of anticipated or expected profits; for while it is the general rule that such profits are not recoverable, an exception has been made in many jurisdictions in cases where an *established* business has *proved profitable in the past*, and where by competent proof it is made reasonably certain that but for an interruption chargeable to the defendant, the amount of the expected profits would have been made. Profit alone, however, is not enough to bring an existing business within the exception. In addition, the business must have been carried on for such a length of time as to make it reasonably certain that it had passed the period of experimentation and was capable of successfully surmounting the ordinary commercial vicissitudes that beset similar enterprises. What length of time may be necessary to obtain such a status may be a question of law or fact, according to circumstances. A shorter

> period during which financial or industrial depression or severe competition was encountered would permit of the submission of the question whether the business was sufficiently established to admit to the recovery of anticipated profits; whereas a much longer period of business life, but during which none of such depression or competition was experienced, might as a matter of law forbid the consideration of such question at all."

And again at p. 2509, folio 7526, referring to the period during which plaintiff claimed a profit the court says:

> "If it be a fact that during that period the plaintiff made profits, they furnish a sufficient basis for comparison with subsequent years for me to submit it to your consideration; but it will be for you to say whether as a fact that period was sufficiently long to furnish a basis for comparison with subsequent years. If you should find that it isn't sufficient to furnish such a basis, even though you should have found that during the twenty-two months the plaintiff made a profit, the further inquiry as to profits during the remaining years must end, and no profits can be allowed."

III. The evidence showed that thirty cents per keg was a reasonable profit to make.

Plaintiff claimed that it was entitled to receive as damages a sum equal to what would amount to a *fair* profit on its powder, regardless of what its actual profits had been during any period of its operation, or in fact, whether it had made any profit at all.

The Court instructed the jury as follows, which is assigned as Error No. 25 (See Trans., p. 3215, folio 9644):

> "Plaintiff claims thirty cents a keg profit,

but there is *no evidence* in the case that would justify the conclusion that that was a fair profit."

At the request of the defendants, the Court again charged the jury that plaintiff had "no right to fix upon what Mr. Waddell deems a fair profit and claim compensation for loss of that." (See Trans., page 2514, folios 7541.) It is a sufficient answer to say that the plaintiff did not make this claim solely upon what Mr. Waddell deemed a fair profit. His opinion as an expert was certainly competent evidence and it was abundantly supported by the testimony of some of the defendants own witnesses. He testified as follows (See Trans., pp. 774-775.):

"Q. Will you state to the Court and jury the different elements that you used in making up this total figure which you have given as the fair price at which you should have sold Buckeye powder to the various customers which are set forth on that exhibit? A. I took into consideration the cost of the powder at the mills, based upon the raw material, labor and cost of manufacturing complete, and the cost of selling, overhead expense; then added to that the cost of freight for the reason that all powder in carloads is sold delivered, and I had to meet that requirement, because that is the general requirement of the United States, that all powder for many years has been delivered in carloads. I added the approximate freight for a given distance and, based upon my experience in the powder business for many years I regarded the price fixed for each of the districts, each of the locations named on this sheet where powder was sold, as a reasonable and fair price at which it should be sold.

"Q. Now, what in your judgment is a reasonable and fair profit or was a reasonable and fair profit for you to have made upon

such powder as you sold while you were manufacturing black blasting powder during the year 1903 to 1908 inclusive? A. Approximately thirty cents, but it would be impossible to make the great variety of prices in a given locality that the addition of thirty cents to the fractional freights would make, so that it has been the custom to fix a price for a district and I follow the same rule as the custom of the country in the sale of powder and fix a price of $1.20 for the State of Illinois, which would approximately give thirty cents in every particular—the average would be thirty."

Mr. Haskell, one of the Vice-Presidents of the Du Pont Company testified that $1.25 east of the Mississippi River and $1.35 west of the Mississippi River, was a *reasonable* price for black blasting powder in the Central District of the United States, in carload lots, and in other cases where it had to be transported from distant mills. (Trans., p. 1752). This would produce a profit of thirty cents per keg because according to the evidence, the cost of making and selling powder (including freight charges) was about ninety-five cents. (See Discussion of Point VIII, Supra, page 181.)

Mr. Moxham, another of the Vice-Presidents of the Du Pont Company, made an address at a meeting of the Trade Association in December, 1902, where the question of prices was discussed. Said address is in evidence as Plaintiff's Exhibit 22. (Trans., pages 2539-2556). As a part thereof the table of average prices for black blasting powder received for a period of 12 years (page 2556), taken in connection with the other testimony in the record relative to the cost of making powder, furnishes very convincing evidence in support of Mr. Waddell's opinion. The table is as follows:

Year		Kegs	Average Price
1890	(Jany. to June)	145,235	$1.65
1891	(June 1890 to June 1891)	171,100	1.55
1892	(June 1891 to June 1892)	151,833	1.52
1893	(June 1892 to June 1893)	174,519	1.22
1894	(June 1893 to June 1894)	128,058	1.07
1895	(June 1894 to June 1895)	151,315	.995
1896	(June 1895 to June 1896)	171,692	.92
		Avg.	.98
1896	(July to December)	103,000	1.09
1897	(Jany. to December)	173,879	1.24
1898	(Jany. to December)	145,349	1.266
1899	(Jany. to December)	230,786	1.214
1900	(Jany. to December)	284,700	1.183
1901	(Jany. to December)	292,422	1.173
1902	(To Sept. 1st)	216,890	1.14

Commenting upon this table, Mr. Moxham said (see Trans., p. 2545):

> "An examination of this will show that the history of the powder business has been that of a steady reduction in price up to the year 1896. The lowest price reached is contemporaneous with the lowest price basis in this country of all other staples; so far so good. But going beyond this, it shows none of the reaction towards higher figures that has ruled in every other business in the years following, viz 1896 to 1902. Prices generally have increased over 100% in other staples during the last five years. This is true of those businesses that were subject to the keenest and freest competition in common with the rest. In powder we find the increase has been from $.98 in 1896 to $1.14 to date in 1902, an increase of only 16 cents. We believe that the price to- day *is abnormally low.*'

If the price was *abnormally low* at $1.14 per keg, what should it have been? This question was answered by Mr. Moxham by recommending an increase to $1.25 east of the Mississippi River, and $1.35 west.

We think that the foregoing facts, as shown by the record, sufficiently dispose of the charge that plaintiff rested its contention that 30 cents per keg was a fair profit to be made, on Mr. Waddell's opinion alone; and also shows that the prices which prevailed while the plaintiff was in business were *abnormally low*, not as the result of natural and normal conditions, but due to a situation brought about by the defendants to force plaintiff out of business; that plaintiff was thus kept from making and selling its goods at a profit, as alleged, and that it is entitled to be reimbursed for the loss thus sustained.

IV. The evidence showed that plaintiff possessed a plant with a minimum capacity of 250,000 kegs and a maximum capacity of 300,000 kegs of powder per annum, and was financed and prepared to operate to full capacity and that it had the customers ready to purchase its output, but was prevented from supplying such customers and operating to capacity by unlawful acts of defendants. It is, therefore, entitled to recover for loss of profits on powder which it was prepared to manufacture and sell, up to the normal capacity of its plant.

The Court instructed the jury as follows, which is assigned as Error No. 27 (see Trans., p. 3217, fol. 9651):

> "As the evidence does not furnish us with a legal basis upon which we can determine, as a matter of fact, that the plaintiff could have sold on a profitable basis any more powder than it actually sold, no allowance can be made for such unmade or unsold merchandise."

As a legal basis upon which the jury might estimate the injury to plaintiff's *future* business, it was first shown that plaintiff had the plant and facilities for conducting such business, and also that there were consumers of large quantities of powder who were ready and willing to *become* its customers, and others who were already its customers who were willing to *continue* as such, but who were compelled to cease to do business with plaintiff by reason of the unlawful acts of the defendants. It was further shown that these customers consumed much more than a sufficient amount of powder to have absorbed all that the plaintiff could produce, if working to its full capacity.

It is difficult to understand how a legal basis could be established with any more certainty than was done in this case, as the following review of the evidence will show:

(a) As to the Plant.

The evidence showed that the fair capacity of the plaintiff's plant was 250,000 kegs per annum, and that plaintiff was financed and equipped to operate its plant at its full capacity (Trans., p. 820, fol. 2458; pp. 832-833, pp. 940-941); that if plaintiff had been permitted to carry on its business without interference from the defendants, instead of making 224,683 kegs from September 19, 1905, to September 18, 1908, it would have made 737,500 kegs. The difference between its capacity and its output was 512,817 kegs.

(b) As to Its Customers.

All that is necessary to take such losses out of the *speculative* class is to show that plaintiff had the customers who were ready to continue with

it, or to come to it, if left free to do so in fair and open competition.

The evidence shows that the following coal operators who had already done business with plaintiff were willing and even anxious to continue to do business with plaintiff, or were willing to become customers of plaintiff, but were prevented from doing so by the acts of the defendants:

	Annual Consumption.	
Applegate & Lewis.....	2,000 to 4,000	Kegs
C. G. Brechnitz.....	10,000 to 12,000	"
Great Northern Fuel Co...	4,000 to 5,000	"
Indiana Bituminous Co...	4,000 to 5,000	"
Waverly Coal Co.....	4,000 to 5,000	"
Wear Coal Co.....	40,000 to 50,000	"
Northwestern C. & M. Co..	8,000 to 10,000	"
Clark Coal & Coke Co.....	21,000 to 25,000	"
Sunday Creek Coal Co....	75,000 to 100,000	"
Central Coal & Coke Co...	150,000 to 200,000	"
Donk Coal & Coke Co...	25,000 to 30,000	"
	343,000 to 556,000	Kegs

There were, besides, the following coal operators who were willing and ready to do business with plaintiff; but, while the testimony shows that they used a large amount of powder, it does not show how much: Charles F. Keeler & Co., New York Coal Company, DeCamp Coal & Mining Company, J. H. Somers & Company.

Inasmuch as the minimum capacity of the plaintiff's plant was 250,000 kegs, it would seem that the plaintiff sufficiently satisfied the reasonable requirements of the rule, if any exists, which imposes upon it the obligation to show that it could have sold its output as a legal basis from which to estimate its losses in this respect.

The fact that there is no binding contract between the person injured and his usual customers makes no difference in the application of the rule. It will be *presumed* that the customers would have continued their voluntary patronage but for the wrongful acts.

8 Cyc., p. 653.

In *United States v. Keystone Watch Case Co.*, 218 Fed., 502, 512, it was said:

> "And it is not sufficient to answer that these competitors appear to have withstood the attack with more or less success, and that their total trade did not always, or even often, diminish. Where or how they made up the loss that they must have sustained is not material; it is certain that they must have lost whatever trade they had previously enjoyed with those jobbers that yielded to the threat of the defendant's circular; and it seems clear, therefore, that in this degree at least there was an unlawful restraint of trade. In other words, if this section of the trade had not been taken away from the defendant's competitors, we may reasonably suppose that they would have retained it; and this fact seems to be a final answer to much of the evidence, the tables and lists, of varying scope and value, that have been laid before us, and were offered to show that on the whole not much damage, if any, was done by the offending circular and the defendant's unlawful conduct."

In *Lawlor vs. Loewe*, 235 U. S., 522, the basis of which was a conspiracy to prevent a manufacturer from carrying on his business, this Court affirmed the action of the Circuit Court of Appeals (209 Fed., 721, 739) in upholding an instruction which charged "that the plaintiffs are

entitled to recover all damages which are the proximate and natural result" of the unlawful acts charged.

The principle laid down in *United States vs. Kissel,* 218 U. S. 601, is applicable here. The American Sugar Refining Company obtained the control of a majority of the stock of the Pennsylvania Sugar Refining Company, through a pledge made to secure a loan, and then voted to suspend business, thus *preventing* a "would-be competitor" as the court describes it, from carrying on business.

An action under the 7th Section of the Sherman Act was instituted by this would-be competitor and disposed of in *Pennsylvania Sugar Refining Company vs. American Sugar Refining Company,* 166 Fed., 254. The defendants urged that because the plaintiff "was not engaged in business at the time of the conspiracy it had no established business to injure," and that legal damages could not be predicated upon the prevention of the carrying out of a mere "naked intention to engage in interstate commerce." The court answered this contention as follows (See page 260):

> "In the very recent case of *Thomsen v. Union Castle Mail Steamship Co.,* 166 Fed. 251, this court said: 'It is as unlawful to prevent a person from engaging in business, as it is to drive a person out of business'. A person has a legal right to engage in a lawful business. If he is unlawfully excluded from exercising this right, when he is prepared and intends to exercise it, he suffers an injury for which the law awards damages—he is 'injured' within the meaning of the federal statute."

The rule is affirmed in *American Banana Co. vs. United Fruit Co.,* 166 Fed. 261, 264.

In *Dowd vs. United Mine Workers,* 235 Fed. 1, 7, the rule as laid down in the above cases is followed and applied to a situation where certain coal companies were not actually engaged in interstate commerce at the time the alleged unlawful acts were committed, but were *preparing* to do so and were prevented from so doing by the acts of the defendants. It was urged that the damages suffered were "indirect, incidental and too remote." The Court said: "It is the *source* of the injury, and not the character of the property injured, which constitutes the test of recovery."

In *United States vs. Patterson,* 59 Fed. 280, 283, Circuit Judge Putnam said:

> "Neither the letter of the statute nor its purpose distinguishes between strangling a commerce which has been born, and preventing the birth of a commerce which does not exist."

In *United States vs. Union Pacific Railroad Company,* 188 Fed. 102, 117, affirmed 226 U. S. 61, Circuit Judge Adams said:

> "A contract to strangle a threatened competition by preventing the construction of an immediately projected line of railway, which if constructed, would naturally and substantially compete with an existing line for interstate traffic would be in violation of the Anti-Trust Law."

That damages are recoverable for the *future* effects of an injury, resulting as the natural and proximate consequence of acts committed by the defendants has been sustained by the following cases in this Court:

> *Washington & Georgetown R. R. Co. vs. Harmon,* 147 U. S., 571;

McDermott vs. Severe, 202 U. S., 600;
Chesapeake & Ohio Railroad vs. Carnahan, 241 U. S., 241.

V. The Court charged that the establishment of a profitable business was essential to good will; that plaintiff's business had not been profitable and that therefore it possessed no good will and withdrew the question of damages for loss of good will, from the jury.

The Court gave the following instruction, assigned as Error No. 28 (see Trans., p. 3218):

> "So far I have been dealing with the value of the plant simply as a tangible or physical property. A manufacturing plant, however, may have another and additional value, namely, its good-will; and as the plaintiff claims that it has suffered damages to its good will, that phase will now be considered. Good-will may be defined for present purposes as 'the advantage or benefit which is acquired by an establishment beyond the mere value of the capital stock, funds or property employed therein in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position, or from celebrity or reputation for skill, or affluence or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices.' **Establishment of a profitable business is the essential of the good-will. Where that does not exist there can be no good-will.**
>
> "The very contention of the plaintiff on another branch of the matter of damages is that from September 18, 1905, until the time that it ceased doing business, it was conducting an unprofitable business; and as the losses said to have been incurred during this period largely overcame the profits claimed to have

been made for the twenty-two months preceding we have as the only basis for a good-will, not that a pecuniary advantage or benefit was secured by the plaintiff during the time it was in business, but that it would have done so except for the wrongful acts of the defendant, and that for a part of such time it actually did make a profit.

"True, a person may be *wrongfully prevented* from acquiring a good-will; **and ethically such a wrong is just as injurious as if an established good-will was injured by such wrongdoing.** The rule in allowing as well as estimating damages, however, is a practical, rather than *an ethical* standard, and this excludes all damages that are purely speculative and contingent. To attempt to create out of unknown quantities a good-will for the purpose of giving it a value when no past conditions establishing a good-will exist, would be but a pure speculation, and, therefore, not allowable. *The claim of damages for good-will therefore must be disallowed.*"

The distinction which the Trial Court here makes between that which is *ethically* wrong and that which is legally wrong is contrary to the plain doctrine of the authorities just cited (*supra*, p. 293) to the effect that it is just as *legally* wrong to *prevent* a person from engaging in business as it is to destroy an existing business.

The *making of profit* has only an incidental relation to the question of good-will. If one's good-will is sufficient to enable one to attract to oneself a large amount of business from which a profit is made, this may show that the good-will is *more valuable*, than it would be if it was operated at a loss. But many a business has been known to operate at a financial loss and yet, because of the reputation which it had established for fair dealing, or for high quality of its goods,

or perhaps on account of its location, it possessed a good will among consumers—and even in the hands of a receiver or of the bankruptcy court, its good will was its most valuable asset.

Nature of the Evidence Concerning Good-Will.

But the evidence shows that notwithstanding the unlawful acts of the defendants, which *prevented* plaintiff from acquiring that good-will to which it was entitled and would have had but for such acts, it did have *some* good-will.

(a) The location of the plant.

(b) Good-will of customers.

(c) The rule used by accountants.

(a) LOCATION OF THE PLANT.

Plaintiff alleged in its declaration that its plant was favorably located near the City of Peoria, with respect to railroad facilities and transportation, and had the benefit of favorable freight rates and that it was in the center of a large consuming district which afforded a vast market for its output, and that the natural increase in the consumption of black blasting powder in the district reached from its mills was sufficient of itself to have absorbed the entire output without diverting any of the trade from already established channels of supply.

These allegations were sustained beyond question. In fact, little attempt was made to controvert them.

The testimony shows that Peoria is the second city in the State of Illinois in size, has twelve railroads, all on trunk lines or connecting with trunk lines, and that it is a most desirable distributing point. That after the plaintiff located

its plant it obtained freight rates which put it on an equality with the mills of the defendants (see Waddell, Trans., pp. 789, 790). It was not only convenient to the Illinois coal fields, but also to those in Iowa, Michigan, and in the Northwest through to Montana (Ibid., p. 790).

In 1903 the production of coal in the State of Illinois was about 36,000,000 tons and it increased until in 1908 it was about 54,000,000 tons (Trans., p. 791, fol. 2373). There was an increase every year in the amount of the powder required to mine the increased amount of coal produced, equal to at least 250,000 kegs additional to take care of the new trade (Trans., p. 794, fol. 2380).

The requirements for a location for a powder mill are peculiar by reason of the hazardous nature of the business. They are well described as follows (Waddell, Trans., pp. 761-762):

> "Q. Tell the jury what requirements in your judgment were necessary for you in obtaining a proper location for a powder mill? A. The location must necessarily be on an important railroad that was capable of making rates and securing good rates from other railroads, and where sidetrack facilities could be obtained. It must be located a long ways, fully a one-half mile distance, from any inhabited dwelling, to comply with the laws of the State. That necessitated a very remote section where no part of the land was within one-half mile of an inhabited dwelling. The location must have good water facilities for boilers, steam purposes; it should be rough ground where there is natural protection in valleys and ravines and timbered well for protection of one mill from another, otherwise barricades would have to be built between mills.

"Q. Protection in what respect? A. From explosions—in the event of explosions. They should be widely separated and in separate valleys if possible. The location must be near enough to a village or town or city to afford church and school facilities for the workmen; they would not be satisfied in a remote country district. There were a number of requirements, all of which must be complied with to make a suitable powder site."

All of these requirements were obtained in the site which was selected for the plant of the plaintiff. (Trans., p. 763.)

(b) Good Will of Customers—Wide Acquaintance and Experience of R. S. Waddell—The Salesmen.

Mr. Pierre S. Du Pont, while testifying as a witness for the plaintiff, stated that when the 1902 Du Pont corporation took over the properties belonging to the 1899 Du Pont corporation, it acquired a large amount of intangible assets, such as *good-will;* and among those which he enumerated was *"good-will of the customers"* (see Trans., pp. 101-102).

It is admitted that Mr. Waddell, the president of the plaintiff, was one of the most experienced men in the powder business in the United States at the time when it began business. He had served as agent for the Du Pont and Hazard Companies for a period of over twenty years and had built up a large acquaintance among the consumers of all kinds of explosives in a large part of the United States. He was thoroughly familiar with the requirements of the various sections of the country in the way of explosives and he had proved himself to be a successful salesman. He

had established many personal friends among the consumers of explosives who were willing and anxious to do business with him if they could do it on equal terms with other manufacturers of black blasting powder.

Mr. Moxham testified that at the time when Mr. Waddell started out to establish the plaintiff he knew more about the powder business and trade than anybody. "He had almost all the knowledge that the company had about that at that time;" that it was his duty to come in contact with the customers themselves during the twenty odd years of his experience (Trans., p. 679, fol. 2037). He thought that Mr. Waddell had a perfect right to go out and establish a business if he wished to and take advantage of his experience and ability in the powder business (Trans., p. 680, fol. 2039).

The following customers told why they wanted to do business with plaintiff:

Mr. R. E. Lewis, of the Applegate & Lewis mines, at Hanna City, Illinois, testified that his firm was anxious to use Buckeye powder because (a) of its nearness to their mines, which would enable them to keep a smaller amount on hand at one time and (b) because they obtained better results from its use in the way of quantity of output and better coal, and less screenings, and (c) because it was not so harmful to the roof of the mine as Du Pont powder (Trans., pp. 630-631). The reason for the inability of this mine to make use of Buckeye power is fully discussed elsewhere (see supra, pp. 209-221).

Mr. Tennant, President of the Indiana Bituminous Company a consumer of from 10,000 to 25,000 kegs of powder per year, testified that before

plaintiff began business his company was a customer of the Du Pont Company, and that he changed from Du Pont powder to the plaintiff "through friendship for the management of the Buckeye Company" (Trans., p. 517); and that he went back to the Du Pont Company because they made him *lower* prices (Ibid., p. 519). A letter written by this same witness to the plaintiff on February 2, 1905, is conclusive upon this point (see Trans., pp. 515-516). The following extract is important:

> "I note the receipt of your letter of the 26th. *I am loath to withdraw my trade from you. The treatment and product have been satisfactory in the past and relations agreeable,* but in these close times I feel we have to sacrifice our friends when it *costs us money to hold them.*
>
> "I will do this, however, as a *sort of farewell.* I will take one car of powder from you —a small car not above 400 or 500 kegs, and pay you $1.05. I won't be sure about the 60 days' payment, but perhaps we can use the powder by that time and will try to satisfy you."

Mr. Horace Clark, President of the Clark Coal & Coke Company at Peoria, Illinois, testified that he was a stockholder in the plaintiff and anxious to do business with it, but was unable to do so on account of the attitude of his miners. The reason for this attitude is elsewhere discussed (see supra, p. 202). In a letter written by Mr. Clark to the plaintiff on December 28, 1907, he says:

> "We only wish it was in our power to use Buckeye powder exclusively, but as you know, our miners positively will not use anything but Du Pont, and much as we *would like to help out our friends,* it seems as if we cannot do it" (see Trans., p. 446, fol. 1337).

Mr. Brechnitz of Belleville, Ill., was a stockholder of the plaintiff, and was also a large customer during the early period of its business. He was not a mine owner, but he was a merchant who bought powder to resell, and at the time when he became a customer of the plaintiff he had a large number of customers to whom he disposed of the powder. (See list of customers, Trans., pp. 2691-2692.)

He was able to make a contract with the Du Pont Company to furnish him powder at 95 cents per keg, with the privilege of the use of its magazine, which he valued as being equal to 3¼ cents per keg additional to him, and he, therefore bought his powder at 91¾ cents. (See Trans., p. 551, fol. 1653.)

Mr. Clarence G. Thurston, Secretary and Treasurer of the Northwestern Coal & Mining Company of Bevier, Missouri, became a customer of the plaintiff, through his friendship for Mr. Waddell, when it began business and remained a continuous customer from that time down to the time when plaintiff ceased business. He bought a total of 47,760 kegs of powder during this period. He transferred his trade at once to the successor of plaintiff, the Western Powder Company, and has continued to do business with that company since (see Trans., p. 511).

Mr. Edward Shirkie, of Terre Haute, Indiana, who was President and Treasurer of the Indiana Fuel Company and consumer of 2,500 kegs of blasting powder per month, gave an order to the plaintiff "through friendship to Mr. Waddell" (see Trans., p. 2313, fol. 6939). He had a contract, however, with the Indiana Powder Company and was unable to continue to do business with the plaintiff.

Mr. John W. Ferguson, President of the Waverly Coal and Mining Company of Kansas City, Kansas, a consumer of between 4,000 and 5,000 kegs of black blasting powder per year, was desirous of doing business with the plaintiff and did do some business with it. He was, however, compelled to cease to do business with it on account of a contract with the Du Pont Company (see Trans., pp. 509-510).

In addition to Mr. Waddell's experience in the powder business and acquaintance with the trade as an element of good-will, is the character of plaintiff's salesmen and agents. Among these were the following:

John G. Miller had previously represented the Laflin & Rand Powder Company for about ten years, and had a very wide acquaintance with the trade. He became a stockholder of plaintiff, and solicited the trade of those whom he had known while acting for the Laflin & Rand Company (Trans., pp. 324-325).

E. C. Burroughs, a salesman nearly all his life, with headquarters at St. Louis.

P. P. Laughlin, a salesman for the Ohio Powder Company for about twenty years, and after that with the Du Pont Company until he entered the employ of plaintiff (Trans., p. 776; also pp. 944-945).

The above facts are sufficient to show that plaintiff possessed *some* good-will; and it was for the jury to determine its amount and value.

(c) THE RULE USED BY ACCOUNTANTS IN DETERMINING GOOD-WILL SHOWS THAT PLAINTIFF HAD SOME GOOD-WILL, EVEN ACCORDING TO THE COURT'S THEORY THAT IT MUST BE BASED ON EARNINGS.

Mr. Armand Bruneau, a witness for the plaintiff, and an expert certified public accountant, gave the rule used by accountants in calculating good-will (see pp. 1808-1809):

> "The rule is to take the average earnings of a concern for a period of time and multiply those earnings by from three to five, and from the total thus arrived at deduct a reasonable amount for depreciation; then deduct interest on the capital invested; and deduct a sufficient amount for a reserve fund."

The depreciation ranges from 2½ to 7½ per cent.; but in the case of a manufacturing concern, 5 per cent. is a reasonable amount. Having determined the depreciation, he would determine the interest on the capital invested in the plant and machinery; and then the amount needed for a reserve fund, which depended on the character of the business, and which was usually an amount equal to the dividend paid. Where the character of the business was hazardous the reserve fund would have to be larger in order to meet the contingencies, as in the case of a powder plant that might blow up. He would then deduct from the total amount of the earnings a proper sum for depreciation and the balance after the deductions would represent net profits.

He sums up the deductions as follows (see Trans., 1811, fol. 5433):

> "We take the amount of depreciation; second, the interest on the capital invested,

and, third, an amount to provide for contingencies and reserves according to the nature of the business. For instance, in the case of a street railway company, they set aside a certain percentage of their earnings to provide for accidents. They have accidents to passengers, and eventually those passengers get damages, and they set aside a sum to cover that."

Mr. Bruneau says the net result for a period of one year should be multiplied by three in order to get the average annual earnings (see Ibid., p. 1812).

Von-Au v. Magenheimer, 115 App. Div. (N. Y.), 87.

This rule shows that plaintiff was entitled to *some* allowance for good-will based on its admitted earnings of 3 1-7 cents per keg previous to September, 1905.

POINT XVI.

Unless the judgment of the District Court is set aside and the foregoing errors corrected, the 7th section of the Sherman Act is a dead letter, and the grip of monopoly upon the destinies of the people will be immeasurably increased—Points and errors reviewed.

We think that in view of the foregoing discussion of the law and the facts, a re-reading of the summary of Points and Assignments of Error set out supra, pages 8-21, will convince the Court that every one of these assignments there pointed out has been shown to be well taken, and that the Court below erred in refusing to set aside the

judgment entered against the plaintiff in the District Court (Assignment No. 1; Trans., p. 3198, fol. 9594), and, instead, affirming the same (Assignment No. 2; Tran., p. 3199, fol. 9595).

We submit that this is not a case where the exercise by the jury of their fundamental right to determine the disputed issues is in question; but the errors grow out of the reception or rejection of evidence and the refusal of the Court to submit to the jury the most vital issues in the case, upon the ground that there was no evidence to support them.

The necessity of pointing out this evidence which is embraced in the five printed volumes of the Transcript and hundreds of exhibits, must be our explanation and apology for the great length of this brief.

The evidence clearly shows that the Eastern Dynamite Company and International Smokeless Powder Company acted *in combination* with the Du Pont interests, from the time they were organized down to the time when they were taken over and became a part of the defendant Du Pont Powder Company, and that they continued to so act thereafter during the entire period of their corporate existence; and it was therefore immaterial, in law, whether they actually participated in any of the overt acts or not. But even if the rule were otherwise, the evidence shows that they did actually participate in overt acts. It was, therefore, error for the Court to direct a verdict in favor of these two defendants (Point I.).

The evidence also shows that the Equitable and Austin Powder Companies acted *in combination* with the Du Pont interests almost from the time of their inception, and that the Du Pont interests

exercised control and influence over the affairs of these two Companies, not only by reason of their large stockholdings therein, but because of their close affiliation by interlocking directorates and otherwise with the remaining stock interests, and also that such influence and control continued after the Trade Association was merged into the corporate body of the defendant Du Pont Powder Company; and that the Du Pont Company knew of, and influenced, the purchase of plaintiff's plant by Messrs. Olin and Lent as a part of the plan to monopolize the trade in explosives. It was, therefore, clearly error to take this question away from the jury (Point II.).

The evidence was overwhelming that the defendants sold their product below cost when necessary to drive competitors out of business (Point VIII.), and that they employed influential miners to stir up opposition and boycotts against the use of plaintiff's powder (Point IX.), and it was clear error to withdraw these questions from the jury.

Furthermore, the evidence shows that the defendants made lower prices in competitive districts than in non-competitive districts, at the same time and under the same general conditions; and that they tied up the trade in explosives by means of long-time rebate contracts; and that by these and other methods they "induced" plaintiff's customers to abandon it and prevented it from obtaining other customers; and it was error to deny plaintiff the right to further support this contention from the writings and statements of customers and others acquainted with the facts, and also error to permit the defendants to confuse these issues by hypothetical inquiries which did not embrace a statement of these, and the other, inducements alleged (Points XI., XIII., XIV.).

It is clear that plaintiff's right of action under

the 7th section of the Sherman Act is single and indivisible, and that by requiring plaintiff to elect whether to stand upon Section 1 or 2 of said Act, plaintiff was denied the right to have many of the unlawful acts and agreements of the defendants considered by the jury in their legitimate effect, under the law (Point III.); and furthermore, that plaintiff was entitled to have the benefit of all the facts available to establish the guilt of the defendants under both of said sections, and that evidence of their conviction of the acts declared unlawful by both sections, was a pertinent fact, and that the decrees in the equity case should have been received (Point XII.).

It is self-evident that the plaintiff does not stand in any different relation, under the law, than it would have stood if it had "come into existence before the development of the influence" of the defendants in the explosives field; and that the motives of Mr. Waddell, and the knowledge which he acquired while in the employ of the defendants, touching their power and policies with respect to competitors, did not in the least degree abridge his or plaintiff's right to enter that field, nor to recover for such injuries as he or it might suffer by reason of the continuance of such power and policies (Points IV. and V.); and we do not doubt that this Court will say that it was grave error, and exceedingly harmful, in an action of this character, to instruct the jury that competition is necessarily a "fight" in which the victor, under the law, is permitted "to go away with the spoils" (Point VI.); nor do we fear that this Court will uphold the doctrine that the defendants were justified in maintaining an espionage over plaintiff's officers by means of detectives, for the purpose of preventing it from obtaining employes with which to carry on its business (Point

VII.), or in maintaining a "surveillance" over its business by the employment of spies for the purpose of "keeping tab" on its customers, or for any other purpose whatsoever (Point X.).

Obviously, plaintiff was entitled to recover for all injuries by it sustained, whether such injuries resulted on account of losses upon business it *actually* conducted, or upon business which it was *prevented* from conducting, including the loss of its good will; and such losses should be calculated upon the fair profit which plaintiff would have received on its product had it not been unlawfully interfered with, regardless of whether it made any actual profit in such business as it was able to carry on; and the Court was in error in instructing the jury otherwise (Point XV.).

Under a statute which provides for the recovery of *all damages* sustained by one who has been injured in his business through illegal and criminal acts, it is impossible in the very nature of the case, to follow the connecting thread from every cause to every effect. The proofs submitted met all reasonable requirements of the rules for the ascertainment of damages, and the Trial Court was in error in holding otherwise. "The law has "been upheld, and therefore we are bound to en- "force it, notwithstanding these difficulties", said Justice Holmes in the *Swift Case,* 196 U. S. 375, 396.

This Court has uniformly upheld the Sherman Anti-Trust Act as have been founded upon well-established and sound principles of public policy, and has insisted upon a rigid enforcement of its equitable and criminal provisions. It has, however, been claimed by many that the remedies provided in the equitable and criminal arms of that Act, have failed to accomplish the object of

Congress—to prevent and abolish monopolies in restraint of trade. Its violators have proceeded upon the theory that it is impossible to "unscramble a scrambled egg", and that, come what will, the *status quo* can never be restored; that dissolutions can do no more than cause inconvenience, and possibly a slight increase in cost of operation, but that recourse may always be had to the consumer to "pay the bill".

We venture to suggest, therefore, that the *civil* remedy given to persons injured, furnishes the most practicable and effective means of enforcement. If private individuals who have been special objects of attack by these unlawful combinations were encouraged by the Courts to seek the remedy provided by the 7th section of the Sherman Act, and if the path of such litigants were cleared of all unjust obstructions and restrictions, and were in fact made easy of travel, the result would be felt *directly* by violators of the law, and would tend to cause them to hesitate before entering upon a policy of deliberate infringement of public as well as private rights.

But if the theories followed by the courts below in the present case are approved, then the 7th section of the Sherman Act is virtually a dead letter. No private litigant can overcome the tremendous difficulties which the plaintiff was required to face. If he is to be held to ancient and technical rules of pleading; if he must prove all his allegations by direct and positive evidence, and nothing may be left to inference; if he must show that each member of the conspiracy actually participated in all, or in fact any, of the overt acts; if he must prove their guilt *out of the mouths* of the guilty parties themselves; if he must show that he stands in a different relation in his right to the protection guaranteed by the Anti-

Trust Act, than he would have stood if he had entered into business before the unlawful combination came into existence; if he must clear himself of all suspicion that he did not intend to conduct a legitimate business; if his competitors had a right to follow him about with detectives to prevent him from obtaining employes, or for any other purpose; if they had a right to maintain a "surveillance" over, and thus "keep tab" on, his trade for the purpose of acquiring the secrets of his business; if, instead of being permitted to develop a legitimate business in legitimate competition, he must engage in a "fight" in which the victor is justified in "going away with the spoils"; if he may be subjected to a price-cutting contest in which the combination has the power, and does not hesitate to exercise it, to sell its goods at a loss, if necessary in order to prevent him from obtaining business, relying upon the certainty that it can make up its losses in other portions of the country where his influence does not reach; if he must submit to the stirring up of prejudice, boycotts and strikes against his product among the ultimate consumers thereof; if he must be deprived of the right to show by the written statements of customers themselves, the "inducements" and methods made use of by the guilty parties to secure their trade and cause them to abandon him; and if, in addition to all this, he must be restricted in his ability to establish losses to an amount based on his *actual* profits, and denied the right to recover for such losses as he may have sustained by reason of having been *prevented* from doing business, then, we repeat, that the **7th Section of the Sherman Act may as well be stricken from the statute books.**

Respectfully submitted,

TWYMAN O. ABBOTT,
WILLARD U. TAYLOR,
Counsel for Plaintiff-in-Error.

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No 24[illegible]37

FILED
APR 28 1917
JAMES D. MAHER
CLERK

Supreme Court of the United States

October Term, 1916

THE BUCKEYE POWDER COMPANY (a Corporation)

Plaintiff-in-Error

against

E. I. DU PONT de NEMOURS POWDER COMPANY et als.

Defendant-in-Error

Assignment of Errors

ADDENDA TO BRIEF OF PLAINTIFF-IN-ERROR

Owing to the fact that the Assignments of Error consist mainly of Extracts from the charge of the Court, and must therefore be set out in full (Rule 21, Subd. 2), they necessarily are of considerable length. It was, therefore, deemed best to summarize these assignments with the "Principal questions," and this was done at pp. 8-21 of the brief. Each assignment is, however, afterwards set out in full under the respective Points as they are discussed separately.

For the convenience of the Court, the Assignment of Errors as set forth in the record at pp. 3198-3220 of the Transcript are here given in full.

TWYMAN O. ABBOTT
WILLARD U. TAYLOR
Counsel for Plaintiff-in-Error

Telephone 1697 Worth THE WEIBEZAHL PRINT 25 Elm St., N. Y.
—1917—

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT.

THE BUCKEYE POWDER COMPANY (a Corporation), Plaintiff in Error, against E. I. DU PONT DE NEMOURS POWDER COMPANY (a corporation of New Jersey), EASTERN DYNAMITE COMPANY (a corporation of New Jersey), INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY (a corporation of New Jersey), Defendant in Error.	Assignment of Errors.

Now comes the Buckeye Powder Company, plaintiff in error, and makes and files this, its Assignments of Error:

The United States Circuit Court of Appeals for the Third Circuit erred—

1. In refusing to set aside the judgment of the United States District Court for the District of New Jersey entered against plaintiff in error, in

the above entitled cause, on the 20th day of April, 1914, at the April Term of said Court, 1914.

2. In affirming the judgment of the District Court of the United States for the District of New Jersey, entered against plaintiff in error on the 20th day of April, 1914, at the April Term of said Court, 1914.

3. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

> "The suit is brought by the Buckeye Powder Company and has proceeded to trial against three defendants. The evidence, however, fails to support any participation by the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, and my instructions to you are that you return a verdict of no cause of action in their favor."

4. In refusing to correct the error of the District Court in making an order requiring the plaintiff in error to make an election whether under its declaration it would rely upon the first or second sections of the Act of Congress of July 2, 1890, commonly known as the Sherman Act.

5. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

> "This suit is unique in many respects. The plaintiff, as a corporation and as a competitor in the powder business, is due to the efforts of R. S. Waddell, its chief witness in the suit. He organized it shortly after he separated himself from his employment with the defendant with which and its predecessors he had been identified

for about twenty years. His services, while in the employment of the Du Pont interests brought him in touch with their business policies and operations in the vending of powder. He knew of the existence of the trade associations and of such of the restraints and limitations put upon its members as related to the apportionment of the trade and the fixing of prices. The comparative size of the defendant's capacity for output in relation to other powder manufacturers, and its influence as a factor in the trade generally, were known to him when he severed his connection and when he conceived and began to carry out his purpose of entering into such powder field as a competitor. The plaintiff does not occupy the same position as a competitor in existence during the period that this influence was being developed and who may have been, during the course of such development, as well as after it had reached the height of its power, injured in its business or property by reason thereof, but is here as one entering the competitive field when such growth and influence have been established. To it, this influence and power of the defendant, when it, the plaintiff, was launched into the powder field, is not in itself actionable, even though that status is due in part to methods which are prohibited by the Anti-Trust Act, and before the plaintiff can recover it must establish that the defendant used its power in the trade oppressively, not necessarily against the plaintiff alone; but at least in the conduct of its business generally; that is, that it used such methods as, backed by its influential position, tended to the suppression of open competition and to obstruct the free flow of commerce—the trade conditions sought to be secured and protected by the prohibitions of the Anti-Trust Act, and that it, the plaintiff, was injured by reason thereof."

6. In refusing to correct the error of the Dis-

trict Court in instructing the jury as follows, to wit:

> "Mr. Waddell, as already stated, was well advised when he promoted the plaintiff company of the defendant's business, capacity and policies. He had been its agent for a long period during which several severe competitive struggles took place, and he knew the outcome thereof, and which was, generally speaking, the taking over in one form and another of such new comers, and at least in one instance—that of the Indiana at a considerable profit to the owners of that company.
>
> "Of course, Mr. Waddell, or the company which he formed had a right to go into business, and the motive for entering into such business is of little moment so far as their rights were concerned; but if he was actuated by the belief that his company would meet with a like experience after some competitive struggles, it may have a bearing upon the question whether the plaintiff was sufficiently capitalized to engage in the struggle for the market already occupied. Of course, if you find that it was sufficiently capitalized, or that it had sufficient financial backing to weather a struggle carried on under normal or lawful competitive conditions, that is a sufficient answer, and it would make no difference whether it was or was not sufficiently capitalized to meet a competition forced upon it by unlawful means."

7. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

> "No one who enters into a competitive field is guaranteed that he will get any particular share or even a share of the business at a profit, nor does the mere fact that the largest competitor is able to prevent a smaller one from getting a profitable share of the business make it liable

in damages to such other. Competition, as it exists under the laws at this date, has within it the element of fight. It permits fighting so long as it is fair and it permits the fair fighter to go away with the spoils, even though some one in that fight has been injured, and perhaps irretrievably injured in consequence; so that it is not the mere fact that a competitor suffers injury through severe competition that makes the other competitor who may have come out of the fray successfully, liable to compensate for the losses sustained by the injured party."

8. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

"There is no evidence whatever which would justify you in finding that the defendant hired detectives to track Mr. Waddell for the purpose of forestalling him in the purchase of a site, and to create opposition among the people to the location of plaintiff's plant in any place by instilling fear or otherwise, or by bidding up the price of any property plaintiff might have desired to acquire so as to prevent the entry of a competitor into the black powder business. The fact, however, that detectives were employed by the defendant to shadow Mr. Waddell after he had severed his connection with the defendant, and after his declaration to embark in a competitive business, is a circumstance to be considered by you in connection with the other testimony in the case upon the alternative questions whether it shows a hostile purpose upon the part of the defendant against Mr. Waddell's contemplated enterprise with the view of suppressing competition, or whether it was but a step taken by the defendant in the protection of its legitimate interests, namely, to prevent their employees from being taken from them by this prospective competitor, which latter is the explanation offered on behalf of the defendants."

Assignment of Errors 9-10

9. In refusing to correct the error of the District Court in refusing to receive in evidence a letter offered by the plaintiff, reading as follows:

"Chicago, Feb. 13, 1903.

H. A. Koach, Esq.,
c/o Stratford Hotel,
Cincinnati, Ohio:

Dear Sir—This will be handed to you by Capt. H. R. Saville of the Philadelphia Agency, who has been engaged in shadowing the party I wired to you about in cipher, as follows:

'Wire immediately if R. S. Waddell of Wilmington, Delaware, is now in Cincinnati; think can be found South East corner Third and Broadway. Want to place shadow; therefore, inquire carefully.'

and to which you replied as follows:

'Mail at party's office Union Trust Building indicates he will arrive tomorrow. He has home and family in this city.'

Will you kindly assist him as much as possible in locating the party, and just as soon as he locates him, he is to wire to Chicago for assistance.

Yours truly,

(Signed) J. H. Schumacher,
Sup't."

10. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

"There is no evidence to the effect that the defendants or any of them exercised any control at any time over the affairs of the Equitable Powder Company or the Austin Powder Company by virtue of any stock that they have held in those corporations, and therefore you must not

consider any claim to the effect that they had exercised such control."

11. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

"There is no evidence showing that any of the defendants knew or had anything whatever to do with the purchase of the Buckeye Powder Plant and property by Mr. Olin and his associates, and therefore you must not consider the fact of such purchase as tending to establish any combination or conspiracy or other conduct prohibited by the Sherman Act."

12. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

"There is no evidence, gentlemen, that would sustain the allegations made by the plaintiff, that * * * cash, intoxicating liquors, household goods and clothing were distributed among miners to secure their influence with their fellow workmen to effect boycotts, * * * or that it (the defendant) sold its product below actual cost; * * * and my instructions to you are, as to these particular allegations, that they have not been established, and you will therefore disregard them entirely in your further consideration of the issue here being tried."

13. In refusing to correct the error of the District Court in instructing the jury that at a test which was ordered by the Miners' Union to be made of the relative merits of the powder manufactured by plaintiff in error, and that manufactured by defendants in error at the mines of Applegate & Lewis at Hanna City, Illinois, "while this test was going on each of the powders had a paid

representative among the working miners, one acting in the interest of the plaintiff's powder, and the other in the interest of the defendant's."

14. In refusing to correct the error of the District Court in refusing to permit R. S. Waddell, a witness for the plaintiff, while on direct examination, to state what it was that caused him, as president of the plaintiff, to make an investigation for the purpose of ascertaining how it was that advices were received by him from persons to whom consignments of black blasting powder had been shipped from the shipment office of the Buckeye Powder Company—giving the definite car number of the car in which shipment was made and all the details of the shipment—before notice of that shipment had been received at the business office of that company.

15. In refusing to correct the error of the District Court in refusing to permit John G. Miller, a witness for the plaintiff, while on direct examination, to answer the following question—he having already been permitted to testify that he called the attention of the Burlington Railway Company officials to the situation relative to information concerning the shipments made by Buckeye Powder Company to its customers coming to him from sources other than the Buckeye Powder Company, and that said officials made an investigation:

"Q. Now, do you know what the result of that investigation was?"

16. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

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"As to the charge that the defendant employed railroad employees to make telegraphic reports or other kind of reports of the plaintiff's shipments, and which information was used to get consignees to reject plaintiff's shipments, there is no proof that the defendant was able to have the consignments of plaintiff's powder cancelled by reason of any information obtained from railroad employees concerning such consignments, or that they ever succeeded in geeting such information from such employees, but there is evidence in the case that one named Piatt, who was an agent of the defendant, sought to hire Harry Paige, commercial agent of the C. B. & Q. Railway, to give him (Piatt) information concerning the shipments of the plaintiff's powder, offering to pay for such information at a named rate —$5.00 a letter, as I recall it. This was peremptorily refused by such agent, and as I recall it it is the only proof of any attempt to secure such information. This, of course, was a reprehensible act. What does such an act, in the light of all the circumstances surrounding it, and keeping in mind other facts in the case bearing upon the keen competition that took place between the defendant's and plaintiff's powders in that district, indicate? The plaintiff was a newcomer in a field already occupied. Except as to new business, it is inevitable that in order for the plaintiff to place its output it would draw some of the custom that theretofore had been flowing to the defendant or some other competitor. All of them had a right to compete for such business. None of them had the right, however, to use any but lawful methods. To retain one's own customers obtained by lawful means or to secure new ones is lawful, provided no unlawful means are used. The mere ascertaining to what person or place a competitor's product is being shipped is a legitimate means of keeping tab on the trade, and if a particular competitor has been making inroads upon the established trade of another, such other may properly

keep a surveillance over the conduct of such new competitor; but while this is lawful, it may be readily noted that an unlawful use of such information may be made."

17. In refusing to correct the error of the District Court in refusing to allow John G. Miller, a witness for plaintiff, while on direct examination, to answer the following questions—he having already been permitted to testify that he had endeavored to sell Buckeye Powder to certain persons whom he knew to be under contract to purchase powder from the Laflin & Rand Powder Company, and that he failed to sell to such persons, and that they gave him reasons why they did not or would not purchase powder of him:

"Q. State what those reasons were as given by them.

"Did any of those reasons which were given to you involve the question of these contracts which were in existence?

"Q. Did any of the reasons which were given to you by these parties or any of them involve the question of special prices that had been made to them by any other manufacturer of powder?"

18. In refusing to correct the error of the District Court in refusing to permit the plaintiff to read to the jury a certain letter written by Thomas Mackie to the Buckeye Powder Company, and dated at Kansas City, Mo., May 24, 1906, and reading as follows:

"Kansas City, Mo., May 24, 1906.

"Buckeye Powder Co.,
Peoria, Ill.:

"Gentlemen—we will soon be ready to enter into a contract for our powder requirements for

the ensuing year or for the next two or three years, and would be pleased to have you make us a proposition covering same.

"Kindly let us hear from you at your earliest convenience, and greatly oblige,

Yours truly,

Thomas Mackie,
Genl. Pur. Agt."

19. In refusing to correct the error of the District Court in refusing to permit the plaintiff to read to the jury a certain letter written by Thomas Mackie to the Buckeye Powder Company, and dated at Kansas City, Mo., August 15, 1906, and reading as follows:

"Kansas City, Mo., August 15, 1906.

"Mr. R. S. Waddell,
Prest. Buckeye Powder Co.,
Peoria, Ill.:

"Dear Sir—Referring to your letter of May 26th quoting prices on powder delivered at our various camps for the ensuing year, beg to state that this matter has just been determined and I regret to advise that you were not the successful bidders.

Yours truly,

Thomas Mackie,
Genl. Pur. Agent."

20. In refusing to correct the error of the District Court in refusing to permit the plaintiff to read to the jury a certain letter signed by the Waverly Coal & Mining Company, by J. W. Ferguson, President, and addressed to the Buckeye Powder Company, and dated at Kansas City, Kansas, February 17, 1906:

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"Kansas City, Kansas, Feb. 17th, 1906.

"Buckeye Powder Co.,
Peoria, Ill.:

"Gentlemen—I wired you today cancelling car of CC Special Powder. I am somewhat tied up with the Du Pont Company and I am obliged to do this. If you have invoiced this car and it is shipped, or if you consider that the powder belongs to us, ship it at once and date your invoice Feb. 16th. Ship by as slow freight as you please, as I do not care for it before the 1st of March, or even the 10th of March. I say this because I do not wish to pay for it until say 90 days. If you are willing to do this, ship it as directed, but don't give me away to the Du Pont powder people.

"I will be clear of them in a few months. Wire me what you do. Saying you had shipped Feb. 16.

Respectfully,

Waverly Coal & Mining Co.,
by J. W. Ferguson, Pres."

21. In refusing to correct the error of the District Court in refusing to receive in evidence on behalf of the plaintiff certain letters written by J. H. Somers & Company to the Buckeye Powder Company, reading as follows, to wit:

"J. H. Somers & Co.
Cleveland, Sept. 10, 1904.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:

Your Mr. R. S. Waddell was here the 5th and promised to send me some samples of your powder. One or two other large users of powder with their offices in this city have been in to see me in regard to your powder. I have asked them to defer their orders or any changes they would make until after these samples had ar-

rived and we had made a thorough investigation of your ability to turn out the kind of powder we require.

The samples Mr. Waddell had with him were beyond question in regard to quality, etc. Some of these other companies I speak of have no contract for powder, consequently you could start to doing business with them at once. It is a little different with us; we are tied up with a contract for the next few months but expect to make some change if we are not taken care of a little better than we have been.

Please forward these samples at once, and oblige,

Yours truly,
J. H. Somers & Co.,
Wm. D. Somers, Pur. Agt."

"J. H. Somers & Co.,
Cleveland, January 31, 1905.

Buckeye Powder Company,
Peoria, Ill.

Gentlemen:

"We have yours of the 28th inst., and in reply will state our present contract does not expire until March. It might be well for you to take this matter up with us at that time.

Your statement that your powder is 'excelled by none' must be correct, as we have heard several parties speak well of your product, and we have a set of your samples, which also speak well for themselves.

We use very little Single F powder. In Michigan we use only FF. Our three mines in this territory have used about 6,000 kegs of FF since October 1st. When Mr. Waddell was in Cleveland he stated your mill was either well supplied with F or FF, the writer does not remember which.

We have been informed that you have been very successful in your new enterprise, and we

are very glad you have met with this success, which, no doubt, is due you.

Yours very truly,
J. H. Somers & Co.,
Wm. D. Somers, Pur. Agt."

"J. H. Somers & Co.,
Cleveland, March 8, 1905.

The Buckeye Powder Company,
Peoria, Ill.

Gentlemen:

We have yours of the 3rd inst., with reference to furnishing powder for our Michigan properties, and note what you say in regard to Mr. Steven Corvin, as being our agent. You have failed to quote us prices on powder, and we would ask you to kindly take this matter up at once and give us your best price delivered St. Charles, Mich.

We have purchased 7,200 kegs of FF powder since October 1st for these properties and you can tell by these figures about how much we will use per year, especially as the coal business in this particular district last winter was not very good.

We might say in conclusion that we expect to buy powder a little cheaper this year than last, and this business no doubt will be yours if you quote the right price.

Yours very truly,
J. H. Somers & Co.,
Wm. D. Somers, Pur. Agt."

"J. H. Somers & Co.
Cleveland, March 25, 1905.

The Buckeye Powder Company,
Peoria, Ill.

Gentlemen:

We have yours of the 23rd inst. with reference to furnishing powder for our Michigan

mines. We are sorry to state that your price quoted several days ago did not meet favor, and as you said you can meet any price that is named we will wait until you make another quotation before we place this business.

We have a much better price than the one you have quoted and while we are very anxious to give our friend Mr. Corvin this business, yet we cannot see our way clear to pay a higher price for your powder than we would have to pay for the powder we have been using in the past.

Yours very truly,
J. H. Somers & Co.,
Wm. D. Somers, Pur. Agt."

"J. H. Somers & Co.
Cleveland, April 15, 1905.

The Buckeye Powder Company,
Peoria, Ill.

Gentlemen:

We are a little late in acknowledging receipt of your quotation of March 31st, however, we have been thinking the matter over and have been in constant correspondence with our superintendent at St. Charles in regard to the matter.

In your letter you state if any Powder Company made us a better price than 1.05 delivered they were entitled to the business. We have the better price all right—same being $1.02½, but we have not decided definitely in regard to the Michigan business. As we use a great deal of powder and have always been well taken care of, we want to know positively if we can get powder promptly after we have placed our order for the same. We have been signed up for some time for our powder in Ohio, and have included the Michigan properties in this contract in a way that we can purchase powder from the same company we purchase our Ohio powder, providing we do not give you the business.

We cannot give you any definite information on this matter until our superintendent has time to render his decision.

Yours very truly,
J. H. Somers & Co.,
Wm. D. Somers, Pur. Agt."

"J. H. Somers & Co.
Cleveland, Aug. 23, 1905.

Buckeye Powder Company,
Peoria, Ill.

Gentlemen:

We herewith enclose our order #1248 for one carload of FF blasting powder, price to be $1.02½ delivered as per your letter of Aug. 21st. You no doubt have been advised by Mr. Corvin that we are buying our powder for $1.00 per keg at the present time. We are willing to pay you 2½ per keg on this order as we are anxious to give your powder a trial.

Yours truly,
J. H. Somers Coal Co.,
Wm. D. Somers, Pur. Agt."

22. In refusing to correct the error of the District Court in refusing to admit the interlocutory decree and the final decree of the United States District Court for the District of Delaware, in the case of United States of America, petitioner, against E. I. du Pont de Nemours & Company, *et al.*, defendants.

23. In refusing to correct the error of the District Court in refusing to permit R. S. Waddell, a witness for plaintiff in error, while under redirect examination, to state what the information was which he gave to plaintiff's attorneys upon which the allegations set forth in paragraph 11 of the amended declaration were based—counsel for

defendants in error on cross-examination having already been permitted to read the said paragraph to the said witness, and thereupon to ask him whether he gave his attorneys the information upon which the said allegations were based, to which the said witness replied that he did and would be glad to state them to the jury.

24. In refusing to correct the error of the District Court in permitting Olive Taylor, a witness for the defendant, to testify as follows:

"Q. Now, Mrs. Taylor, in a suit instituted in the United States District Court for the District of New Jersey, by the Buckeye Powder Company against the E. I. du Pont de Nemours Powder Company and two other companies, known as the International Smokeless Powder and Chemical Company and the Eastern Dynamite Company, the Buckeye Powder Company, in answer to a demand for the names of customers of the Buckeye Powder Company induced by the defendants, or by the other persons or corporations I will name to you, the Buckeye Powder Company has given the name of Howarth and Taylor as one of the customers of the Buckeye Powder Company which was induced by these defendants and persons which I will name, to abandon the purchase of powder from the Buckeye Powder Company. The names of these persons are: Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry E. du Pont, Irene du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmund G. Buckner, Frank L. Connable, Jonathan A. Haskell, and the following corporations: International Smokeless Powder and Chemical Company, E. I. du Pont de Nemours and Company, E. I. du Pont de Nemours and Company of Pennsylvania, du Pont International Powder Company, Delaware Secu-

rities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin & Rand Powder Company, Fairmont Powder Company, and Judson Dynamite and Powder Company. Will you now state whether or not any of the persons that I have mentioned here, or any of the corporations which I have mentioned in this question, or any agent or representative of those persons or corporations, ever induced you, as purchasing agent for your husband, Daniel Taylor, trading as Howarth & Taylor, not to purchase powder of the Buckeye Powder Company? A. No, sir."

25. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

"Plaintiff claims thirty cents a keg profit, but there is no evidence in the case that would justify the conclusion that that was a fair profit."

26. In refusing to correct the error of the District Court in instructing the jury as follows, to wit:

"In this case the statute of limitations pleaded by the defendant furnishes a line of demarkation between the two periods of the plaintiff's business. The 18th of September, 1905, fixes the dividing line and the plaintiff seeks to recover anticipated profits on the kegs of powder manufactured and sold for the three years since that date. The plaintiff claims that up to the 18th day of September, 1905, and covering a period of twenty-two months, it carried on its business profitably. The average profit per keg during such period, according to this claim, is 3 1/7 cents. This price per keg it figures from $6,470.61, which is the sum that the plaintiff claims its books show as the amount of the net profits made during the said twenty-two months and the

number of kegs upon which the 3 1/7 cents per keg profit is based is 205,931. What I said to you concerning those books as evidence when dealing with the alleged cost of the plant is applicable here. It is only in case you find that these books have been so kept that you can ascertain therefrom with certainty that a profit was made during this period, and the amount of such profit, that you can use that profit as a basis for a comparison upon the question of profits during the subsequent period. If you can not ascertain what were the actual profits by resorting to such books, of course, the inquiry as to profits at all fails for the lack of proof, and no allowance of profits can be made. If, on the contrary, however, it can be ascertained from such books with certainty that profits were made, and what was the amount of them, then the next question arises whether this period of twenty-two months was sufficiently long in view of the trade conditions prevailing, whatever may have been the cause thereof, to establish with reasonable certainty what the anticipated profits for the period subsequent to this 18th day of September, 1905, would have been if normal trade conditions had prevailed. Now, according to one contention, normal trade conditions did not obtain during this twenty-two months ending with the eighteenth day of September, 1905, while according to another contention that the conditions prevailing during that period, as well as during the period following, were normal; and that they were just such conditions as would be likely to follow the abandonment of the Trade Association, which you know finally was dissolved in June, 1904. Whether they be normal or abnormal, if it be a fact that during that period the plaintiff made profits, they furnish a sufficient basis for comparison with subsequent years for me to submit it to your consideration; but it will be for you to say whether as a fact that period was sufficiently long to furnish a basis for comparison with subsequent years. If you should

that it would have done so except for the wrongful acts of the defendant, and that for a part of such time it actually did make a profit.

"True, a person may be wrongfully prevented from acquiring a good-will; and ethically such a wrong is just as injurious as if an established good-will was injured by such wrong doing. The rule in allowing as well as estimating damages, however, is a practical, rather than an ethical standard, and this excludes all damages that are purely speculative and contingent. To attempt to create out of unknown quantities a good-will for the purpose of giving it a value when no past conditions establishing a good-will exist, would be but a pure speculation, and therefore not allowable. The claim of damages for good-will therefore must be disallowed."

29. In refusing to correct the error of the District Court in refusing to grant plaintiff in error a new trial, for the reasons and causes therefor shown as follows:

"1. Because the verdict in favor of the E. I. du Pont Nemours Powder Company, returned herein on the 25th day of February, 1914, is against the clear weight of the evidence.

"2. Because the verdict for the Eastern Dynamite Company and International Smokeless Powder and Chemical Company, returned herein on the 25th day of February, 1914, is against the clear weight of the evidence.

"3. Because said verdict rendered in favor of the E. I. du Pont Nemours Powder Company is against the law.

"4. Because said verdict in favor of the Eastern Dynamite Company and International Smokeless Powder and Chemical Company is against the law.

"5. Because the charge of the Court was erroneous in law.

"6. Because of the failure of the Court to instruct the jury on material issues in its charge to the jury.

Assignment of Error 29

"7. Because of the refusal of the Court to instruct the jury on material issues as requested by the plaintiff in its charge to the jury.

"8. Because the jury while deliberating upon their verdict had before them a large number of letters, files, pleadings, and other papers that were not in evidence in said case and which they examined and inspected contrary to law."

WHEREFORE, the plaintiff in error prays that said judgment may be reversed and the errors above stated be corrected and a new trial of the issues in this action be directed.

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BRIEF FOR DEFENDANTS IN ERROR

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Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 249.

THE BUCKEYE POWDER COMPANY (a corporation),
Plaintiff in Error,

AGAINST

E. I. DUPONT DE NEMOURS POWDER COMPANY (a corporation of New Jersey), EASTERN DYNAMITE COMPANY (a corporation of New Jersey) and INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY (a corporation of New Jersey),
Defendants in Error.

BRIEF FOR DEFENDANTS IN ERROR.

General Statement.

This is an action brought under Section Seven of the Sherman Law to recover damages to the business or property of the plaintiff by reason of alleged offenses of the defendants against the provisions of Section Two of the Sherman Law.

The action was begun in September, 1911, under a declaration consisting of one count and containing volu-

minous charges against the defendants under the law referred to.

The defendants moved that the declaration be stricken out on the ground that it was bad for duplicity and was so irregular and defective as to prejudice the defendants in a fair trial. This motion was disposed of by Judge Rellstab in an exhaustive opinion, which appears in 196 Fed. 514, the result of which was that certain sections of the declaration were ordered to be stricken out and it was held that the declaration fairly construed did not embrace causes of action under both the first and second sections of the law, but under one of said sections only and therefore was not bad for duplicity. The Court further held that any indefiniteness in the declaration could be cured by a bill of particulars.

Thereupon, the declaration was amended as suggested by the Court and the defendants filed pleas of the general issue and also a special plea of the Statute of Limitations.

Thereafter, the defendants served upon the plaintiff a demand for a bill of particulars asking to be informed in reference to what illegal methods it was claimed had been employed by the defendants, or any of them, and particularly as to what customers of the plaintiff it was claimed the defendants, or any of them, had induced by illegal means to abandon the purchase of powder from the plaintiff. This demand for a bill of particulars called forth an answer, setting forth various alleged offenses and giving the names of over three hundred persons whom it was alleged, the defendants had induced to abandon the purchase of powder from the plaintiff corporation. The persons named in the bill of particulars as having been so manipulated by the defendants were scattered all through the middle west and it necessitated the taking on behalf of the defendants of many depositions to refute said allegations. This was done and depositions to the number of about one hundred and thirty were taken, all of which conclusively refuted the charges thus made by the plaintiff, many of which depositions have been printed in the record.

The case came on for trial before Judge Rellstab and a jury in the United States District Court at Trenton, on September 23rd, 1913, and ended in a verdict for the defendants on February 25th, 1914, the intervening period, with the exception of adjournments over week ends and some holidays, having been continuously occupied by presentation of evidence and argument in the case.

The jury returned a verdict of "no cause of action" in favor of all the defendants, being instructed by the Court to return such a verdict in favor of the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company. A writ of error was taken to the District Court of the United States for the District of New Jersey from the United States Circuit Court of Appeals for the Third Circuit. The judgment for the defendants was affirmed in an opinion rendered by Circuit Judge McPherson (223 Fed. 881). The assignments of error under the present writ are all assignments of error made under the writ directed to the District Court for the District of New Jersey and were considered by the Circuit Court of Appeals. Some of the assignments of error made before the Circuit Court of Appeals are not made in this Court and counsel for the plaintiff have not considered in their brief assignment of error No. 29 which is presumably abandoned and will not be considered in this brief.

It is apparent that to recover in an action like this, the plaintiff must prove to the satisfaction of the jury by a fair preponderance of the evidence, two things:—First, that the defendants, or some of them, have been guilty of offenses against the Sherman Law in accordance with the allegations of the declaration, and Second, that thereby the plaintiff has been injured in its business or property in such a manner that the jury could find a specific sum equivalent to such damages.

The plaintiff in error maintained before the jury and now maintains to an extent in its brief that the defendant duPont Powder Company was guilty of various offenses against the Sherman Law.

Our object in discussing these propositions at all is to indicate that there was much evidence in the record on both sides of each proposition advanced by the plaintiff in error and that such evidence was submitted to the jury and all the questions in reference thereto were foreclosed by the verdict of the jury, or else the plaintiff in error succeeded in producing no evidence whatever in reference thereto.

It was claimed that detectives were placed on Mr. Waddell's track. There was some evidence to the effect that detectives were employed for two or three weeks. It was explained that the purpose was to determine whether or not Mr. Waddell was endeavoring to interfere with the employees of the defendants and entice them away. There certainly was a question of fact here raised as to the purpose of this operation and also as to its effect, and that question was decided by the jury.

Second—It was alleged that a Peoria Committee was appointed for the purpose of centralizing the fight against the plaintiff.

In this regard there is no evidence in the record.

Third—It was alleged that workmen in the mills of the defendants were notified that they would be put on a black list if they entered the employ of the plaintiff.

The only evidence in this regard is in the deposition of Ernest Hauser (Record, p. 355). Mr. Hauser testified that on one occasion the Superintendent of the Fontanet Mill of the defendants posted a notice to the effect that Mr. Waddell had declared himself an enemy of the duPont Company and any employee that obtained employment at the Buckeye Mill need not thereafter apply to any mill controlled by the duPont Company. He states that this notice was posted in the washroom of that plant by the Superintendent (p. 358).

This again raised various questions of facts. First, as to the correctness of Mr. Hauser's testimony, and second, the important question of whether it was a circumstance that in any way injured the plaintiff—a question, of course, passed upon by the jury. Mr. Hauser also testified that Mr. Waddell at the time was seeking to entice

employees of the Fontanet Mill away from duPont Company (Record, p. 356).

Fourth—It was claimed that after the Buckeye plant was located the defendant sent spies to ascertain its business secrets.

In this regard there is no evidence.

Fifth—It was claimed that agents of various transportation companies, particularly the C., B. & Q. R. R. Co., were sought to be employed to furnish information of the Buckeye shipments.

There is no evidence in the record in regard to the agents of any transportation lines except the railroad mentioned. There is some flimsy evidence in reference to an alleged interview between a man by the name of Piatt and a freight agent of that railroad by the name of Page, the result of which was that no arrangement was made. The whole evidence was of the most inconclusive character and bore such internal evidence of improbability that a question of fact immediately arose as to the reliability of this evidence, and, of course, the further fact appeared that of necessity the plaintiff could not have been injured by such an abortive attempt.

Sixth—It was claimed that a contract system was employed to tie up the trade in the district reached by the plaintiff for the purpose of forestalling it in its effort to secure business.

On this subject the record contains much evidence explaining in detail what contracts were made, how they were made, what their effect was and it conclusively appears that they were not confined to the district operated in by the plaintiff. There was much evidence to the effect that they were only incidents in the ordinary course of business and they had no injurious effect upon the plaintiff and that these contracts had been made long prior to the establishment of the plaintiff's business. This claim, of course, raised questions of fact as to the propriety of the contracts and as to their effect upon the plaintiff, questions entirely disposed of by the jury.

Seventh—Claims were made in reference to rebates on

these contracts and to special prices made to consumers.

The state of the record is similar to that in regard to the contracts, and all questions relating thereto were effectively disposed of by the jury.

Eighth—It was claimed that the defendant reduced its prices for powder solely with the view of preventing the plaintiff from obtaining a fair portion of the powder trade, and that the plaintiff was unable to offer powder at any price below which the defendant would not go.

There is no evidence to this effect in the record. There is voluminous evidence to the effect that the defendant reduced prices only to meet prices which had been made against it by the plaintiff and many other competitors; that these conditions were not confined to the territory occupied by the plaintiff, but were general throughout the country. This claim, of course, raises various questions of fact, which were likewise disposed of by the jury.

Ninth—There was a claim that sales were made at an actual loss.

There is no evidence in the record to this effect, but even if there were, it would raise questions of fact in regard to the propriety of the sales and their effect upon the plaintiff, which likewise would have been disposed of by the jury.

Tenth—There was a claim that powder was sold in districts where competition did not prevail for prices higher than in districts where it did prevail, and in some places at prices which enabled the defendant to make substantial, and sometimes excessive, profits.

In regard to the last proposition, there is no evidence in the record. It is true that prices varied in different sections of the country, but the variations were all explained by a number of witnesses, who maintained the propriety of such conditions. Whether there was any irregularity in this, and what the effect on the plaintiff was, were all questions of fact which were likewise disposed of by the jury.

Eleventh—It was claimed that the defendant employed

miners to stir up discontent among their fellow workmen to the prejudice of the plaintiff's powder.

In this regard there is no evidence in the record, and even if there were it would have raised questions of fact which would have been effectively disposed of by the jury.

We have made the above statement in regard to these alleged offenses for the purpose of showing that none of them can be here discussed as a ground for reversing this judgment, unless it can be established that some specific error was committed by the Court in the making of the record which led to the conclusion.

The brief of the plaintiff in error takes up under Point I (pp. 25 to 109 inclusive) a discussion of the direction of a verdict in favor of the defendants, Eastern Dynamite Company and International Smokeless Powder and Chemical Company, which is a matter that we will hereinafter discuss in its proper order, but under that heading of the brief there follows a more or less elaborate discussion of what the plaintiff calls a history of the explosive business in the United States, going back to remote periods and purporting to come down to the period in which the Buckeye Powder Company existed.

This long statement sets forth in detail what the plaintiff claims the record shows as to the illegality of the defendant's organization and various acts committed by it under the claim that these were offenses under the Sherman Law. There are many inaccuracies in this statement and it would seem to be sufficient for this purpose to point out the fact that whatever evidence appeared in this record tending to show offenses by the defendants, or any of them, against any provisions of the Sherman Law, the record also includes voluminous evidence introduced by the defendants to the effect that they were not guilty of any offenses against that statute and that no operations carried on by the defendants or any of them were of such a character as to have had any effect upon the plaintiff or its business operations. Hundreds

if not thousands, of pages of the record go to show that the misfortunes of the plaintiff were due, not to any attack by the defendants, not to any undue conditions in the trade for which the defendants were responsible, but on the contrary were due to lack of proper organization on the part of the plaintiff, lack of capital, lack of business experience, inattention to business, misrepresentations to customers, inability to fill orders, and furnishing bad powder. The record is full of evidence to the effect that the defendants in no wise interfered with any of the customers of the plaintiff, in no wise induced any of them to leave the plaintiff. Of the one hundred and thirty customers that were examined, not one testified that the defendants, or any of them, induced such customer to leave the plaintiff, but on the contrary, they all testified that they left for other and legitimate reasons, disconnected with anything except the failure of the plaintiff to satisfy them. The record is further full of testimony to the effect that during all the period of the existence of the plaintiff company a very large number of independent competitors sprang up with the consequent result of lower prices; that prices were decreased not by any action of the defendants, but by the action of these new concerns including the plaintiff, and in fact under the leadership of the plaintiff, which was one of the first to be established; that during the whole period instead of increasing its hold upon the trade and the volume of its trade, the defendant lost trade and the volume of its trade continually decreased.

In view of this state of the record, it immediately becomes immaterial as to what evidence the plaintiff can point to in the record as tending to establish the proposition that the defendants were guilty of any unlawful monopoly under the Sherman Law or attempt to monopolize the powder trade, because it is perfectly apparent that whether such monopoly existed or whether such attempt was made upon this record was a question of fact on which there certainly was voluminous evidence in favor of the defendants even though the plaintiff can

point to certain evidence that tended the other way. It is also true that whether or not such monopoly existed or such an attempt to monopolize existed, nevertheless there was no competent evidence or there at least was a great conflict of evidence on the question of whether any such alleged conditions, if they existed, resulted in any specific damage to the plaintiff, or whether, on the contrary, the plaintiff's misfortunes, such as they were, were not entirely accounted for by other and distinct and independent causes, evidence of which is to be found all through the record as made.

Therefore, we think it unnecessary to discuss in detail this alleged history of the powder industry, because, like the specific claims of offenses, heretofore discussed, the matter was entirely disposed of and conclusively foreclosed by the finding of the jury. The history, as detailed in the plaintiff's brief, can have no effect in this cause unless the plaintiff can point out that in making the record submitted to the jury, the Court below committed such a substantial error as to require a new trial of this action.

We, therefore, in briefing this case, will do nothing except to consider the specific assignments of error that go to the alleged errors of the Court in making the record.

In discussing these assignments of error, we will take them up in the order in which they appear in the formal assignment of errors.

Assignment of Error Number 3:

This assignment is based upon the following instruction of the court to the jury and the refusal of the court below to disapprove the instruction (Record, 3199):

> "The suit is brought by the Buckeye Powder Company and has proceeded to trial against three defendants. The evidence, however, fails to support any participation by the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, and my instructions to you are that you return a verdict of no cause of action in their favor."

In discussing this matter, Judge McPherson in the court below, stated (Transcript, 3186):

> "In our opinion, the direction to find a verdict in favor of the Dynamite Company and of the International Company was correct. Neither of these corporations manufactured or traded in black blasting powder—which was the particular business the defendants were charged with restraining or monopolizing—and their indirect connection with the alleged unlawful combination was rested almost wholly on the fact that a majority of the stock in each was owned or controlled by the duPont Company. Obviously, however, this fact alone did not prove their participation in a conspiracy, and as there was almost nothing else to support the allegation we need not take further time to discuss it. Moveover, only selected portions of the evidence are before us, and the district judge very properly called attention to this fact when he granted the exception now being considered, saying: 'In my judgment this exception to be considered should have behind it the entire record, but it is allowed and signed that the plaintiff may have the benefit of it in case I am in error in that view.'"

As heretofore pointed out, there were three defendants in this action, E. I. duPont de Nemours Powder Company, Eastern Dynamite Company and International Smokeless Powder and Chemical Company. The effect of the court's instruction was to eliminate the last two companies from the consideration of the jury and the assignment involves an inquiry as to whether there was anything in the record with reference to either of those companies that should have been submitted to the jury for its consideration. This assignment is briefed by the plaintiff in error at great length from pages 25 to 109 of its brief, in which discussion there is reviewed practically all the evidence in the case that was favorable to the plaintiff, disregarding anything that counteracted it, and drawing no distinction between those facts which affected the duPont Company on the one hand and the two corporations involved in this assignment on the other hand.

The question here is not whether there was any evidence that should be submitted to the jury in reference to attempts to monopolize, and damage to the plaintiff's business, as the discussion would seem to indicate, but is simply whether or not there is any evidence in the record on which any liability could be based as against either the Eastern Dynamite Company or the International Smokeless Powder and Chemical Company. It is submitted that there is no such evidence.

The plaintiff in error cites a number of cases on pages 33–37 of its brief, which go to the point that a conspirator may in some instances be liable for the acts of his co-conspirators. This proposition probably could not be successfully denied, nor is it necessary to deny it. The Court here did not hold that one conspirator is not liable under proper limitations for the acts of his co-conspirators, but held that there was no evidence that either of these corporations was a conspirator, and it was on that ground that the verdict was directed in their favor. The evidence never proceeded to the point where the rule that is laid down in the cases cited could have an application. In quoting from Judge McPherson's opinion in the Court below on page 37 of the brief of the plaintiff in error, that court is made to say that the connection of these two corporations with the alleged unlawful combination "was rested *wholly* on the fact that a majority of the stock in each was owned or controlled by the duPont Company". This is an incorrect quotation, because it omits the word "almost", the language used by Judge McPherson being that such charge was "rested almost wholly on the fact mentioned". (See record, p. 3186). This inaccuracy is probably not of consequence, as the record does not disclose anything besides such stock ownership which could be re lied upon to establish such connection.

Inasmuch as the plaintiff in error has briefed the evidence in the manner above mentioned, it seems to be necessary to make the following comments upon what is shown by the record.

POINT I.

There are no facts shown by this record upon which any liability could be based as against the Eastern Dynamite Company or the International Smokeless Powder and Chemical Company.

To begin with, the amended declaration does not charge either of these defendants with having done any act to the injury of the plaintiff, or its business, nor does it recite any fact to show that either of these defendants was a participant in any conspiracy save the mere fact that the controlling interest in the stock of each of the corporations was owned by the duPont Powder Company.

After describing the three defendants and alleging that a large number of other corporations and individuals were co-conspirators with them, without stating any facts to justify that conclusion, the declaration states that certain efforts were made to monopolize the trade in powder and other explosives by various means mentioned in Paragraph Fourth of the declaration. The declaration then states that a large number of the corporations which are named were acquired by the defendant duPont Powder Company and were dissolved, and continues (Transcript, p. 7),

> "and thereupon the said E. I. duPont de Nemours Powder Company became possessed of a controlling interest in the capital stock of each of the following corporations, to wit: * * * The Eastern Dynamite Company * * * The International Smokeless Powder and Chemical Company. * * * "

and the paragraph concludes with the statement that by reason of the premises the said defendants and others mentioned succeeded in creating practically a complete monopoly. The declaration then describes the organiza-

tion of the plaintiff corporation, the location of its plant, etc., and describes the great opportunities it had for doing profitable business.

Beginning with Paragraph Eighth (Transcript, p. 14), the amended declaration proceeds with a detailed discussion of a great number of oppressive acts alleged to have been committed by the defendant duPont Powder Company against the plaintiff, but nothing is said in these paragraphs in reference to anything done by either of the other two defendants. These allegations against the duPont Company were none of them proved and almost all of them had no evidence whatsoever to support them in the record. The amended declaration then ends up with a statement of the damages that have been occasioned to the plaintiff by the aforesaid transactions. It is true that in one or two places in the declaration as quoted on page 38 of the brief of the plaintiff in error, it is alleged that the defendants, including the two here involved, by means of the premises maintained a practically complete monopoly, etc., but there were no premises stated in the declaration on which to found such a conclusion.

It is, therefore, apparent that practically no charge against these two defendants is made in the declaration except that a controlling interest in their stock was owned by the duPont Powder Company.

It is important to understand the origin and the status of the Eastern Dynamite Company and the International Smokeless Powder & Chemical Company.

First, in regard to the Eastern Dynamite Company. The Du Pont Company and others ever since the beginning of the Nineteenth Century had been engaged in the manufacture of black blasting powder and rifle powder. Dynamite was invented in the latter part of the sixties and late in the seventies it began to be introduced as a commercial explosive.

The Atlantic Dynamite Company was a California corporation largely owned by people in California (Haskell, p. 1610). It had a plant at Kenville, New Jersey, for the manufacture of dynamite. The Repauno Chemical Com-

pany and the Hercules Powder Company were also engaged in the east in the dynamite business, each having a plant in the State of New Jersey. The stockholders in each concern were identical, being the Laflin & Rand Powder Company, the Hazard Powder Company, and E. I. duPont de Nemours & Company, together with certain individuals. These stockholders had been connected with those companies from their inception and had practically been partners in the organization of the two corporations. These same stockholders also had certain interests in said Atlantic Dynamite Company (Haskell, pp. 1756–1758); P. S. duPont, pp. 111–112). In other words, the Laflin & Rand Powder Company, the Hazard Powder Company and the duPont Company were jointly pioneers in the introduction and development of the dynamite business in the United States.

In 1895 certain dissensions arose among the directors of the California corporation, the Atlantic Dynamite Company. Its practical managers were in the east. One of them, a Mr. Schrader, being the General Manager and Agent, attended to the operation of the works and the sale of the product. A Mr. Moore was also largely interested in the company and occupied a position of equal importance to that of Mr. Schrader. These two gentlemen differed so much in regard to matters of policy that considerable friction arose between them. Whereupon, the directors of the Atlantic Dynamite Company, who were located in California, found that it was impossible to reconcile the differences between these two gentlemen, and being so far from the scene of the practical operations of the company, they determined it would be best to turn over the management of the business to the eastern stockholders, being the same ones who were stockholders in the said Repauno Chemical Company and the Hercules Powder Company (Haskell, pp. 1758–1759).

The only practical way to accomplish this object was by the formation of a new corporation which would control the business of the three corporations mentioned. Thereupon this defendant the Eastern Dynamite Com-

pany was formed with a capital stock of Two million dollars. $1,400,000. of it was given to the stockholders of the Repauno Chemical Company and the Hercules Powder Company in exchange for their stock in those concerns. The other $600,000. of the stock was given to the Atlantic Dynamite Company in exchange for its physical assets and that company was wound up. Consequently, in the formation of the Eastern Dynamite Company and in the acquisition of the stock of the Repauno Chemical Company and the Hercules Powder Company and the property of the Atlantic Dynamite Company there was no change in the beneficial ownership except in reference to the property of the Atlantic Dynamite Company and a proportionate interest in the new concern, the Eastern Dynamite Company, was preserved in the stockholders of the Atlantic Dynamite Company (Haskell, pp. 1759–1760).

Such was the origin of the Eastern Dynamite Company. It and its subsidiary companies engaged entirely in the manufacture and sale of dynamite, a business wholly distinct from that of black blasting powder and smokeless powder, enterprises in which the Eastern Dynamite Company was never in any way interested. Furthermore, the formation of the Eastern Dynamite Company was brought about at the instance of the western stockholders of the Atlantic Dynamite Company (Haskell, p. 1760). Later the Eastern Dynamite Company acquired the property of quite a number of dynamite companies that had sprung up in the meantime (Haskell, p. 1761). The only interest of the defendant duPont Powder Company and its predecessors in this business was through its stock ownership, first, in the three corporations mentioned, and later in the Eastern Dynamite Company. The duPont Powder Company and its predecessors had owned the stock of the Hazard Powder Company since the early seventies, and in 1902, upon the acquisition of the Laflin & Rand Powder Company, there came also into their possession such stock interests in the Eastern Dynamite Company as were owned by the Laflin & Rand Powder Company. Therefore, the defendant duPont

Powder Company was a stockholder and continued to be a stockholder controlling the Eastern Dynamite Company during all the periods complained of in this action, the situation being as described in the amended declaration, page 7, to the effect that the defendant duPont Powder Company became possessed of the controlling interest in the capital stock of said Eastern Dynamite Company.

The above is the basis of Judge Rellstab's charge to the jury that almost the entire connection of the Eastern Dynamite Company with the transactions complained of is the fact that its stock was controlled by the defendant duPont Powder Company.

In the next place, in reference to the International Smokeless Powder & Chemical Company: There seems to be very little in the record in regard to this company. It appears that previous to 1903 it was manufacturing Smokeless Powder as was also E. I. duPont de Nemours & Company (p. 94). The duPont International Company acquired a controlling interest in its stock (p. 95).) The defendant duPont Powder Company acquired a controlling interest in the duPont International Powder Company in 1903 and retained the control until 1908 (p. 96). This company was engaged exclusively in the manufacture of military powder. The defendant duPont Powder Company owned no stock in the defendant International Smokeless Powder & Chemical Company, but the majority of its stock was owned by said duPont International Company, which in turn was controlled by said duPont Powder Company. There are a large number of outstanding stockholders of the defendant International Smokeless Powder & Chemical Company (P. S. duPont, p. 114).

The statement at page 86 of the brief of the plaintiff in error to the effect that the International Smokeless Powder & Chemical Company was organized by the new management is entirely incorrect, and there is no evidence in the record to support it.

From the above statement it will appear that these two defendants, the Eastern Dynamite Company and the

International Smokeless Powder & Chemical Company, are separate corporations, their only relationship to the duPont Powder Company being that the latter owns the stock of the Eastern Dynamite Company and through the duPont International Company owns not all, but a controlling interest, in the stock of the International Smokeless Powder & Chemical Company. This connection alone, of course, does not make either of those corporations a co-conspirator in the matters complained of in this action, as was very properly held by the District Court with the approval of the Circuit Court of Appeals.

It remains to determine whether any other facts appear in the record which connect either of these corporations with the matters complained of in such a way as to show that a verdict should not have been directed in their favor. It is submitted that there is nothing whatever in the record that indicates such a connection.

(a) *The Gun Powder Trade Association.*

In the discussion of this assignment of error, the plaintiff in error in its brief from page 37 to 109 has seen fit to discuss the history of the powder industry and particularly the history of the Gun Powder Trade Association with the evident purpose of indicating that the Eastern Dynamite Company or the International Smokeless Powder & Chemical Company had something to do with that association or with other matters subsidiary thereto that are discussed in the brief. Such is not the fact. Neither of these defendant corporations was ever in any wise involved in the Gun Powder Trade Association or its operations.

There was an association organized some time in the seventies between a number of corporations and partnerships engaged in the business of the manufacture and sale of black blasting powder and rifle powder, a business in which neither the Eastern Dynamite Company nor the International Smokeless Powder & Chemical Company was ever engaged. This association attempted

in various ways to apportion the trade and fix prices and had a varying career under different agreements until its final dissolution in 1904. Its history, operations and results are exploited in this record at great length The brief of the plaintiff in error contains everything in reference to it that is favorable to the plaintiff in error. This proof was met by more proof on the part of the defendants to the effect that the association did not result in any monopoly of the powder industry and did not result in damage to the plaintiff. All of this portion of the record was submitted to the jury as against the duPont Powder Company, whose predecessors were members of the association, and the jury, after considering it all, brought in no cause of action against that defendant.

The record can be searched in vain for a disclosure of any participation by either of the other two defendants in the association or its operations.

An examination of the Fundamental Agreement of 1889 and the General Understanding of 1896 will show that those agreements are entirely between companies manufacturing black blasting powder and sporting or rifle powder. The former agreement is printed at page 42 of the record. The latter agreement does not seem to be printed in the record, but is referred to by M. Haskell on page 1623 of the record. These are the agreements governing the Association and its operations.

The companies that were parties to the agreement of 1889 are recited on page 46 of the brief of plaintiff in error and neither the Eastern Dynamite Company nor the International Smokeless Powder and Chemical Company is among them and could not have been, because neither was in existence nor is any dynamite company among them. The same is true of the agreement of 1896 and the same is true of this Association down to its final dissolution in 1904. Furthermore, the terms of the agreements themselves show that they had to do exclusively with black blasting powder, products not dealt in by either of the defendants now being discussed. The agreement of 1889 (Transcript, p. 2637) confines its operation to "gun

powder for blasting or sporting purposes or both", and goes on at length to regulate matters in reference to the sale of such commodities.

The references to the agreement of 1896 by Mr. Haskell, above mentioned, occur in the course of his discussion of the black blasting powder business and has nothing to do with dynamite. Voluminous minutes of the meetings of the Association and extracts therefrom were introduced in evidence (Transcript, pp. 2821–2889), and an examination of them will show that they relate to nothing except black blasting powder and sporting powder. Nowhere do they relate to dynamite or high explosives.

It is not our purpose to discuss the details, the operations or the results of this Association in reply to the very long argument of the plaintiff in error found on pages 37 to 109 of its brief, for the reason that all of those considerations had to do with the defendant duPont Powder Company and were submitted at great length and in detail to the jury by Judge Rellstab and the jury disposed of them by its verdict in favor of that defendant. Our only object at the present time is to point out that the two defendants, the Eastern Dynamite Company, and the International Smokeless Powder and Chemical Company, had nothing to do with this Association and its operations.

At pages 77 to 81 the plaintiff in error argues that the Eastern Dynamite Company co-operated with the Gun Powder Trade Association because it was one of the Wilmington High Explosives Companies that bought powder. The minutes of the Trade Association referred to long ante-date any period involved in this litigation. Mr. Waddell testified that this condition prevailed while he was agent for the Hazard and duPont Companies in Cincinnati, which was prior to 1902. He states that the Gunpowder Trade Association, through a special committee made special prices to the Wilmington High Explosives Companies when he was acting on that special committee. If this is true, it is entirely without significance, because it simply means that some of the high explosives companies were buying black powder from mem-

bers of the Gunpowder Trade Association. This does not indicate that the high explosives companies were parties to any conspiracy, but, if anything, that thay were the victims of the operations of that Association, if those operations were illegal. They were buying powder according to the rules of the Association. It is difficult to see how this circumstance in any wise makes them a party to any monopoly or attempt to monopolize.

No mention of the Eastern Dynamite Company will be found in this testimony, nor in the minutes of the Gunpowder Trade Association in reference to this matter. The discussion in the brief of the plaintiff in error from page 87 in reference to the advisory committee of the Trade Association, the fixing of lower prices on specific cases and in competitive districts, the Brewster report, the ninety-five cent price, advancing prices after each contest, tying up trade by a system of contracts, the contract system in its operation in the district reached by the plaintiff, the special price system, so called. trading and exchanging contract customers, and the rule of equities respecting contract trade, the legal effect of the contract system employed by the defendants, all found in the brief of the plaintiff in error from pages 87 to 109, relate exclusively to the black powder companies in the Gunpowder Trade Association, and have nothing whatsoever to do with the dynamite business or the Eastern Dynamite Company or the International Smokeless Powder and Chemical Company, nor can anything be pointed out in the record which shows that they have anything to do with those companies.

On page 98 of the brief, Mr. Barksdale's testimony is quoted from page 1915 of the record with the evident intent of showing that the kind of a contract system that the plaintiff was complaining of with reference to the black powder business also prevailed in the dynamite business. This is not the fact. The plaintiff's complaint in regard to the contract system was that all the independent black powder manufacturers dictated and authorized these contracts to be made by its respective members.

There being no Association among the dynamite interests, no such thing was possible. Mr. Barksdale's testimony as quoted in the brief does not indicate any such thing. It is simply to the effect that the same method of contracting for either dynamite or black powder that prevailed previously continued to prevail after the defendant duPont Powder Company was organized. This does not indicate that the sysnem of contracts in each industry was the same. That it was not so is explained later by Mr. Barksdale in his testimony at pages 1924–5 and 6, which testimony is not mentioned by the plaintiff in error and which shows that all Mr. Barksdale referred to was that the dynamite companies prior to the organization of the duPont Company did make contracts for the furnishing of dynamite and continued to do so after that date.

(b) *Specific contracts referred to in the brief of the plaintiff in error.*

Mixed up with the discussion in regard to the Gunpowder Trade Association is a discussion of certain specific contracts that had nothing to do with that Association, evidently interjected for the purpose of confounding the dynamite industry with that Association. The so-called "Foreign Agreement" is discussed at page 50 of that brief. The following agreements are also mentioned at the pages referred to:

Haskell-Fay Agreement of 1895097 (Brief, p. 68).
King Powder Company Agreement of 1897 (Brief, p. 71).
Mexican Agreement of 1898 (Brief, p. 73).
Hancock Chemical Company Agreement of 1898 (Brief, p. 74).
Sullivan-Fay Agreement of 1904 (Brief, p. 75).

The Foreign Agreement is not in evidence. The only matters relating to its terms are found in the testimony of Mr. Haskell (Transcript, p. 1665 *et seq.*). He gives his recollection as to a few terms of the agreement, but it is

entirely indefinite. There was nothing in it in reference to the fixing of prices, and it seems to have related to a division of territory, and to have been to the effect that the European factories would not build plants or sell certain products in the United States, and a reciprocal provision was contained. It does not oven appear whether or not the agreement applied to dynamite, except as it may be inferred from the fact that the Eastern Dynamite Company was a party to the agreement and dealt in that commodity. Mr. Haskell specifically says (Transcript, p. 1662):

> " I am not at all clear whether that was universal; whether it applied to all classes of goods or not."

The detail of what was provided in this agreement that is contained on pages 51 and 52 of the brief of the plaintiff in error is most axaggerated. This agreement was abrogated in 1906, at large expense to the duPont Company (Transcript, p. 214). It is difficult to see how the plaintiff could have been harmed by an agreement which resulted in keeping a lot of foreign companies from manufacturing and selling black power in the the United States.

Mr. Haskell testified at page 1777 of the Record:

> " Q. In your opinion, would a plant or plants built in the United States, for instance in the vicinity of Peoria, have been an aid to the Buckeye Powder Company if they had been built by this foreign concern?
>
> A. They would have added further competion where more than enough already existed."

It is further to be noted that this agreement was abrogated prior to the time that the plaintiff herein was entitled to collect damages on account of injuries it could succeed in showing it had been subjected to.

The plaintiff in error has interjected a discussion of this agreement at page 50 of the brief in the midst of a discussion of the Gunpowder Trade Association. The agree-

ment was not made by that Association, although some members of that Association signed it, and its discussion has no part in the operations of that Association.

In reference to the Haskell-Fay agreements of 1895 and 1897. The Eastern Dynamite Company was in no wise a party to the first agreement. It is printed at page 2784 of the record and was prior to the organization of the Eastern Dynamite Company. The interests, however, that were consolidated into the Eastern Dynamite Company were involved in the agreement. In 1899 a supplemental agreement was entered into to which Mr. Haskell was a party and he represented the Eastern Dynamite Company. This is printed at page 2792 of the Record. Both these agreements were abrogated long before the plaintiff went into business and had to do entirely with the dynamite business. That the organization of the duPont Company, which took in the stock of the Eastern Dynamite Company, was a successor to these agreements can in no wise be claimed, because the duPont Powder Company did not acquire the company that was represented by Mr. Fay, to wit, the Ætna Powder Company, whereas, it did acquire the companies that were represented in the Gunpowder Trade Ascociation. This fact alone is sufficient to eliminate these agreements from consideration herein.

The entire theory underlying the charge that the defendant duPont Powder Company was a combination or monopoly, both as presented in this case and as discussed by Judge Lanning in the Government case, was that it brought together in itself the ownership of various corporations which previously had been members of the Gun Powder Trade Association, and thereby made that association no longer necessary.

It is therefore apparent that the mere fact that the Eastern Dynamite Company had an old contract with the Ætna Powder Company, which company was not acquired by the duPont interests, is immaterial as showing any conspiracy or attempt to monopolize on the part of the Eastern Dynamite Company and the duPont Powder

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Company. The Ætna Powder Company is not even charged in the declaration as being in the combination or a co-conspirator.

The Eastern Dynamite Company made an agreement on December 31st, 1897, with the Ætna Powder Company and the King Powder Company. Herein it is likewise true that the duPont Company did not acquire either the Ætna Powder Company or the King Powder Company. This agreement is printed on page 2796 of the record and is an agreement that the King Powder Company, which desired to become more actively engaged in the dynamite business, should sell only such high explosives as were manufactured by the Eastern Dynamite Company and the Ætna Powder Company. Instead of being an agreement to foster a monopoly, it would seem to be an agreement to encourage the King Powder Company to go into the dynamite business. This agreement lasted until May, 1901, when the King Powder Company retired from the dynamite business by virtue of an agreement dated May 1st, 1901 (Record, p. 2800). It will, therefore, appear that these contracts were done away with long before the plaintiff came into existence and could not have had any effect upon it. Later the King Powder Company sold a trade-mark it owned to the Eastern Dynamite Company and the Ætna Powder Company (Record, p. 2801).

The Mexican Agreement related to trade in Mexico, and had nothing whatever to do with the black powder business, or any attempted monopoly therein. It is printed at page 2805 of the record and was abrogated long before the matters complained of in this suit.

The Hancock Chemical Company agreement was dated October 11, 1898 (Record, p. 2784). The Eastern Dynamite Company was a party to this agreement, whereby it agreed to act as selling agent for all the dynamite produced by the Hancock Chemical Company. This agreement was also abrogated long before the matters complained of in this suit.

The Eastern Dynamite Company was not a party to the

Sullivan-Fay agreement of 1904 referred to in the brief of the plaintiff in error (p. 75).

It, therefore, appears that although the Eastern Dynamite Company was a party to certain specified agreements they all related to the dynamite business and were abrogated before the period of the plaintiff's existence and could in no wise be a part of any attempt to monopolize the black powder business, or if they had been a part they had been done away with before the matters involved in this suit occurred. In the next place, the defendant duPont Company was not a party to any of these agreements. Consequently, the Eastern Dynamite Company and the duPont Company were not jointly interested in any one of them. No predecessor of the defendant duPont Powder Company was a party to any of them except the Foreign Agreement. It is not even pretended that the International Smokeless Powder and Chemical Company had anything to do with any of these agreements.

(c) *Mis-statements in the brief of the plaintiff in error in regard to this matter.*

There are certain glaring mis-statements in the brief of the plaintiff in error that we desire to call to the Court's attention.

On page 55 it is stated that in 1902 when the Laflin & Rand Powder Company was purchased that company was a large stockholder in certain companies "all of which were at that time members of the Gunpowder Trade Association". Among such companies catalogued as being members of that Association is the Eastern Dynamite Company. That corporation as heretofore shown had never had anything to do with that Association.

On page 65 it is stated that the Eastern Dynamite Company co-operated with the Gunpowder Trade Association by becoming a party to the Foreign Agreement. It has been shown that that agreement had nothing to do with the Association.

On page 66 the brief states that Mr. Haskell in 1895

wrote a certain letter to Mr. Miller "immediately after he brought the dynamite interests into the Association". To begin with, it was not until 1902 that Mr. Haskell's interests were purchased by the duPont Company, and, in the next place, they were not brought into the Association at any time.

We, therefore, come back to the point at which we started, which is that the only connection with this case that exists so far as these two defendants are concerned, is that the duPont Company owned a controlling interest in their stock.

No corporate action on the part of either company can be pointed out that in any wise relates to any conspiracy or attempt to monopolize the black powder business, or any other business, so far as that goes, and it is submitted that the ruling of the court was correct.

POINT II.

This assignment of error cannot be considered in the absence of the whole record.

In granting this exception, Judge Rellstab made the following comment (Record, p. 2518).

> "In my judgment, this exception to be considered, should have behind it the entire record, but it is allowed and signed, that the plaintiff may have the benefit of it in case I am in error in that view."

Judge McPherson in the Circuit Court of Appeals made the following statement (Record, p. 3186):

> "Moreover, only selected portions of the evidence are before us, and the district judge very properly called attention to this fact when he granted the exception now being considered, say-

> ing 'In my judgment this exception to be considered should have behind it the entire record, but it is allowed and signed that the plaintiff may have the benefit of it in case I am in error in that view.'"

It would seem to be apparent that the whole record should be considered in determining a question of this sort. Large portions of the record are omitted in the bill of exceptions. This is evident from Judge Rellstab's statement. The presumption is that the District Court was right in its ruling and that the omitted portions of the record would so indicate in case there were anything in the record that is brought up which indicates the contrary. To obviate the effect of this consideration, the plaintiff in error in its brief from pages 25 to 31 presents an elaborate argument to the effect that the bill of exceptions is an agreed statement of facts in this case. Unfortunately, the counsel for the defendants have been unable to agree upon any proposition with the counsel for the plaintiff from the beginning of the litigation. If this bill of exceptions were an agreed statement of facts that statement includes of course the proposition that the whole record is not here, a statement included in the bill of exceptions. That the bill of exceptions is an agreed statement of fact, however, is not correct. This bill of exceptions was granted in the ordinary course. A proposed bill of exceptions was prepared by the plaintiff in error and served on the defendants in error; they duly objected to various portions of the proposed bill of exceptions on account of its manifest inaccuracies and after various conferences and a reference to Mr. Chevrier as a friend of the Court to pass on certain of the objections and a final hearing before the court upon notice, the bill of exceptions was allowed by the Court. There was nothing in the proceedings either suggesting or resulting in an agreement that the facts stated were correct or that they were all the facts in the case.

The above proposition is supplemented by the state-

ment that if the record is deficient in this regard the defendants should have applied for a writ of *certiorari* to send up the missing portion of the record. We are not aware that any burden rests upon the defendant in error to so complete a bill of exceptions that certain exceptions taken by the plaintiff in error will be considered by the Court. We have trouble enough in pointiug out the erroneous contentions of the plaintiff in error without taking the burden of perfecting his case for him. As the matter stands, it appears conclusively that only a part of the record is here, and this alone is sufficient to defeat this assignment of error.

POINT III.

If an error was committed in directing a verdict in favor of the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company, that error was harmless.

There is not a thing in this record to indicate that either of these corporations did anything to the injury of the plaintiff in error. If either was to be held at all, it would be only by virtue of the legal proposition that having joined a conspiracy, such company was responsible for the acts of the co-conspirators. Inasmuch as the only alleged co-conspirator who did any of the things that were charged to have injured the plaintiff in its business is the duPont Company, and everything that was done by that company was submitted to the jury with the result that it was completely exonerated, it is difficult to see what harm was done the plaintiff, even if as a matter of law an error was committed in dismissing the case so far as these corporations were concerned. To all intents and pur-

poses these two corporations stand in the position of two sureties sued in connection with the principal for whom they are sureties. In such a case, even if the two sureties should be dismissed from the proceeding erroneously, no harm would be done unless a verdict was rendered against the principal. Here, if the duPont Company did nothing that rendered it liable to the plaintiff in error, certainly these other two corporations could not be held on the ground that they were co-conspirators of the duPont Company.

We desire to take this occasion to extend our acknowledgments to the counsel for the plaintiff in error for having called to our attention the case of *Portland Gold Mining Co.* vs. *Stratton's Independence* (158 Fed. 63), which is cited in its brief under another point.

The case was decided by the Circuit Court of Appeals for the Eighth Circuit, with a very interesting opinion by Mr. Justice Vandevanter.

The suit was brought against Stratton's Independence, Ltd., an English corporation, J. W. Price, T. B. Burbridge and others to recover damages for trespass to real property, the claim being that the defendants had mined ore on the plaintiff's property and disposed of it. The plaintiff and Stratton's Independence owned adjoining mining properties. Stratton's Independence leased certain privileges to Burbridge to take out ore from its mine. The ore when mined was to be sold by Stratton's Independence. Burbridge made some working agreement with Price, whereby the latter became interested in the operation.

It appeared that if any trespass had been committed, it had been committed by Burbridge and Price and that the operation was not participated in by Stratton's Independence, but the latter was claimed to be responsible, for the reason that it took the ore thus mined and sold it. It, therefore, appears that the only claim against Stratton's Independence would be based upon and derived through a liability on the part of Burbridge and Price.

The case went to trial and the Court directed a verdict

in favor of Stratton's Independence. The case then proceeded and resulted in a judgment in favor of Price and Burbridge, whereupon the plaintiff took the case to the Circuit Court of Appeals on exception to the ruling directing a verdict in favor of Stratton's Independence.

A situation more similar to the one in the case at bar could scarcely be presented.

The Court held that it was unnecessary to examine the record to see whether the direction of a verdict in favor of Stratton's Independence was justified or not, for the reason that it was at most a harmless error, inasmuch as judgment went in favor of the other two defendants. Any liability on the part of Stratton's Independence of necessity being based upon the fact that Burbridge and Price had committed a trespass, and it appearing by the result of the action that the latter had not committed a trespass, it became entirely immaterial what the Court did with Stratton's Independence. Many authorities are cited by the Court, all of which seem to be pertinent and uphold the contention.

Applying this principle to the case at bar we here have a situation in which it is neither alleged in the declaration, nor was it claimed at the trial, that either of these corporations did anything whatsoever to the plaintiff or its business. It is sought to hold them by virtue of the legal proposition that they may be liable in law for something that was done by the other defendant. Inasmuch as the verdict of the jury shows that those things were not done by that other defendant, the question of whether or not the direction of the verdict in favor of these two defendants was proper becomes an academic one, and if an error was committed it becomes a harmless one.

The above case is specifically approved by this Court in *Bigelow* v. *Old Dominion Copper Co.* (225 U. S. 111). At page 128 this Court, among other things, says:

> "The unilateral character of the estoppel of an adjudication in such cases is justified by the injustice which would result in allowing a recovery against a defendant for conduct of another when that other has been exonerated in a direct suit."

Assignment of Error No. 4:

This assignment of error is based upon an order made by the trial Court requiring the plaintiff to make an election as to whether the plaintiff under its declaration would rely upon proof of acts declared to be unlawful by Section 1 of the Sherman Act or those declared to be unlawful by Section 2 of said Act.

The bill of exceptions on page 2433 contains the following:

> "Thereafter, upon the conclusion of the opening statement to the jury by plaintiff's counsel the defendant's counsel moved the Court to require the plaintiff to make an election as to whether the plaintiff under his declaration would rely upon the first or second section of the Act of Congress of July 2nd, 1890, commonly known as the Sherman Act, in seeking a recovery, and after argument said motion was sustained.
>
> To which ruling of the Court the plaintiff by its counsel then and there excepted and said exception was allowed."

In allowing said exception the trial Judge made the following statement:

> "In my judgment, this exception to be considered, should have behind it the entire record, but it is allowed and signed, that the plaintiff may have the benefit of it in case I am in error in that view.
>
> JOHN RELLSTAB,
> Judge."
>
> (Record, p. 2433).

POINT I.

The first point we make is that the specific statement by the trial Court is to the effect that the bill of exceptions is deficient in that it does not contain portions of the record which in the judgment of the trial Court are

essential to a consideration of this assignment of error. What those portions of the record are does not appear, but it does not lie in the mouth of the counsel for the plaintiff in error to state that they are not pertinent, the trial Court having stated unequivocally that there are things in the record that bear upon this subject which have not been embodied in the bill of exceptions.

We submit that this alone is a sufficient ground for refusal of this Court to consider said assignment. We also submit that the position of the trial Court to the effect that an assignment of error of this sort cannot be considered in the absence of the entire record, is a correct position.

It is apparent that in order to have any substance, the assignment on behalf of the plaintiff must be based upon the proposition that his declaration does contain allegations of offenses under both the first and second sections of the Sherman Law and further does claim damages for violation of each of those sections. If this is not the condition of the declaration, of course, in no event would the plaintiff have the right to claim the privilege of going to the jury under both sections of the law.

Without discussing the question at the present time as to whether the declaration is so framed or not, it is apparent that all the evidence in the case should be embodied in the bill of exceptions in order to determine whether or not there was any proof offered which would justify the claim of the plaintiff that there is evidence in the record showing violations of both sections of the Act. It will not do to point out episodes in this evidence, which, by themselves, might indicate some violations of each section of the Act, in the absence of the whole record, because it is apparent that the portions of the record that are omitted may well have done away entirely with the effect of any evidence that the plaintiff can now point out which he has embodied in his bill of exceptions which would indicate a violation of either section of the Act. Consequently, from a fragmentary bill of exceptions of this sort it may well be that there are indications of

some violations of each section, whereas, upon a complete record the Court would not have been justified in submitting the case to the jury based upon violations of the first section. Under these circumstances, certainly the plaintiff cannot be heard to argue that an error was committed.

It is also apparent that before an error can be made the subject of a reversal of the judgment it must appear that it was a harmful error. Without the entire record, including all of the evidence, it is impossible to say that the refusal of the Court to allow the plaintiff to go to the jury under the first section of the Act injured the plaintiff in any way. The missing parts of the record might well be such as to show, even if there were offenses against the first section of the Sherman Law, that no damages had been sustained thereby.

POINT II.

The position of the plaintiff on this assignment of error is anomalous. It is well settled that the offenses described in the first section of the Sherman Law and those described in the second section of that law are different and distinct. It has been so held repeatedly by the Supreme Court of the United States; it was so held by Judge Rellstab in this case, and in his opinion passing upon this declaration, which is published in 196 Fed. 514, page 517, he states:

> "The first section of this act denounces restraint of interstate trade in two ways—by contract and by a combination or conspiracy—and in the second section the monopolizing and attempt to monopolize any of such trade is denounced. To maintain an action under this act, therefore, the plaintiff must allege as well as prove that the defendant committed one of such forbidden acts, and that in consequence he was injured in his business or property."

This clearly shows that the acts forbidden by the two sections are separate and distinct offenses. Many other cases might be cited to this end.

It is therefore apparent that the plaintiff is basing his contention at this stage of the proceedings upon the proposition that his declaration is bad. He is maintaining that his declaration consisting of only one count, does, as a matter of fact, contain two causes of action, and that he ought to have been allowed to avail himself of both those causes of action before the jury. In other words, he is forced to the position, not only that his declaration is the subject of duplicity, but that it is properly so, and he can take advantage of the duplicity that is therein contained. Otherwise, of course, there would be no allegations in the declaration that would support his claim that he should have been allowed to go to the jury on both sections of the law. It is an anomalous position to try to construe the declaration in such a manner as to make it bad for the purpose of being allowed to take advantage of those defects in the declaration to try two causes of action under one count. It follows that if there is any substance in this assignment of error, the declaration should have been stricken out as being bad for duplicity. This, again, we submit, is a sufficient answer to this assignment of error.

POINT III.

The position of the plaintiff in error being that his declaration is subject to duplicity and properly so, and that he can so consider it and take advantage of it, leads to a consideration of a few well defined holdings to the effect that if a declaration is subject to duplicity it is perfectly proper for the Court at the trial, upon motion, to order the pleader to elect as to which cause of action as stated in his count he will rely upon.

In the case of *Clancy* vs. *St. Louis Transit Co.*, decided

in 1905 by the Supreme Court of Missouri, 91 S. W. Rep., page 509, the plaintiff joined in one count a cause of action for common law negligence and one based upon the violation of a city ordinance and another on willful negligence. Discussing this matter the Court states, page 516:

> "The petition originally stated three different kinds of negligence in the same count, to wit, common-law negligence, ordinance negligence and willfulness, recklessness, or wantonness, commonly called the 'humanitarian doctrine'. The defendant treated the petition as stating only two kinds of negligence, to wit, common-law negligence and ordinance negligence, and accordingly moved to require the plaintiff to elect on which he would stand. The court overruled that motion. That was error."

The Court further cites the case of *McHugh* v. *St. Louis Transit Co.*, 88 S. W. Rep. 853, and quotes from that case as follows:

> "In case a petition improperly joins two different causes of action in the same count, it has always been ruled by this court that the remedy is by timely motion to require the plaintiff to elect upon which count he will proceed to trial, as was done in this case."

In *Giacomo* v. *N. Y., N. H. & H. R. R. Co.*, decided by the Supreme Judicial Court of Massachusetts in 1907 (81 N. E. Rep. 899) a declaration contained two counts in each of which had been pleaded a cause of action at common law and also one under a statute.

In reference to these counts, the Court stated:

> "By the rejection of some of the sentences as surplusage, each count could stand as a count under the statute; on the other hand, by a similar rejection of other sentences each count could stand as at common law. It was simply a question of what should be rejected as surplusage. It is manifest that only one cause of action could be stated

> in one count. What the plaintiff desired was that there should be two causes of action in one count—one under the statute and one at common law. Under the circumstances, the Court rightly ordered the plaintiff to elect what he meant by the counts."

The Court held that this order was perfectly proper.

It will be observed that the situation in this case is exactly the situation in this declaration. Here by eliminating certain statements as surplusage, there would be left a count under the second section, and likewise, by a rejection of certain other statements as surplusage, there might be left a count under the first section of the Act. Certainly the plaintiff cannot complain of having been given the privilege of extricating himself from bad pleading by taking his choice as to which interpretation he would put upon his own count.

POINT IV.

Beyond the reasons above given as to why there is no substance in this assignment of error, we further submit that it is the law of this case that this declaration states a cause of action under only one section of the Sherman Law.

As originally filed, the declaration contained a number of sections which do not now appear in it and also contained the names of a large number of corporations and individuals as defendants, who do not now appear in it as such defendants. The declaration was of such a character that it called forth a motion on behalf of the defendants to strike it out upon several grounds, but principally that it was subject to the charge of duplicity and that the declaration was so defective as to prejudice the defendants in obtaining a fair trial.

This motion was argued at length before Judge Rellstab and very carefully considered by him in an opin-

ion reported in 196 Fed. Rep., page 514, a perusal of which will show that Judge Rellstab, himself, had many misgivings in regard to this declaration. He ordered certain sections to be stricken out and he ordered the missing defendants to be eliminated, but he upheld the declaration.

It is unnecessary to discuss that portion of his opinion which deals with the claim made by the defendants that the declaration was so indefinite as to prejudice them in a fair trial, but the other ground urged by the defendants at that time was that the declaration was subject to the charge of duplicity in that it not only counted in one count upon offenses under both sections of the Sherman Law, but also upon offenses not governed by the Sherman Law at all. To uphold his declaration the plaintiff's attorney strenuously maintained that it counted only on a single cause of action, a position in which he was upheld, said cause of action being upon the second section of the law, as we understand it, the Court holding that all the statements in the declaration in reference to combinations and conspiracies were there either as matters of introduction and inducements or as statements of matters which led up to the monopoly or attempt to monopolize that is prohibited by the second section of the Sherman Law. The result is that the Court maintained the plaintiff's declaration at the plaintiff's insistence upon the very ground that it stated nothing but a cause of action under the second section of the Sherman Law.

To this ruling of the Court, the plaintiff took no exception, and we, therefore, submit that whether or not this declaration is susceptible of an interpretation as containing statements of causes of action under both sections of the law, nevertheless it is the law of this case that it states a cause of action only under the second section.

Despite the fact that the plaintiff maintained its declaration by this position at that time, a result which would not have occurred had he admitted that the declaration counted on both sections of the Sherman Law, he now

claims that it does so count on both sections and that he should be allowed to take advantage of the fact, which, if it existed, would clearly have resulted in striking out his whole declaration, because, in considering the matter, Judge Rellstab stated (p. 517):

> "If in so doing the pleader has combined two or more distinct causes of action, the pleading is bad for duplicity (*Rice* v. *Standard Oil Co.*, *supra*)."

It is, therefore, apparent that the plaintiff is endeavoring to take advantage at different stages of this proceeding of positions in reference to his declaration that are entirely inconsistent with each other. We submit that the declaration, as a matter of fact, does count only on the second section of the Sherman Law. Whether it does or not, we further submit that in view of Judge Rellstab's ruling on the preceding motion, it is the law of the case that it only counts on that section. Under these circumstadces, we fail fo see what ground of complaint the plaintiff has growing out of the fact that he was allowed to take his choice as to whether it should be considered a count under the first or second section of the act. In giving him that privilege, we submit that the Court was giving him a privilege to which he was not entitled; that the situation was such that he should not have been given an election, but should have been instructed that his declaration was under the second section of the law exclusively, and that, therefore, nothing could be considered under the first section. Because the plaintiff was given too much, he certainly cannot ask to have this judgment reversed thereby. That the plaintiff elected to go to the jury under the second section of the law, is a good indication of what his understanding was as to what the gravamen of his declaration consisted in. He elected to proceed under the second section, and we submit that he was in no wise harmed.

POINT V.

We furthermore submit that even if there was substance in this assignment of error, the plaintiff did not take the proper course to avail himself of the alleged error. The evidence had been taken—certainly there was no error unless the evidence was such as to support a cause of action under each section. If the evidence was in that shape, it having been put in during the course of many months, under circumstances where no one could well claim surprise, or that the facts had not been adequately developed, and the plaintiff felt himself aggrieved by the action of the Court in confining him to one section, his remedy was not an exception to that action of the Court but was to move for leave to amend his declaration to conform to his proof and insert therein another count founded upon the first section of the act. We are inclined to think that if such a motion had been made it might have been granted by the Court. However this may be, the motion was not made, and thereby we claim that the plaintiff, if there is any substance in his contention, failed to take the measures to protect his rights which he should have taken.

This view of the proper course to be taken by the plaintiff was upheld by the Circuit Court of Appeals. Judge McPherson, at page 3187, said:

> "But in any event we do not see how the ruling could have done harm; if the declaration did not support alternative charges, and if such charges were regarded as important to the case, the easy remedy by amendment was at hand. It is not surprising, however, that the plaintiff did not ask to amend; for we cannot conceive it possible that any one could doubt, at the end of this five months' trial, that the plaintiff's case depended for success upon the truth of the charge (to which practically all the evidence was directed) that the defendants had unlawfully attempted to monopolize a large part of the trade in black powder. The case was

certainly tried on the merits, and the ruling complained of was harmless, even if it were formally erroneous."

The plaintiff now contends that the motion to require the plaintiff to elect was made as the final act after the case had been argued to the jury (Plaintiff's Brief, p. 140). This is not the fact. It was made after the opening argument of the plaintiff. Then followed the defendants' arguments to the jury taking over five days and the closing argument for the plaintiff which took some four days. If the counsel for the plaintiff had thought it material to have two counts, there was ample time to make the amendment. The fact is that the plaintiff's counsel had all along contended that the declaration only set forth offenses under the second section, so that when put to an election plaintiff was consistent with its prior position in electing to rely upon the second section. The present position is only taken to extricate the plaintiff from the situation the verdict of the jury left it in.

POINT VI.

Lastly, we submit that the action of a trial Court in a matter of this sort involves nothing but a matter of discretion, and that, therefore, it is not the subject of review in this Court.

People v. *Briggs* (114 N. Y. 57).

In this case the complaint contained a count which was founded upon two different causes of action. The defendants moved for a direction either that the plaintiff separate his allegations and put in two counts, or, that he should be required to elect upon which one of the causes of action he would rely. The Court disposed of these ques-

tions, but they were made the subject of an appeal to the Court of Appeals, which Court stated (p. 66):

> "Whatever reasons may have been urged for or against the direction asked for, the most that can well be claimed on the part of the defendants is that such motions then made were addressed to the discretion of the Trial Court (*Roberts* v. *Leslie*, 14 J. & S. 76). This is not reviewable here."

The plaintiff endeavors to escape the situation in which it finds itself by maintaining that a cause of action for damages under the Sherman Law is based entirely upon Section Seven of that statute. That, therefore, in any one count any number of offenses can be relied upon, whether they are under one or both of the first two sections of that act, and it is stated that to consider each separate act as constituting a cause of action would make it necessary to formulate a separate count for every separate overt act or step in a conspiracy as a separate cause of action. This position is entirely untenable and no such claim is made by the defendants. We admit that many overt acts may tend to a combination or a conspiracy, likewise many and distinct overt acts may tend to an attempt to monopolize or a monopoly, and, of course, where the offense charged is a combination or conspiracy or monopoly or an attempt to monopolize, in any count that relies upon any one of those offenses, any number of overt acts tending to the consummation of that offense may be relied upon in one count, but to say that the pleader can rely upon all those different offenses in one count is an entirely different and an entirely unsound proposition.

We have already cited cases to the effect that an action for negligence cannot rely upon negligence in general, negligence due to a breach of an ordinance and other kinds of negligence. The situation is exactly similar. The fact that this cause of action is given by a statute does not differentiate it in a matter of pleading from a cause of action that is given by the general principles of the law. The

plaintiff's brief cites only two cases that seem to require discussion. They are the cases of the *Monarch Tobacco Works* v. *American Tobacco Co.* (165 Fed. 774) and the *People's Tobacco Co.* v. *American Tobacco Co.* (170 Fed. 396), (Plaintiff's brief, pages 136–137).

In the first case the question did not arise. It is true that the Court states in the course of its opinion that the petition which was framed under the Kentucky Code, so far as the form of pleading goes, averred that the defendants had conspired to restrain trade and also had attempted to monopolize trade. No motion or demurrer was filed upon the ground of this duplicity, but it appeared that the petition charged certain defendants with doing some certain things and other defendants with doing other things, and the motion was to separate the defendants or cause the pleader to elect as to whether he would proceed against one set of defendants or the other set of defendants, not because there were two causes of action stated, but because the respective defendants did not have to do with the same parts of what was evidently considered by all parties to be one cause of action. The case was in the District Court and the District Judge held merely because one defendant was charged with doing one thing and another with another thing, all tending to the same end, no reason was presented why they should be separated in the proceeding. This case, therefore, in no wise carries out the contention that is made for it in plaintiff's brief.

In the second case (170 Fed. 396), the lower court held that no cause of action was sustained. The Circuit Court in reviewing this decision merely held that the District Court had erred. While as a matter of fact the petition did recite offenses both under the first section and the second section, the attention of the Court was in no wise drawn to the question of whether any duplicity existed in this pleading, and, therefore, did not pass upon this phase of the case. It is also to be remarked that the question of duplicity is one which, of course, can be waived by the adverse party, if he so desires. It is, therefore, true that

this case in no wise sustains the contention made for it in the plaintiff's brief.

These two cases, however, are valuable authorities on other points that are relied upon by the defendants. The last case plainly holds that offenses under the first section and the second section of the Sherman law are entirely distinct offenses. The case first referred to also clearly holds, which we understand to be the law, that questions of pleading in this class of actions are to be governed by the law of the State in which the trial is held. Consequently, this question is to be referred to the law of the State of New Jersey. What the law there is on the subject is conclusively settled by the case of *Rice* v. *Standard Oil Co.* (134 Fed. 464) and also by Judge Rellstab in his decision heretofore referred to in 196 Fed., page 514.

In the case of *Rice* vs. *Standard Oil Co* , Judge Lanning considered a declaration under the Seventh Section of the Sherman Law, which contained one count and did not rely upon both the first and second sections of the Act but relied only upon the first. The declaration, however, did reply upon the fact that the defendants had been guilty both of unlawful contracts and combinations or conspiracies under the first section. Judge Lanning held that there was a distinction between the contracts and combinations or conspiracies under that section and that the declaration combining two or more of these distinct offenses was bad for duplicity. He stated (p. 466):

> " In one count there may be a charge of an unlawful contract, and in another a charge of an unlawful combination or conspiracy, but two unlawful things cannot be declared upon as synonymous terms and changed in a single count."

This decision goes much further than we contend for in this case. Here the pleader claims to have the right to count upon offenses under both sections of the law, to say nothing of failing to make any distinction between the various offenses prohibited by each sections taken separately.

The Circuit Court of Appeals in its opinion held that this assignment could not be reviewed satisfactorily without the whole record.

Counsel for plaintiff in this brief apparently conceding the correctness of the view of the trial and appellate courts in this position now contend that the incompleteness of the record is the fault of the defendants, and that the defendants should have applied for a writ of *certiorari* to bring up the balance of the record so that the plaintiff can avail itself of this assignment. We know of no authority which places the burden on the defendants in error to place before the appellate court a record which will enable the plaintiff in error to have considered by the appellate court the assignments of error it alleges. The furnishing of such a record is the duty of the plaintiff in error.

Assignment of Error No. 5:

This assignment of error is based upon the instruction to the jury as given by the trial Court as follows:

> "This suit is unique in many respects. The plaintiff, as a corporation and as a competitor in the powder business, is due to the efforts of R. S. Waddell, its chief witness in the suit. He organized it shortly after he separated himself from his employment with the defendant with which and its predecessors he had been identified for about twenty years. His services, while in the employment of the duPont interests, brought him in touch with their business policies and operations in the vending of powder. He knew of the existence of the trade associations and of such of the restraints and limitations put upon its members as related to the apportionment of the trade and the fixing of prices. The comparative size of the defendant's capacity for output in relation to other powder manufacturers, and its inflnence as a factor in the trade generally, were known to him when he severed his connection and when he conceived and began to carry out his purpose of entering into such powder field as a competitior. The plaintiff

> does not occupy the same position as a competitor in existence during the period that this influence was being developed and who may have been, during the course of such development, as well as after it had reached the height of its power, injured in its business or property by reason thereof, but is here as one entering the competitive field when such growth and influence have been established. To it, this influence and power of the defendant, when it, the plaintiff, was launched into the powder fields, is not in itself actionable, even though that status is due in part to methods which are prohibited by the Anti-Trust Act, and before the plaintiff can recover it must establish that the defendant used its power in the trade oppressively, not necessarily against the plaintiff alone, but at least in the conduct of its business generally; that is, that it used such methods as, backed by its influential position, tended to the suppression of open competition and to obstruct the free flow of commerce—the trade conditions sought to be secured and protected by the prohibitions of the Anti-Trust Act, and that it, the plaintiff, was injured by reason thereof."

This portion of the charge of the trial Court is most vigorously attacked in the plaintiff's brief in this Court as it likewise was in the brief submitted to the Circuit Court of Appeals. On page 146 of the plaintiff's brief it is stated that a correct analysis of its real meaning and effect is as follows:—

> "It is tantamount to saying that monopoly needs but to obtain a foothold, and thereafter competitors must enter the field at their peril. It was a virtual direction of a verdict for the defendants, because it was equivalent to saying that long-continued violation of the law may ripen into privilege and may become a vested right. It is a most dangerous doctrine that monopoly can gain the right to perpetuate itself by prescription; that one who may venture into the field occupied by it must do so at his peril, and, if he does so with knowledge of its existence, can claim no protection from its unlawful methods."

Judge McPherson correctly criticised this analysis in his opinion in this case when he said:—

> "It is almost needless to say that the instructions of the learned judge carry no such meaning, and could have had no such effect. After a preliminary statement outlining the previous history of the powder trade, he told the jury distinctly that:
>
> 'The defendant (the duPont Powder Company) therefore, at the time of the organization of the plaintiff company, * * * and during the entire time the plaintiff carried on its business, was acting in violation of the Anti-Trust Act as attempting to monopolize the trade in powder, which subjected it to be dissolved as such by direct attack on the part of the United States Government'.
>
> "He added, however, the qualification that was called for by the nature of the case on trial:
>
> 'The fact that the status of the defendant was such, however, that, under a direct attack by the government, it would be dissolved as an unlawful combination in restraint of trade and an attempt to monopolize, would not alone make it liable in an action for damages. Such a suit can be maintained only for injuries sustained by reason of such attempted monopolization, so that, in a suit for damages, the defendant is entitled to more defenses than would be available in a suit brought by the government for dissolution, and the plaintiff in such a suit has more to prove than is necessary to obtain a decree in the government suit. It becomes important, therefore, to inquire into the relationship which the defendant bore to the powder trade generally at the time when the plaintiff asserts its promoter first declared his intent to engage in the powder business, and its subsequent relationship toward such trade generally, and to the plaintiff in particular, during the years 1903 to 1908, within which period the plaintiff claims it was being injured by reason of the acts of the defendant, and which it alleges were unlawful and within the operation of the Anti-Trust Act, as attempts to monopolize the powder trade.'
>
> "He then summarized the following paragraph, repeating that the mere fact that the defendant

> owed much of its growth and power in the trade to unlawful acts in the past, and that it continued to enjoy the fruits of some of such unlawful acts, did not make it liable in damages."

Then follows immediately the passage attacked, which is the subject of this assignment. The Court continues:

> "We confess our inability to see anything objectionable in this language. It states nothing but indisputable facts." * * *

We feel that it is perhaps unnecessary to add anything to what Judge McPherson has said, but we submit that the statement complained of is perfectly sound. It is, of course, true that the plaintiff would have occupied a very different position if it had existed for a long period prior to its organization and while the defendant was increasing in size and business. In that event, if there had been anything illegal in that increase on the part of the defendant, which had injured the plaintiff during that period, the plaintiff would be entitled to recover. Not having been in existence during that period, however, of course it is in a position different from one that had been in existence. The following part of the charge makes it perfectly plain what the Court meant. The Court goes on to state that the influence and power of the defendant which existed when the plaintiff entered the field, even if it were true that such position was due in part to methods prohibited by the law, nevertheless, before the plaintiff could recover it must also prove the other fact necessary to its cause of action, that is, that such position and power had been used to the detriment of the plaintiff and had caused it damage. This is simply a statement that to recover the plaintiff must show not only the offense against the statute but also the damage which it has caused the plaintiff.

Assignment of Error No. 6:

This assignment is found on page 3201 of the record.

It is based upon the proposition that the following portion of the instruction of the Court to the jury was erroneous:

> " Mr. Waddell, as already stated, was well advised when he promoted the plaintiff company of the defendant's business capacity and policies. He had been its agent for a long period during which several severe competitive struggles took place, and he knew the outcome thereof, and which was, generally speaking, the taking over in one form and another of such new comers, and at least in one instance—that of the Indiana at a considerable profit to the owners of that company.
>
> Of course, Mr. Waddell, or the company which he formed had a right to go into business, and the motive for entering into such business is of little moment so far as their rights were concerned; but if he was actuated by the belief that his company would meet with a like experience after some competitive struggles, it may have a bearing upon the question whether the plaintiff was sufficiently capitalized to engage in the struggle for the market already occupied. Of course, if you find that it was sufficiently capitalized, or that it had sufficient financial backing to weather a struggle carried on under normal or lawful competitive conditions, that is a sufficient answer, and it would make no difference whether it was or was not sufficiently capitalized to meet a competition forced upon it by unlawful means."

The above portion of the Court's charge will be found on page 2493 of the record.

In the lower court the plaintiff in error discussed this assignment, together with another portion of the charge which is the subject of Assignment No. 5 (Record, p. 3199), although the two extracts from the charge had no connection with each other and are taken from portions of

the charge that deal with entirely different subjects. This consideration is pointed out by Judge McPherson in his opinion in the court below (Record, p. 3192), and after quoting the instruction complained of in full the Court stated (Record, p. 3193):

> "Certainly, as we think, no sound criticism can be made of these passages either taken singly or placed side by side, and we shall make no further comment upon them."

We submit that the court below disposed of this assignment of error correctly. In the first place, no exception was taken to this portion of the charge. The exceptions that were taken to the charge will be found from pages 2518–2523 of the record, and among these exceptions there is none that specifies this portion of the charge as being objectionable. This fact alone is sufficient to prevent the plaintiff-in-error from now urging this assignment.

Rule 10 of the Third Circuit provides as follows:

> "But the party excepting shall be required to state distinctly the several matters of law in such a charge to which he excepts and those matters of law, and those only, shall be inserted in the bill of exception and allowed by the Court."

The reason for this rule and of the decisions below cited is that if the Court's attention is called to the specific error alleged to have occurred in the charge, an opportunity is thereby afforded the Court to reconsider the matter and correct the charge if erroneous.

Connecticut Life Ins. Co. v. *Union Trust Co.*, 112 U. S. 250;
Wabash Door Co. v. *Lewis*, 184 Fed. 260;
Louisville & N. R. R. v. *Womack*, 173 Fed. 752;
Block v. *Darling*, 140 U. S. 234.

Many other authorities might be cited, but the above would seem to be sufficient.

In the next place, the charge as given was perfectly

sound. The Court had discussed at great length the allegations of the complaint in reference to the alleged illegal conduct of defendants, together with the evidence which appeared in the record to support and refute those charges. Form page 2434 to page 2491 of the record the court gave its attention to those phases of the case and then (Record, fol. 7473) stated that if such facts failed to prove that the defendant was guilty of an attempt to monopolize the powder trade, the verdict must be for the defendant, but if, on the other hand, such an attempt had been proved, then there arose the question of whether the plaintiff had thereby been injured in its business or property by such illegal acts of the defendant. It was in the discussion of the elements of such damage that the court used the language that is complained of in this assignment of error. The defendant claimed that the plaintiff's misfortunes were not due to illegal acts of the defendant, but, on the contrary, were due to the plaintiff's lack of proper capitalization and equipment, its failure to produce satisfactory powder, and other causes. The Court stated to the jury that it was necessary that the evidence in regard to these claims of the defendant be considered (Record, fol. 7474). As the first item of these claims, the Court discussed the one to the effect that the plaintiff's plant was not properly equipped and the plaintiff company was not properly capitalized (Record, pp. 2492 and 3). It is in the course of this discussion that the language complained of was used. It is simply to the effect that Mr. Waddell was well posted as to the defendant's business capacity and policies on account of his long service with the defendant company; that he knew of the methods of competition of the defendant company. It is then stated that Mr. Waddell and the plaintiff company had a right to go into the powder business and that his motives therefor were of no consequence, but that if he believed his company would meet a similar competitive struggle, it might have a bearing on the question of whether his company was sufficiently capitalized. The Court then stated that if the jury found that it was sufficiently capitalized, of

course, that was the end of such contention, and, on the other hand, that if the competition which the plaintiff was forced to meet was unlawful, then it would make no difference whether it was sufficiently capitalized or not.

It is difficult to see what fault the plaintiff in error can justly find with this language. It simply points out the particular bearing of the evidence referred to in case competition was normal and legal, but the jury is plainly told in the last few lines of the extract quoted that if the competition was unlawful, then even that bearing was immaterial. In other words, if the plaintiff had made out the first part of the case, then this contention of the defendant had no bearing whatsoever.

We believe that instead of prejudicing the plaintiff in error, this portion of the charge was very favorable to it, much more so than the record fairly warrants. Instead of giving to Mr. Waddell's motives and the evidence in the record concerning those motives, the full scope to which the defendants claimed they were entitled, that is, instead of instructing the jury that if such were Mr. Waddell's motives it might account for the very bad condition of his plant and the poor quality of powder that was made therein, the Court directed the jury that its only effect would be that therefrom some inference might be drawn to the effect that he had been unable to raise or was not provided with the amount of capital he should have had to make his enterprise successful. This not only negatives the meaning attached to the charge by the plaintiff, but confines the legitimate evidence in the record within limits much narrower than we believe the defendants were entitled to.

Even after making the above statement, the Court pointed out that the question of capital, as well as other questions, was a question of fact to be determined by the jury, and if they found that the plaintiff was sufficiently capitalized to engage in a competitive struggle, not of the character induced by abnormal and illegal operations, but one existing under legitimate business conditions, then no inference whatever adverse to the plaintiff could be drawn from the evidence we have been discussing.

Assignment of Error No. 7:

This assigment of error is based upon an exception to the charge of the trial Court. This assignment embodies a quotation from the charge as given, which is substantially to the following effect:

That no one who enters into a competitive field is guaranteed that he will get any particular share, or even a share, of the business at a profit, nor does the mere fact that the largest competitor is able to prevent a smaller one from getting a profitable share of the business make it liable in damages to such other; that competition as it exists under the laws at this date, has within it the element of fight. It permits fighting so long as it is fair and it permits the fair fighter to go away with the spoils, even though some in that fight have been injured and perhaps irretrievably injured in consequence. So that it is not the mere fact that the competitor suffers injury through severe competition that makes the other competitor who may have come out of the fray successfully liable to compensate for the losses sustained by the injured party.

We are unable to see anything in this portion of the charge that is not entirely sound and very well expressed.

The exception that was taken by the plaintiff, however, is not broad enough to involve all of the charge quoted in this assignment of error, said exception being in the following language:

> " We also except to that portion of your Honor's charge which relates to the definition of competition and refers to it as being in the nature of a fight " (p. 2518).

When this exception was taken the Court made the following remark:

> " I did not define competition. I said that it had in it the element of fight " (Record, p. 2519).

It therefore appears that the only exception the plaintiff in error has is to the statement of the Court to the jury that competition as it exists under the laws of this date has within it the element of fight.

We do not see how anybody can successfully contend that the statement is not absolutely true.

The discussion of this assignment of error by plaintiff's counsel is found on pages 169 to 175. It appears to contend that a softer expression than "fight" should have been used. It certainly cannot be reversible error to have used so good an English word as "fight" when it so aptly describes legitimate competitive conditions.

Assignment of Error No. 8:

This assignment is found on page 3203 of the Record. It is based upon the instruction of the Court to the jury, as follows:

> "There is no evidence whatever which would justify you in finding that the defendant hired detectives to track Mr. Waddell for the purpose of forestalling him in the purchase of a site, and to create opposition among the people to the location of plaintiff's plant in any place by instilling fear or otherwise, or by bidding up the price of any property plaintiff might have desired to acquire so as to prevent the entry of a competitor into the black powder business. The fact, however, that detectives were employed by the defendant to shadow Mr. Waddell after he had severed his connection with the defendant, and after his declaration to embark in competitive business, is a circumstance to be considered by you in connection with the other testimony in the case upon the alternative questions whether it shows a hostile purpose upon the part of the defendant against Mr. Waddell's contemplated enterprise with the view of suppressing, or whether it was but a step taken by the defendant in the protection of its legitimate interests, namely, to prevent their employees from being taken from them by this prospective competitor which latter is the explanation offered on behalf of the defendants."

Here again we point out that among the exceptions taken to the Court's charge to the jury (Record, pp. 2518, 2523), there is no exception to this portion of the charge and, therefore, it cannot now be considered. In the next place, the charge is perfectly correct. The amended declaration (Record, p. 10) alleges that the defendant having failed to dissuade Mr. Waddell from entering into the powder business, formed a plan to prevent him from doing so and with this end in view placed detectives on his track to shadow him throughout the United States while he was looking for a location, to keep them advised of his movements and "to enable them through their emissaries to forestall him in obtaining a location of plaintiff's plant in such place as might be decided upon, by instilling fear into the minds of the people thereabouts", and further, if need be, by competing for the purchase of sites and bidding up the price, not with any purpose of making use of the same, but to prevent the entrance of an independent competitor into the business and with a view of preventing the plaintiff from finding a site, whereby Waddell was compelled to travel in secrecy and under assumed names.

All that appears in the record in reference to detectives is that detectives were employed by the defendant for a few weeks.

Mr. A. J. Moxham, Vice-President of the defendant, testified that he discovered that they had been hired, and instructed his assistant Mr. Dwinnell to discharge them as being entirely useless for any purpose which he had in mind (Record, pp. 676 and 7).

Mr. T. C. duPont (Record, p. 245) testifies that these detectives were employed because it was felt that some of the defendant's employees were being enticed away by Mr. Waddell, that after three weeks they discovered that this was not so and the detectives were discharged.

Mr. Waddell testified that he discovered that detectives were following him, and by taking assumed names and otherwise he avoided them (Record, pp. 760-61).

So far as we are aware, the above is all the testimony there is in the record in reference to detectives, and cer-

tainly there is nothing in it that indicates that they were hired for the purpose either of forestalling Mr. Waddell in purchasing a site, or of creating opposition among the people to the location of a plant, or for the purpose of bidding up the price of the property, or otherwise. In the above instruction, the Court certainly allowed the jury to use the evidence, such as it is, for its only legitimate purpose, and it is difficult to see what fault the plaintiff in error can justly find with this portion of the charge.

This assignment is discussed in a peculiar way at pages 175 to 180 of the brief of the plaintiff in error. It is there claimed by a course of reasoning that we are unable to follow that the reason given by Mr. T. C. duPont for the hiring of these detectives was not the correct one. It is then argued that Mr. duPont's reason being not the correct one, his testimony is evidence of the fact that the detectives were hired for the purposes mentioned in the declaration, although nobody testifies to that effect. The plaintiff in error prints in the discussion of this matter a letter from some detective agency, which letter was excluded from the record by the Court. However, the letter does not show anything, so we suppose it is unimportant.

Immediately after making the statement that is complained of, the Court instructed the jury that the fact that the detectives were employed was to be considered by them with the other testimony in the case as to whether it showed a hostile purpose on the part of the defendant against the plaintiff's enterprise.

Assignment of Error No. 9:

This assignment is based upon the refusal of the Court to receive in evidence a letter offered by the plaintiff, reading as follows:

"CHICAGO, Feb. 13, 1903.

H. A. KOACH, Esq.,
c/o Stratford Hotel,
Cincinnati, Ohio.

DEAR SIR:

This will be handed to you by Capt. H. R. Saville of the Philadelphia Agency, who has been

engaged in shadowing the party I wired you about in cipher, as follows:

'Wire immediately if R. S. Waddell of Wilmington, Delaware, is now in Cincinnati; think can be found South East corner Third and Broadway. Want to place shadow; therefore, inquire carefully and to which you replied as follows:

'Mail at party's office Union Trust Building indicates he will arrive tomorrow. He has home and family in this city.'

Will you kindly assist him as much as possible in locating the party, and just as soon as he locates him, he is to wire to Chicago for assistance.

Yours truly,

(Signed) J. H. SCHUMACHER, Sup't."

(Record, p. 759.)

It appears in the record that after Mr. R. S. Waddell left the employ of the duPont Company he made a trip through the country, looking up a site for his proposed powder plant, and as he said, making arrangements for the purchase of machinery, etc. After going to several places, he arrived at Cincinnati, and states that while there he was handed a letter by a gentleman he had known. He was then shown a printed volume of testimony that was taken in the suit brought by the United States against the duPont Company and others and stated that he gave the original letter to the Government and that a certain letter printed in said book was a copy; that he knew who Mr. Schumacher was at the time that letter was written. Upon being questioned further it appears, however, that any knowledge he has as to who Mr. Schumacher was consists of statements to the witness by the people who employed Schumacher; that he was then allowed to state that the people who employed Schumacher ran a detective agency and that they told him that Mr. Schumacher was a superintendent located in Chicago and at the date of the letter located in Philadelphia. Thereupon, the letter heretofore quoted, or rather the copy of it that appeared in the printed book, was objected to on the ground that it was irrelevant and incompetent and it was excluded by the Court.

The action of the Court in excluding this copy of the letter was proper in the first place because there is nothing whatever in this letter to connect the defendants or any of them with the writer of the letter, and, therefore, it was irrelevant and immaterial. In the next place, there was no proof whatsoever that the letter was actually signed and sent to anybody by Schumacher. In the next place, there is nothing in the letter itself which is at all relevant or material to any issue in the case. If it had been admitted, it is very difficult to point out what issue involved in this litigation the jury could have considered it as having a bearing upon. It purports to state that someone wants to put a detective on the track of Mr. R. S. Waddell and asks assistance in locating Waddell. There is no evidence in the record as to who it was that was actuated or what the purpose of this was.

Assignment of Error No. 10:

In pursuance of the defendants' request, the Court instructed the jury as follows (Record, p. 2517):

> "There is no evidence to the effect that the defendants or any of them exercised any control at any time over the affairs of the Equitable Powder Company or the Austin Powder Company by virtue of any stock that they have held in those corporations, and therefore you must not consider any claim to the effect that they did exercise such control."

The plaintiff excepted to this charge and that exception is the subject of this assignment of error. It appears that the predecessor of the defendant duPont Powder Company acquired forty-nine per cent. (49%) of the stock of the Equitable Powder Manufacturing Company. Mr. Olin, the president of the Company, thinks it was acquired by E. I. duPont de Nemours & Co., the partnership, in 1896 (p. 590). It also appears in the record that the predecessor of the duPont Powder Company also acquired thirty-three per cent (33%) of the capital stock of the

Austin Powder Company. These stock holdings were taken over by the defendant duPont Powder Company when it was organized in 1903.

The above charge of the Court, of course, is confined to the fact that the duPont Powder Company exercised no control over either of these corporations "by virtue of any stock that they have held in those corporations". This assignment is discussed in the brief of the plaintiff in error at length from page 109 to 130, together with the next Assignment No. 11, although these two assignments of error would seem to have nothing to do with each other.

So far as the discussion relates to Assignment No. 10, it goes far afield from anything included within the instruction complained of. It has principally to do with whether or not there is anything in the record to show that any combination existed between the Equitable and Austin companies and the duPont Company growing out of the Gunpowder Trade Association and other similar matters, and is not confined to a discussion of whether or not any control was exercised by virtue alone of the stock interest which the duPont Powder Company had. All such discussion has nothing to do with the matter. Whether or not an individual or a corporation that owns either thirty-three or forty-nine per cent. of the stock in another corporation thereby controls the affairs of that other corporation, must be a question of fact. If such control exists, the only way in which it would be capable of being manifested would be that thereby a Board of Directors would be elected in the interests of such stock holdings. That such a Board was never in existence cannot be denied. The duPont Powder Company and its predecessors at times had a representative on the Boards of those two companies, but that is as far as any participation ever went.

There is no evidence in the record to show that any such control was exercised over either corporation, and on the contrary, there is a great deal of evidence in the record to show there was no such control. Mr. Olin was

president of the Equitable Powder Manufacturing Company and he testified as follows at page 597 of the Record:

"Q. In reference to the stock ownership of the duPont Company in the Equitable Power Company, I understand that is 49 per cent.? A. Yes, sir.

Q. I desire to ask you as to the individual holders of the other 51 per cent., Mr. Olin, but I would like to have you state, if you have no objection, as to whether that 51 per cent. is held by a very few individuals? A. Very few.

Q. And is that 51 per cent. of stock harmonious in its action in reference to the control of the Equitable Powder Company? A. Entirely so.

Q. And has it been since the organization? A. Always been.

Q. And has that stock interest of 51 per cent. always controlled the Equitable Company and its policies? A. Yes, sir.

Q. How many directors have the duPont interests on the board? A. Two.

Q. How many of your interests? A. Three.

Q. Are there frequent directors' meetings, at which these two directors attend? A. No, sir.

Q. In a general way how often are those meetings held? A. The last meeting was subsequent to the annual meeting in February last.

Q. Now, in the practical operation of your company, and I refer to the period from its organization down to September, 1908, did the duPont Company or any of its officers, as a matter of fact ever dictate any policy of the Equitable Powder Company? A. No, sir.

Q. Did they ever have anything whatosever to do with the prices at which you sold your product to any customer? A. No, sir.

Q. Did they know how much you were charging for your powder to various customers? A. Only as they could get it from the customers.

Q. You never told them? A. No, sir.

Q. And they were not consulted? A. No, sir.

Q. Was any arrangement whatsoever made with the duPont Company as to a division of trade in reference to your customers, of the Equitable? A. No, sir.

Q. That was entirely managed by yourself and

the other internal officers of the company, was it not? A. Myself, principally.

Q. Where are the executive offices of the company located, Mr. Olin? A. The two that were referred to—C. L. Patterson, I think——

Q. I mean the offices? A. Their principal offices are at East Alton, Illinois.

Q. And is it from that office that the sales are made and prices fixed, and customers attended to? A. Yes, sir.

Q. And of course the duPont Company has no representative there and never did have? A. No, sir."

The members of the Executive Committee of the duPont Company have testified on this subject. Mr. T. C. duPont, President of the Company and member of the Executive Committee, states as follows (pp. 1902-3):

"Q. As a member of the Executive Committee and an executive officer of this corporation, do you know of any control exercised by the duPont Powder Company over the Equitable, Austin, Egyptian or United States Powder companies during that period? A. No, sir; none whatever.

Q. Was there any action ever taken by your executive committee or by your board looking to the exercise of any control over all or any of these companies? A. No, sir.

Q. Did you have anything to do whatever with shaping the business policy or the prices for black blasting powder charged by these companies or any of them? A. None whatever.

Q. Was there ever any arrangement made with these companies, or any of them, by the duPont Company, by which the duPont Company was to be compensated in any way for any losses which it might sustain in carrying on any competition against any competitor? A. None whatever.

Q. Was there any such arrangement or understanding, express or implied, between your company and any of those companies concerning the Buckeye Powder Company? A. No, sir.

Q. In view of that, of course, it follows that the duPont Powder Company never did receive any such compensation? A. None whatever."

The testimony of the other members of the committee is practically to the same effect and it does not seem necessary to quote it in full. It will be found in the following places in the record:

Hamilton M. Barksdale, pages 1910–11;
J. A. Haskell, pages 1932–34;
A. J. Moxham, page 1945;
P. S. duPont, page 1952.

The above testimony is not contradicted by anything in the record.

The brief of the plaintiff-in-error (p. 112) claims that this instruction negatived the plaintiff's contention that these two companies continued to act in combination with and as co-conspirators of the duPont Powder Company. If there is any evidence in the record to show that there was such combination and conspiracy, this instruction certainly does not do away with such evidence. It is further contended on the same page that the instruction supports the defendant's contention that the two companies were in active competition with each other. If the defendant's testimony as above recited is true, and there is nothing to refute it, it has the effect claimed only by negativing the fact that this stock ownership controlled those two companies. It is to be noted that in the very long list of co-conspirators prepared by the plaintiff and inserted in its amended declaration, neither the Equitable Powder Manufacturing Company nor the Austin Powder Company is mentioned as a co-conspirator; consequently it is not even charged that those two companies were in any combination or conspiracy (Transcript, p. 3).

The plaintiff in error details the amount of powder produced by these two companies, among others (brief, p. 114), and claims that it was not in competition with the defendants. Whether it was or not was all submitted to the jury and has nothing to do with the question of this stock ownership.

The brief cites the case of *United States* v. *Union*

Pacific Railroad Co. (226 U. S. 61), to the effect that minority interest may control a corporation (Brief, p. 129).

An examination of this case shows that the Court did not hold any such thing but held directly the opposite, that is, the question of whether any particular stock interest gave control of a corporation is a question of fact depending upon all the circumstances. It is true the Court held that in this particular case 46 per cent. of the stock was ample to give control, but it came to that conclusion because the testimony in the case showed that situation to exist. On page 95 the Court makes the following statement:

> "But it is said that no such control was in fact obtained; that at no time did the Union Pacific acquire a majority of the stock of the Southern Pacific, and that at first it acquired but thirty-seven and a fraction per cent. which was afterwards somewhat increased and diminished until about 46 per cent. of the stock is now held. In any event, this stock did prove sufficient to obtain the control of the Southern Pacific. It may be true that in small corporations the holding of less than a majority of the stock would not amount to control, but the testimony in this case is ample to show that distributed as the stock is among many stockholders, a compact, united ownership of 46 per cent. is ample to control the operations of the corporation. This is frankly admitted in the testimony of Mr. Harriman, the prime mover in the purchase of the Southern Pacific. It was purchased, he declared, for the purpose of getting a dominating interest in the Southern Pacific Company, and, he added, the Union Pacific did thus acquire such interest."

The plaintiff also cites the testimony of T. C. duPont and P. S. duPont in reference to the control of the duPont Company over the California Powder Works in one instance and over other corporations in which it was interested in another instance. An examination of this testimony, however, discloses the same situation. Mr. T. C. duPont says that the minority interest his company had in the California Powder Works practically controlled

it because the other stockholders took no interest in the business and left it to the duPont Company. Mr. P. S. duPont says the same thing in regard to the corporations he was speaking of, and instead of substantiating the plaintiff's claim, this testimony, of course, substantiates the defendant's claim to the effect that whether a stock interest gives control or not depends upon the situation and is a question of fact.

It is submitted that the instruction of the Court was correct to the effect that the defendant exercised no control over either of these corporations by virtue of the stock it owned in them.

Assignment of Error No. 11:

At the request of the defendant the Court instructed the jury as follows (Record, p. 2517):

> "There is no evidence showing that any of the defendants knew or had anything whatsoever to do with the purchase of the Buckeye powder plant and property by Mr. Olin and his associates, and therefore you must not consider the fact of such purchase as tending to establish any combination or conspiracy or other conduct prohibited by the Sherman Act."

The testimony in the record that justifies this instruction is full and uncontradicted. Mr. Olin and Mr. Lent personally and not in the name of any corporation purchased from Mr. Waddell and the other stockholders the property of the Buckeye Powder Company. It is, of course, to the interest of the plaintiff in error to maintain that this was done at the instance of the duPont Powder Company and a long and confusing argument to this effect is included in the brief of the plaintiff in error from pages 115 to 130. The record, however, is all to the effect that the defendants had nothing whatsoever to do with this purchase.

Referring to the plant of the Buckeye Powder Company Mr. Olin testified (Record, p. 1989):

> "Q. Now, when you bought this plant, Mr. Olin, did you have any communication whatsoever in reference thereto with the duPont Company or any officer connected with the duPont Company? A. No, sir.
>
> Q. Did they have any knowledge whatsoever of your intention of purchasing that plant? A. No, sir."

Further, on page 1990:

> "Q. You testified this morning that in purchasing the Buckeye Powder plant you did not disclose your object to the duPont Company. I will ask you if you took it up with any other powder companies besides the duPont Company? A. No, sir.
>
> Q. Was Mr. Lent associated with you in the purchase of the Buckeye Company? A. Yes, sir.
>
> Q. Outside of you and himself and Mr. Waddell and his stockholders, did anyone know anything about it? A. Not that I know of."

It, therefore, appears that not only is there nothing in the record which shows that any of the defendants had any such knowledge, but the record, on the contrary, shows exactly the opposite state of affairs.

At page 117 of the brief it is claimed that the Austin Powder Company was interested in this purchase. There is no evidence whatever in the record to this effect. The purchase was a personal one by Mr. Olin and Mr. Lent. It is there also stated that the ownership of the plant soon went to the Egyptian Powder Company, a concern that was controlled by the Equitable Powder Manufacturing Company. This is entirely incorrect and the only basis for this contention is Mr. Olin's testimony in this regard found on page 586 of the record which is as follow:—

> "Q. You are at the present time, I believe, connected with the company known as the Western Powder Manufacturing Company? A. Yes, sir.

Q, Located at Edwards, Ill.? A. Yes, sir.

Q. Do you have any other plants at which black blasting powder is manufactured except the Equitable and Western Powder Manufacturing Company? A. The Equitable have another plant——

Q. I mean the Equitable Company. A. The Egyptian Powder Company.

Q. What plants are they that the Equitable Company is interested in? A. The Equitable owns the plant at East Alton, Ill., and the one near Fort Smith, Ark. The Egyptian owns the plant in Williamson County, near Marion, in Southern Illinois, and the Western Powder Company's plant."

It is perfectly evident that Mr. Olin did not intend to say that the Egyptian Powder Company owned the Western Powder Company plant. The examination began with a question as to whether he had any other plants that manufactured blasting powder except the Equitable and the Western Powder Manufacturing Company. Then the following question was put to him:

"Q. What plants are they that the Equitable Company is interested in?"

He then answers:

"A. The Equitable owns the plant at East Alton, Ill., and the one near Fort Smith, Ark. The Egyptian owns the plant in Williamson County, near Marion, in Southern Illinois, and the Western Powder Company's plant."

It is perfectly apparent that Mr. Olin had in mind that he was being asked to state what black powder plants he was interested in. His answer is somewhat confused, but the other portions of the record show that the Western Powder Company was a separate corporation formed by Mr. Olin and Mr. Lent to acquire the Buckeye property. This testimony simply grows out of the confusion in Mr. Olin's mind as to just what was being asked him. The answer was in no wise confined to the question which was put to him and which was simply as to what plants

the Equitable Company was interested in. His answer manifestly goes beyond the question, thus indicating that he had it in mind that he was requested to give the names of all the plants in which he was interested. Furthermore, even if it did appear that the Egyptian Company owned the Western Powder Company plant, that in turn would not charge the defendants with any knowledge as to its acquisition, so the point is more or less immaterial in any event.

The brief continues with a discussion of the Gunpowder Trade Association, although the plaintiff's counsel is perfectly well aware that that Association disappeared in 1904, several years before the Buckeye Powder property was purchased.

It further appears that a month or so after Mr. Olin and Mr. Lent purchased this property, the duPont Powder Company bought some powder manufactured there, this for the reason that it had had an explosion in one of its Western plants.

There is not the slightest evidence that prior to the purchase of the plant, or as an inducement therefor, such an arrangement was in existence. The whole testimony is to the contrary. The arrangement is set forth in certain correspondence printed in the brief of the plaintiff in error from pages 119 to 121. The first letter which was dated November 18th, 1908, the plant having been purchased two months previous, refers to a conversation in New York as the beginning of the arrangement for the purchase of this powder. Mr. Olin testifies that that interview was three or four days prior to the writing of the letter (Record, p. 600).

The brief of the plaintiff in error maintains that this is not likely. Whether it is or not, certainly the Court could not have allowed the jury to speculate as to whether the arrangement in this letter was made weeks prior to its date and before Mr. Olin purchased the plaintiff's property, because there is certainly no evidence on which any such speculation could be based.

The brief of the plaintiff in error (p. 121) maintains that

Mr. Olin was not positive in regard to the date of the interviews and unwilling to put himself on record. His testimony previously quoted to the effect that the duPonts knew nothing whatever about the purchase of this plant seems to be sufficient record in this regard. It is next claimed that Mr. Patterson must have been obliged to consult the officers of the duPont Powder Company before buying this powder. If so, it would seem to be unimportant. It is next claimed (p. 123 of brief, plaintiff in error) that about this time Mr. Patterson went on the Board of Directors of the Equitable Powder Manufacturing Company with Mr. Haskell. Inasmuch as that company had nothing to do with the purchase, this fact, if true, would seem to be immaterial. It is next claimed that Mr. T. C. duPont in December, 1906, knew that Mr. Waddell was trying to sell his plant to some coal operators and, therefore, the duPont Company, being so thoroughly posted in that regard must have known of the sale to Olin two years later. This is a rather arm's length conclusion, but when we consider that the source of information that the duPont Company had in 1906 in reference to the then proposed sale to the coal operators was Mr. Ferdinand Luthy, one of Mr. Waddell's stockholders who corresponded with Mr. T. C. duPont and had several interviews with him (Record, p. 615 *et seq.*), the conclusion would scarcely follow that the duPont Company was favored with similar information in 1908. Although the defendants were unable to show the situation conclusively, it is quite apparent from Mr. Luthy's correspondence and his interviews that he went to Mr. T. C. duPont to threaten a sale of the Buckeye plant to the customers of the duPont Company in case Mr. T. C. duPont did not see his way clear to buy it out at that time.

Although Mr. Luthy denies that this was his object, a reading of his correspondence and his testimony on pages 615 to 627 of the Record will go a long way to convince one of that state of facts, particularly if we may apply the legal contention of the plaintiff in error made in this

case, that nothing need be proved by direct evidence, but is to be taken by surmise and implication.

It is next claimed in this regard (Brief, pp. 125 and 6) that the duPont Company gave up some of its trade to the Western Powder Company after Mr. Olin had purchased the Buckeye plant. There is not the slightest evidence in the record to substantiate any such statement.

It is next claimed (Brief, p. 128) that because the duPont Company owned stock in the Equitable and Austin Powder Companies, they were presumed to know about this purchase. Inasmuch as neither of those companies had anything to do with the purchase, it is difficult to follow this conclusion. Even if those companies did have something to do with the purchase, we do not think that minority stockholders are to be charged with knowledge of everything that is done by the owners of the majorty of the stock of the corporations in which they are interested.

The discussion is practically concluded by the inquiry (Brief, p. 128):

> "How is it possible to say that there is no evidence of a combination between these interests to control the explosives trade, or of the charge that the defendants knew of and had anything to do with the purchase of this plant?"

If there was a combination between these defendants it has nothing to do with the instructions complained of and that the defendants had any knowledge of Mr. Olin's intention to purchase the Buckeye plant is not only refuted by the direct evidence in the record, but there is not a scrap of evidence that can be pointed out as showing that such knowledge existed.

Assignment of Error No. 12:

This assignment is based on the instruction of the Court to the jury that there was no evidence that would sustain the allegations of the plaintiff that the defendant

had sold its powder below actual cost. This matter is discussed in the plaintiff's brief on pages 181 to 189. Most of this discussion relates to the testimony of Mr. Haskell and others as to whether the plaintiff could make money under certain conditions, a matter, of course, not involved in this assignment of error. The sole question here is whether or not the duPont Company sold its powder below cost. The long extracts quoted in the plaintiff's brief from Mr. Haskell's testimony contain no evidence that the duPont Company did any such thing. The long quotations from Mr. Patterson's testimony again show no such condition of affairs. The references to conditions in 1895 and theretofore are entirely beside the question, as they were not within the period involved in the Court's charge, and furthermore, the statements in the plaintiff's brief as to the effect of the evidence, even at that remote period, is entirely incorrect. The record shows no such state of affairs.

The only evidence bearing on the charge that the plaintiff is able to point out is a solitary statement of Mr. Waddell. This testimony of Mr. Waddell appears on pages 812 and 813 of the record. He was asked to give the circumstances by which he knew that the duPont Company had sold powder below cost, whereupon he answered:

> "In the cases where they sold powder at ninety cents, ninety-two cents,—in all cases of of that kind and in many cases where they sold at ninety-five cents delivered where the freight rate was high and in the district in which I operated."

In regard to this answer, there is no evidence in the record showing that the duPont Company sold any powder at ninety or ninety-two cents. Therefore, the proposition must be confined to his statement that in many cases powder when sold at ninety-five cents delivered where the freight rate was high was sold below cost. The record does disclose some sales by the defendants at ninety-five cents. It does not, however, disclose

anything in reference to the freight rates charged on those sales, nor in reference to the plants from which such orders were filled. Furthermore, the testimony of the defendant's witnesses all was to the effect that they never sold powder below cost. Under these circumstances, this answer given by Mr. Waddell, discredited as he was, cannot be considered to be evidence of the fact that the defendant sold powder actually below cost.

It is further to be observed that Mr. Waddell's answer confines these ninety-five cent sales in which he claims money was lost to his district.

In this regard it should be remembered that the cost to the duPont Company was probably considerably less than the cost to the Buckeye Company.

We further submit that this is a question which cannot properly be considered by the Court in the absence of substantial portions of the record which as heretofore pointed out are not included in the bill of exceptions. Such portions would modify the questions involved in this assignment of error very materially.

After having discussed Assignment of Error No. 12 as if it involved nothing except the foregoing matters, the brief of the plaintiff in error proceeds with a protracted discussion from pages 190 to 238 of certain portions of the Court's instructions to the jury alleged to be the subject of the same assignment of error. The portion of the charge here considered is as follows:

> "There is no evidence, gentlemen, that would sustain the allegations made by the plaintiff, that * * * cash, intoxicating liquors, household goods and clothing were distributed among miners to secure their influence with their fellow workmen to effect boycotts, * * * and my instructions to you are, as to these particular allegations, that they have not been established, and you will therefore disregard them entirely in your further consideration of the issue here being tried."

The plaintiff in error took no exception to anything contained in the above charge except as follows (Record, p. 2518):

> "Mr. Abbott: We also desire to except to Your Honor's instruction to the effect that there is no evidence that the defendant distributed cash to the miners.
>
> The Court: You may take an exception. I withdraw that question from the jury."

Despite the above limiting exception, the plaintiff in error has seen fit to enter into a long discussion of various methods by which the consumers of powder might have been influenced against the plaintiff's powder. It is evident that nothing can be here considered except the mere question of whether there was any evidence to the effect that the defendants distributed cash among miners to secure their influence to effect boycotts. The record discloses no such evidence.

From pages 194 to 198 of its brief, the plaintiff in error complains that after having instructed the jury that there was no evidence to support these allegations and withdrawing the entire question from the jury, the Court commented at length on the evidence relating to what were known as the "Thrush Incident" and the "Spicer Incident".

The Spicer incident did not involve the distribution of cash, which was the subject of this exception, and was submitted to the jury in its entirety.

The Thrush incident, which was commented upon by the Court (see Charge, Record, pp. 2464–66), was submitted to the jury for all it was worth, and did not involve any question of distributing cash for the purpose of creating boycotts. It further appears that the Thrush who was advocating the introduction of duPont powder was employed by one Moffatt, who had no connection with the duPont Powder Company. This is a sufficient answer to the criticism of the plaintiff in error. The fact is, the Court did not withdraw the consideration of those incidents from the jury.

Beginning on page 198 of the brief appear what are termed "General Evidences of Improper Influences Exercised by the Defendants", all of which discussion has no proper place under this exception, but it will be here considered inasmuch as it has been briefed by the plaintiff in error.

The first point made is concerning certain agreements between the miners' associations and the coal operators' associations (Brief, p. 198). These agreements have nothing whatsoever to do with the matter under discussion.

The second contention is under the head of Pit Committees. There were pit committees probably in all of the mines, but that fact certainly is no evidence of any improper action on the part of the defendants.

In the third place, under the head "Employing Howlers", the plaintiff's brief recites certain testimony given by R. S. Waddell. In the Record, page 744, Mr. Waddell stated that the Oriental Powder Mills had had a contract for a couple of years with the Smoky Hollow Coal Company, which information he got from the Oriental Powder Mills; that complaint had been made by the Oriental Powder Mills that they were unable to supply the Smoky Hollow Coal Company because the duPont Company through its agent Donnelly had howlers in the mines of the Smoky Hollow Coal Company who would raise a disturbance when the Oriental powder went into the mines, and that the Oriental Company had asked the duPont Company to stop this practice; that Mr. T. C. duPont came into Mr. Waddell's office and asked him what he could suggest as a method of stopping Donnelly from hiring howlers in coal mines, complaining that Donnelly had howlers paid to raise trouble if any powder other than the duPont was used in mines at Springfield and in Northern Illinois and Iowa. Mr. Waddell had no suggestions to make, as he had no control over the Chicago office.

In the first place, this testimony relates to a time long before any period during which the plaintiff could recover

damages and in fact to a period prior to the formation of the plaintiff.

Mr. duPont absolutely denied having had this conversation with Mr. Waddell.

In the next place, it is plain from the conversation as detailed by Mr. Waddell that there was no personal knowledge on the part of either himself or Mr. T. C. duPont as to this matter; that at the most, if it were true, it simply indicated that some third party had made certain statements to Mr. duPont in this regard, which statements Mr. duPont in turn had discussed with Mr. Waddell. This certainly cannot be enlarged into evidence of the fact that "howlers", whatever they may be, were actually employed in this mine. The fact that the episode referred to occurred prior to the organization of the plaintiff is a sufficient reason why this conversation, if it occurred, cannot be considered as evidence supporting a request to charge which is specifically to the effect that the defendants employed people to circulate among various miners to cause them to become dissatisfied with and object to the use of powder manufactured by the plaintiff. We also call attention to the charge of the Court (Record, p. 2514), as follows:

> "The fact that Mr. Waddell, Sr., testified that he told certain persons certain things is no evidence of the truth of the things related".

A discussion then follows under the heading "General Conditions in the Peoria and Springfield Districts".

The testimony of Thomas J. Reynolds is mentioned, which nowhere refers to the duPont Company, or any of its officers.

A discussion follows under the heading of "Specific Instances of Influence of Miners against the Plaintiff's Powder".

The deposition of Mr. Horace Clark is mentioned, in which a letter was brought out to the Buckeye Company, saying that Mr. Clark would like to use their powder, but

his miners positively would not use anything but duPont powder. This is not evidence that that very sensible conclusion had been induced by any undue means. Something is made of Mr. Donnelly's trade report to the effect that Mr. Thiesen, superintendent of this mine, "was a good friend of ours and that the trade was all right". This certainly is no evidence of anything except good will.

Then Mr. Haskell's testimony is commented upon. All he says is that the only way of selling powder to a coal mine was to get the good will of the manager, a condition probably necessary to the sale of anything to any company. Mr. Haskell says that he has no recollection of any commissions being paid, although at times cases of shells were given.

The next statement mentioned relates to the Howarth & Taylor matters. A trade report is quoted to the effect that Mr. Taylor personally favors duPont powder and the miners favored Buckeye powder, and continues "that if the miners could be induced to demand duPont we might be able to secure a contract with Mr. Taylor, provided the price was any where near what he was paying for Buckeye". In the deposition of Mr. Taylor and his wife it appears that thereupon a test was made in the mine between the duPont and the Buckeye powder, the result of which was so much in favor of the duPont powder as to furnish very ample reasons as to any change of attitude on the part of the miners in regard to the two powders. That there was anything improper in this there is absolutely no evidence. This testimony is in the record at pages 2069 and 2082.

The next case mentioned is that of the Maplewood Coal Company. It appears the Pit Committee decided they would not use Buckeye powder and demanded duPont powder. An argument is made to the effect that the miners have much to do with what powder they shall use. We are willing to admit that they have almost everything to do with what powder they shall use, and why shouldn't they?

There is no evidence in regard to this mine that shows in the slightest degree that any influence was brought to bear upon the miners by any of the defendants. Mr. McElwee stated that the reason he ceased to use Buckeye powder was that they received unsatisfactory shipments of said powder that was not properly screened and graded (Record, p. 2138).

The next incident commented upon is one relating to the mines of Applegate & Lewis. Mr. Lewis and Mr. Morton testified that for certain reasons they wished to use the plaintiff's powder, but that the miners objected to it. A test was made which Mr. Morton claims was unfair to the Buckeye powder, because he discovered some of the miners undercutting the coal that was being taken out with the duPont powder, whereupon he ordered the test to be stopped. There is no evidence here whatsoever that the duPont Company had anything to do with it, or had used any influence whatsoever in the matter. There were reasons enough why the miners might properly prefer duPont powder rather than Buckeye.

The brief of the plaintiff in error next takes up for discussion the employment of Alec Thrush by one Moffatt, who was a salesman of Dooley Brothers, to advocate the introduction of duPont powder in a certain mine. The portion of Alec Thrush's deposition that related to the arrangement he made with Moffatt was excluded, but over the objection of the defendants the Court allowed the cross-examination of the witness to be read to the jury, the evidence have been taken in the form of a deposition. The cross-examination did disclose that Moffatt had agreed to pay Thrush five cents (5¢) a keg for such powder as was introduced. There is nothing in this incident that is contradictory to the instruction of the Court, but it further appears that the defendants were in no wise responsible for anything that was done either by Moffatt or by Dooley Brothers. Although the brief of the plaintiff in error (p. 215) makes the statement that Dooley Brothers were the agents of the duPont Company at Peoria, the record establishes the fact that they were not such agents and

particularly the fact that they had no authority from the defendants to adopt any such methods, if they were adopted.

The brief of the plaintiff in error (pp. 216-224) discusses the relations between Dooley Brothers and the duPont Company, with the intent of establishing the responsibility of the duPont Company for anything that was done by Dooley Brothers. The facts in this regard are as follows:

Mr. Moffatt was an employee of Dooley Brothers. In the first instance, it is apparent from the witness's own statement that what Mr. Moffatt did was in no wis- brought home to the firm of Dooley Brothers, his employers. Consequently, there is a hiatus there, but it is also true that there was no relation between Dooley Brothers and the defendants, or any of them, which would make the defendants responsible for the acts of Dooley Brothers, even if we were to admit that Moffatt was acting within the scope of the authority he had from Dooley Brothers.

Dooley Brothers was a partnership between the years 1903 and 1908, composed of James B. Dooley and his brother. They conducted a general business in the sale of coal, powder and mining supplies in Peoria, Illinois. Mr. James B. Dooley was examined as a witness for the plaintiff and his testimony is found at pages 606 to 615 of the record. He testified that he had occasion to use black blasting powder in the way of selling it and said he purchased it and resold it; that during the said period he so purchased and sold duPont Powder; had a written arrangement with the duPont Company covering his relations during the period in question but was unable to find it. He testified that when his partnership made a sale of powder to a customer his concern was responsible for the account. In some instances sales were made directly by the Powder Company to customers in his district and in that event the duPont Company paid him a commission (Record, pp. 606-608). In cross-examination

it turned out that there was only one instance in which the duPont Company had sold a customer direct and paid Dooley Brothers a commission; that ordinarily if the sales were direct Dooley Brothers had nothing to do with it (Record, p. 611). Mr. Dooley further testified that the duPont Company had nothing to do with the question of what salesmen Dooley Brothers should employ nor of the payment of them (Record, p. 611). Dooley Brothers controlled them absolutely; Dooley Brothers had to pay the duPont Company for the powder regardless of whether they succeeded in collecting the price of it from their customers or not (Record, p. 612). Mr. Dooley further testified that Mr. Moffat was a salesman of Dooley Brothers (Record, p. 614). The reference to Mr. Moffatt as vice-president and stockholder refers to a later date.

Certainly there is nothing in the above to the effect that Dooley Brothers are agents of the duPont Company; they bought powder from that company and resold it. It is therefore apparent that anything that was done by them or their employees cannot be charged to the account of these defendants.

In addition to the above, the plaintiff produced and introduced into evidence a number of contracts. These contracts fall into three classes.

First—contracts like Plaintiff's Exhibit P-162 on Page 2587, which is a contract between the duPont Company and Dooley Brothers, providing for the sale to Dooley Brothers of all the explosives and blasting supplies needed by Dooley Brothers for use or sale in the Peoria coal mining district, specifying the prices and terms of payment, contract to remain in force for a year and thereafter from year to year unless ended by sixty days' notice.

It will be noted that the above contract is dated in 1912, a period long after any of the matters involved in this suit, but there is a similar contract, Exhibit 1247-B, page 2722, dated in 1907.

There is nothing in this class of contract, to create any relationship except that of seller and purchaser.

The second class of contracts is illustrated by Exhibit 1247-AA on page 2724, which is a contract between the duPont Company and Dooley Brothers, whereby there is sold to Dooley Brothers all the explosives and blasting supplies required by Dooley Brothers for use of Sholl Brothers mines at Peoria, at certain prices and on certain terms. This contract, however, has in it a provision that the price shall be less five cents per keg commission to Messrs. Dooley Brothers.

It might be argued from this contract that Dooley Brothers were commission agents of the duPont Company, but even so, that does not make the duPont Company in any wise responsible for any act committed in the sale of powder by an employee of Dooley Brothers or in fact, for any act committed by Dooley Brothers.

There is a third variation of the contracts above mentioned, illustrated by Exhibit 732 on page 2590, which is a contract for the sale of powder to a coal company and is signed "E. I. duPont Company by Dooley Brothers, Agents". It is provided that the contract cannot become effective until accepted by the duPont Company at Wilmington. The most that could be claimed for this kind of a contract is that in some instances the Dooley Brothers were agents for E. I. duPont Company to the extent of negotiating a contract to be accepted by that company.

All of these contracts and anything that is in them are entirely beside the question, and even if it were established that Dooley Brothers were general agents of the duPont Company it would be immaterial because there could not be implied from any such situation, authority on the part of Dooley Brothers to commit an act that is forbidden by the law. Certainly that would not come within the scope of any agent's authority, and if such an act was committed it can in no wise be laid at the door of any defendant in this case until there is some evidence produced bringing home the knowledge thereof to such defendant.

The next incident discussed relates to the business of the Great Northern Fuel Company, at Novinger, Missouri,

a matter concerning which there was considerable testimony in the record. We think that we can dispose of the long discussion of this matter in the brief of the plaintiff in error (pp. 225–237), by pointing out the fact that it was a separate incident in the evidence, treated by the Court fully in its charge as a separate incident, and properly submitted to the jury. The only claim that can be made for the evidence by the plaintiff is that it indicated that a traveling salesman of the defendant, Mr. Spicer, went to this mine and influenced some of the miners to strike because the duPont was union powder and the Buckeye powder was not. A consideration of the evidence will show that this claim was entirely unfounded. As a matter of fact, the Buckeye powder was a union powder and the duPont powder was non-union powder, but certainly it cannot be claimed that evidence of this sort would justify an instrution to the jury in reference to the employment of miners and other persons to circulate among users of powder in coal mines to induce them to make protests and complaints to their employers against the use of the plaintiff's powder. Having submitted this evidence to the jury in some detail and having instruced the jury fully in regard thereto, certainly the Court was not called upon to give any such charge as here requested, indicating, and it does, that any such practice, if it existed, was a usual and general practice on the part of the defendants.

We submit that there is no evidence whatever which connects the duPont Company with any illegal methods in either the retention of the use of duPont powder in coal mines, or in the introduction of this powder into coal mines. The evidence shows that the duPont powder was a well known powder; that it had been manufactured for many years; that the miners were familiar with the use of it; that they had used it for many years; that they knew its strength; that they knew what results could be obtained by the use thereof; that working as they did, in the bowels of the earth, they would naturally prefer to use a powder which they had been accustomed to use, and

from the use of which they could obtain certain and exact results. Considering the danger of working in the coal mines and the dangers incident to the use of unfamiliar powder, it is not unlikely that the miners would desire a well known and standard powder in preference to one that had been made but for a short time and the introduction of which was being sought. In this connection, it must also be remembered that the miners paid to the operators a uniform price for the powder, namely, $1.75 per keg. This price the miners were obliged to pay. The operators naturally were desirous of securing powder as cheaply as possible and the evidence shows that the plaintiff, in order to introduce its powder, started out by making concessions to the operators to induce the sale thereof below the price charged by the duPont Company. The miners, paying as they did, such a large price for the powder in comparison with the price paid by the operators, were in the first place desirous of securing the powder that would mine the largest tonnage per keg, and, secondly, it is presumed that they were indifferent to the fact that the plaintiff's powder could be purchased by the operators for a lesser price than duPont powder. These reasons were undoubtedly the reasons which were the foundation for that which the plaintiff in its brief calls "prejudice," but which in fact was nothing more than a desire for self-preservation by continuing to use that which they had used and had found for many years satisfactory.

Assignment of Error No. 13:

The assignment of error is considered in the brief of the plaintiff in error from pages 291 to 224.

This assignment of error is based upon the instruction given by the Court to the jury to the effect that the plaintiff and the defendant each had a paid representative looking after its interests among the miners at a certain mine while a test was being made. The period, however, the Court stated to the jury, was in dispute between Mr. Thrush and Mr. Waddell.

There can be no doubt upon this record but that the Buckeye had a paid representative in that mine. His name was Alec Thrush, and he has testified to the circumstances and identified receipts for payments received by him from the Buckeye Powder Company. His testimony in this regard will be found in the record, pages 1865 *et seq.* Mr. Thrush testified as follows in reference to his arrangement with Mr. Waddell:

> "Q. What was it? A. He proposed to compensate me for my trouble.
>
> Q. How much was he going to pay you? A. He was going to pay me a dollar a day for looking after the business and furnish what powder I used free of charge.
>
> Q. And was anything said as to what was to happen in case you got the powder established in the mine? A. Not at that conversation, there was not. There was later.
>
> Q. Where was the later conversation? A. It was in his office in Peoria.
>
> Q. What was said in that regard at that time? A. That if we got the powder established there I was to get a commission on all powder that came in there.
>
> Q. After it was established? A. Yes.
>
> Q. How much commission were you to get then? A. I believe it was ten cents a keg" (p. 1866).

He goes on to say that thereafter he did his best to get the powder introduced.

On page 1877 appears a statement of account involving some of these payments to Mr. Thrush, which are identified by the witness.

Mr. Waddell, himself, president of the plaintiff corporation, testifies on page 2420 in regard to the matter:

> "I employed Mr. Thrush at $1. a day to go about the mines of Appelgate & Lewis after his days' work was done, to assist other men, other miners, in the proper use of Buckeye powder. He was a very successful miner with that powder. I agreed to pay him a dollar a day. He was employed for thirty days. I paid him $30. for that work."

He stated that Mr. Thrush's statement that he was employed for two months is not correct. He also introduced a voucher showing payment of $30. to Thrush from the Buckeye Powder Company under date of October 22, 1906, services for which said payment was rendered, being described as follows:

> " October 22, 1906.
>
> To introducing Buckeye powder in mines of Appelgate & Lewis Coal Company..... $30 " (p. 2421).

One of the owners of the Appelgate & Lewis mines, Mr. R. E. Lewis, on cross-examination (p. 634, fol. 1901), was asked:

> " Q. You spoke of tests made at Hanna City. Do you recall in what year they were made? A. I could not say that, no."

On the following day Mr. Robert Morton, the Superintendent of the Appelgate & Lewis mines, testified, and was asked by Mr. Abbott the following question:

> " Q. You heard the testimony of Mr. Lewis yesterday, did you not? A. Yes, sir.
>
> Q. You heard him testify regarding a certain test that was made at the mines during the Fall of 1907? A. Yes, sir."

From this testimony it will be noted that Mr. Morton was basing his testimony upon what was supposed to be the testimony of Mr. Lewis, whereas, Mr. Lewis was unable to tell at what time the test occurred.

The brief of the plaintiff in error has quoted only a portion of the charge of the Court in this regard and makes the statement, page 223, that this instruction of the Court implied in some way that the plaintiff was endeavoring to secure the introduction of its powder by unfair means. There is nothing whatever in the charge of the Court to indicate this. On the contrary, the occasion of this portion of the charge was that the plaintiff claimed that the

defendant used unfair means to introduce the duPont powder and to get the Buckeye powder discarded, and in the Court's charge (Record, p. 2464 to p. 2466) this matter was submitted to the jury as being one of the plaintiff's claims together with a reference to the evidence relating thereto. Incidentally, the Court made the statement complained of which, as above shown, is fully supported by the record. It consequently appears that instead of indicating to the jury that the plaintiff was doing anything improper, the Court was submitting to the jury the plaintiff's claim that the defendant was guilty of improper conduct, and certainly stated the matter to the jury as strongly against the defendant as the facts warrant.

In reference to the statement that Mr. Alec Thrush was not present while this test was being made, the Court stated that the period was in dispute. It is also true that the period at which the test was made is not definitely established, and furthermore, the Court did not tell the jury that this man was present at the test, but simply stated that while the test was going on the plaintiff had a paid representative among the miners. This statement is perfectly true.

Assignment of Error No. 14:

This assignment of error is based upon the refusal of the Court to permit R. S. Waddell, a witness for the plaintiff, to state what caused him to make an investigation to ascertain how it happened that he received advices from his customers that powder had been shipped by his company before information in reference thereto had been received at his company's office.

It appears that Mr. Waddell was asked a series of questions on page 805 of the record as to whether he had caused an investigation into this matter to be made, which questions were overruled. He was then allowed to state that there were instances in which his company had made shipments of powder wherein the advice of such shipments reached him from other sources than the con-

signees before he had received that information. This testimony is somewhat mixed up, and it is not plain just what was intended. He mentioned four or five persons from whom he had received such information. He was then asked what these customers advised him and was not allowed to state. The plaintiff's counsel then made an offer to show that the witness had made an investigation and ascertained from certain railroad companies something in reference to how this information was promulgated. The Court refused to allow the witness to state this on the ground that it would be nothing except hearsay evidence (see pp. 809 and 10 of the Record).

It is apparent that this ruling was entirely correct because the offer was to have Mr. Waddell make a statement as to what somebody who was not called as a witness had on some occasion stated to Mr. Waddell. That proposition would not seem to require argument.

In the next place, the exception was not to the refusal of the Court to allow Mr. Waddell to make this statement, but the exception is to the refusal of the Court to allow Mr. Waddell to state what purpose he had in instituting the investigation, which it is claimed resulted in the hearsay evidence that was excluded. There is no question in the record that supports this exception. He was nowhere asked what his purpose was in instituting such an investigation. If he had been, it of course would have been entirely irrelevant and immaterial. In any view of the matter there was no error committed.

Assignment of Error No. 15:

This assignment is somewhat discussed in the brief of the plaintiff in error at pages 240 and 241. The plaintiff claimed that the duPont Company was obtaining information in reference to the details of its shipments of powder from certain railroad companies. Mr. John G. Miller was produced as a witness for the plaintiff and testified that having become suspicious of such a situation, he made an investigation and got the railroad company to make an

investigation of the circumstances. Whereupon he was asked the question:

> "Q. Now do you know what the result of that investigation was?" (Record, p. 322).

This question was excluded by the Court, to which the plaintiff excepted. It is evident that the question called only for hearsay evidence, not only this, but for a conclusion. It called for the statement of what certain third parties said to Mr. Miller, and further, if they said anything, it called for his conclusion as to what that information was. However desirable it may have been for the plaintiff to show that the defendant was obtaining information in reference to shipments from railroad companies, the fact remains that it was improper for the plaintiff to show such a state of facts by the introduction of hearsay evidence.

Assignment of Error No. 16:

This assignment is based upon the charge of the Court to the jury in reference to what was known in the course of this trial as the "Piatt Incident."

An examination of the record in regard to Piatt will show that the connection between Piatt and any of the defendants was of the most flimsy character, and we submit that nothing appears in the record that does show any responsibility on the part of the defendants, or any of them, for anything that Piatt was said to have done. If this be true, the plaintiff in error certainly cannot complain of this instruction, because it was much more favorable to it than it was entitled to.

It also appears that Mr. Waddell, who gave the testimony, made so many contradictory statements in regard to the matter that the whole situation was one that could not reasonably have been influential with the jury.

In the next place, the plaintiff in error reserved no exception to this part of the charge (Record, pp. 2518–2220). Furthermore, we see nothing unsound in the charge. It

is to the effect that while the giving of such information in and of itself is not illegal, nevertheless, when so procured, it might have been unlawfully used, and if so, should be so considered by the jury. It appears that no information could have been illegally used by the defendants, because plaintiff's own witness demonstrates that the attempt to get the information, if it was made, was entirely unsuccessful (Record, pp. 347-348.)

Assignments of Error Nos. 17, 18, 19, 20 and 21:

These assignments of error are discussed together in the brief of the plaintiff in error at page 249 and relate to the rejection of a number of letters from third parties to the plaintiff or its agents and certain conversations of third parties with a Mr. Miller who was endeavoring to sell the plaintiff's powder. The testimony was clearly in the nature of hearsay and of statements between third parties and as such was clearly inadmissible.

The plaintiff in error attempts to justify its exceptions in this regard by the decision of this Court in the case of *Lawlor* v. *Loewe* (235 U. S. 522) in which this Court made a statement to the effect that reasons given by the customers of certain people who were selling Loewe hats as to why they stopped selling were admissible.

We do not understand that this court or any other court has held that it is proper to introduce in evidence letters relating to miscellaneous matters and statements made by miscellaneous people as to why they would not begin to buy goods from a plaintiff. The assignments of error will be discussed separately.

Assignment No. 17:

This assignment is based upon the Court's refusal to allow John G. Miller, plaintiff's witness, on direct-examination, to answer three questions.

These questions called for a statement on the part of the witness as to what reasons certain concerns which

some years previously had been customers of the Laflin & Rand Powder Company, whose names are not disclosed in the record, gave him as to why they would not buy Buckeye powder from him. These questions are found on pages 326 and 327 of the record.

The questions called for a statement of conversations in the absence of the defendants between the agent of the Buckeye Powder Company and various individuals, not defendants or alleged co-conspirators in this proceeding, and not shown to have had any connection with the defendants. The evidence called for is strictly in the nature of hearsay.

Mr. Miller was examined as a witness for the plaintiff and his testimony in this regard appears at pages 323 to 327. It appeared from Mr. Miller's previous testimony that he was the general sales agent of the Laflin & Rand Powder Company from 1895 to the end of 1903. He then went into the brokerage business in Chicago, had conducted that business ever since, but made arrangements to sell Buckeye powder in 1904 (Record, p. 305).

It appears on page 323 that the plaintiff's counsel handed Mr. Miller a list, purporting to give certain names of customers who the witness knew were under contract with the Laflin & Rand Powder Company while the witness was connected with that company, that is, in the period between 1895 and December 31, 1903. Thereupon, the witness was asked to state whether any of the persons on that list operated in the territory in which the plaintiff was located and doing business. He stated that some of them did, whereupon he was required to examine the list and state which ones on the list he called upon. He then gave the names of the companies on the list whom he did not call upon.

It is, therefore, apparent that there is nothing in the record to show the names of the concerns on whom he did call, the said list not having been put in evidence and not appearing in the record.

After the matter had been developed to this point, he was asked if he got business from all these concerns that

he did call upon and he said he did not; then he stated that they gave him reasons why they would not buy his powder. He was then asked the following question:

> "Q. State what those reasons were as given by them?"

This question was excluded, and he was then asked the following question:

> "Q. Did any of the reasons which were given to you involve these contracts which were in existence?"

This question was excluded. He was then asked the following question:

> "Did any of the reasons which were given to you by these parties, or any of them, involve the question of special prices that had been made to them by any other manufacturer of powder?"

This question was also excluded (Record, p. 326).

This assignment of error is based upon the ruling of the Court on these three questions.

This proposition is discussed in the plaintiff's brief (pp. 249 to 252), and it is there attempted to justify the plaintiff's position by the recent decision of the Supreme Court in the case of Lawlor *v.* Loewe (235 U. S. 522), known as the "Danbury Hat Case", with the statement that the whole question of hearsay evidence seems to be fully covered by that decision.

We submit that the decision has nothing to do with a situation such as the one here disclosed.

The only reference to the matter in the opinion of Mr. Justice Holmes in the above case is as follows:

> "The reasons given by customers for ceasing to deal with sellers of the Loewe hats including letters from dealers to Loewe & Company were admissible (3 Wigmore on Evidence, Sec. 1729 (2))."

In the Loewe case the testimony admitted seems to have been that of certain witnesses, as to the reasons given by people who theretofore had been purchasing the Loewe hats, as to why they withdrew their patronage from the people who were selling those hats. Of course the principle on which any such evidence is admitted is an exception to the general principles covering the admissibility of hearsay evidence, and its admission was upheld as such an exception. The limits of the exception under which it was admitted, therefore, become important. The evidence was not admitted as evidence of the fact that the defendants had been guilty of any illegal conduct, but was admitted as evidence of the effect on these particular people of illegal conduct of the defendants, which had theretofore been established by other independent and direct evidence.

Compare the above situation with that which confronted the Court when these questions were asked Mr. Miller, and the distinction between the two situations will immediately appear. Mr. Miller was not asked concerning any customers who had been shown to have been buying powder from the plaintiff company, nor was he asked concerning any customers who had been shown to have been buying powder from the defendants. The customers concerning whom he was asked and whose names do not even appear in the record, he states were parties who had been customers of the Laflin & Rand Powder Company during a period beginning ten years prior to the period involved in this suit and ending about the time the plaintiff began business. The record also shows that the people inquired about were not customers of the Buckeye Powder Company, and the inquiries made of Mr. Miller were not as to what reasons they gave for leaving the plaintiff or withdrawing their patronage from the plaintiff, but what reasons they gave as to why they would not make a change from a condition undisclosed by the record and give their business to Mr. Miller for the plaintiff corporation.

It is apparent that in getting rid of persistent salesmen many reasons might be advanced by consumers of powder, which would be entirely unreliable as evidence of any state of mind on the part of those consumers except irritation and lack of time. The situation of a customer who had already been buying certain goods, and who took affirmative action in changing his course of dealing, is a very different situation than one in which he was simply being solicited to become a customer for goods which he had never theretofore used and which had no established reputation.

To let down the bars in regard to hearsay evidence and to enlarge the exception referred to by Mr. Justice Holmes to such an extent as to admit evidence of this character for the purpose of establishing the real reasons that actuated miscellaneous people from refraining to buy Buckeye powder, would be going far beyond anything that is said by either Mr. Justice Holmes or in the authorities referred to by him, namely, Wigmore on Evidence, or in the cases cited by Mr. Wigmore.

The only authority cited by Mr. Justice Holmes in the Loewe case is Wigmore on Evidence, Section 1729 (2). The instances given by Mr. Wigmore clearly show that the rule is one that is applicable where the motive to be proved is a person's motive for doing some affirmative act. He says:

> "The typical instances in which motive becomes material are actions for loss of service or of custom in which it is necessary to show that the customer's or servant's abandonment of the plaintiff was motivated by the defendant's persuasion or threats; and actions, in which the reliance of a person upon another's representations becomes a part of the issue."

The above is exactly the situation in the Loewe case. The persons whose statements were allowed to be proved were people who were actively changing their course of conduct at the time they made their statements—that is, they were abandoning the plaintiff.

In this case it does not appear that any of the persons whose statements were attempted to be proved ever were customers of the plaintiff nor that they ever had any relations with the defendants.

Most of the cases cited by Mr. Wigmore are cases in which the statement of motive accompanied an affirmative act by the person who made the statement.

The reason on which this exception to the rule of hearsay evidence is based is thus stated by Mr. Wigmore (Section 1422):

> "(*a*) Where the circumstances are such that a sincere and accurate statement would naturally be uttered and no plan of falsification be formed."

As above pointed out, such might be the situation when a customer abandons one with whom he has been trading, but it is notoriously not the situation when a person is giving a drummer a reason for not buying his goods.

Another plain distinction between the Loewe case and this situation is that in the Loewe case the boycott had been established by other evidence as affecting the trade of the people whose declarations were admitted in evidence. In this case there was not the slightest proof that the people interviewed by Mr. Miller had ever come in contact with the defendants, nor that the defendants had anything to do with them; their names even are not given. This distinction is well pointed out in the case of *Elmer* v. *Fessenden* (151 Mass. 359), in which the opinion happens to be written by Mr. Justice Holmes when he was a justice of the Massachusetts court.

It was an action for slander, for having informed the plaintiff's workmen that the Board of Health had reported that the silk used in the plaintiff's establishment, and on which the workmen were employed, contained arsenic. The workmen left and evidence was excluded showing that at the time they left they assigned their reasons for leaving to the fact that there was arsenic in the silk.

The Court held that the exclusion of this evidence was error and after stating that such evidence was permissible to show the reasons the workmen had for their act in leaving, the Court made the following statement (p. 362):

> "The excluded testimony was not competent to prove that the defendant did tell the workmen the story. As to that, it was mere hearsay, and was not within the scope of the special reasons which led to the decisions last cited. *Roosa* v. *Boston Loan Co.*, 132 Mass. 439; *Chapin* v. *Marlborough*, 9 Gray, 244; *Bacon* v. *Charlton*, 7 Cush. 581, 586; *Aveson* v. *Kinnaird*, 6 East. 188; *People* v. *Thornton*, 74 Cal. 482, 486. It is admitted, however, that there was independent testimony that the defendant spoke to the workmen, and therefore the exceptions must be sustained."

It is therefore evident in the above case, which is one of the principal ones relied upon by Mr. Wigmore, that a preliminary to the admissibility of such evidence is proof of the existence of the facts which the persons stated were their motives for their conduct. If such evidence is not present, it cannot be supplied by the statements of such persons.

That these were the reasons for the exclusion of Mr. Miller's testimony on this subject is very apparent from the rulings of the Court in other instances, and the Court put the ruling on exactly the above ground.

Beginning on page 835 of the record, Mr. R. S. Waddell was shown a lot of contracts which the Buckeye Powder Company had, and was allowed to state the reasons given to him as to why some of the people with whom he had contracts ceased to buy powder from him. This sort of testimony continued for pages. On page 863 and following, he was allowed to state the reasons given him by customer after customer, whom, he said, he had lost. This continued up to page 867, when an objection by the defendants was renewed on the ground that the witness was proceeding to testify in regard to customers without show-

ing that any of the defendants had any connection with their trade, whereupon the Court said (p. 868):

> "Of course, if it does not connect with the defendants in either one or the other issues raised in this case, it is not pertinent.
>
> Mr. Button: We don't know any testimony that connects it.
>
> The Court: You see, the ruling began, Mr. Abbott, in those cases where there was evidence that the duPonts had furnished the powder. Now, as you extend this, if you get beyond anything where you can connect the defendants or any of their alleged co conspirators with the sales, why, of course, the testimony is irrelevant."

In other words, the Court held just the same thing that Mr. Justice Holmes did, that is, that there must be evidence independent of the statement of the customers to the effect that there had been some interference with the particular trade by the defendants or some of them. No such evidence appears in regard to the people Mr. Miller was attempting to tell about.

Assignment No. 18:

This assignment of error is based upon the refusal of the Court to permit the plaintiff to read to the jury a letter written by Thomas Mackie, a purchasing agent, to the Buckeye Powder Company. The letter is in the record, page 504, and is to the effect that Mr. Mackie would like quotations from the Buckeye Powder Company.

The objections to this letter are practically the same as those referred to in the last assignment of error.

Furthermore, the fact that Mr. Mackie inquired what the Buckeye prices were, even if competently proven, would not be a relevant fact in this case.

The plaintiff's brief (p. 253) states that this letter was important to show that the plaintiff's prices were higher than those of its competitors and that thereby it had suffered an actual loss by price cutting on an amount of

business which would have been sufficient to absorb the plaintiff's entire capacity.

We do not doubt that many litigants would find it desirable to prove many facts by hearsay if the rules of evidence permitted it.

The record not only fails to show any connection of the defendants with this episode, but does affirmatively show that this business was secured by the Excelsior Powder Company, an independent concern, having a plant at Holmes Park, near Kansas City, where the properties of the Central Coal & Coke Company were located and which undoubtedly could sell at a less price than the Buckeye Powder Company, whose mills were located many hundreds of miles from the properties of the Central Coal and Coke Company.

Assignment No. 19:

This assignment of error is based upon the exclusion of another letter from Mr. Mackie which appears on page 505 of the record and is simply to the effect that the Buckeye Powder Company was not a successful bidder.

The discussion of the preceding assignment of error would seem to be sufficient to dispose of this one also.

Assignment No. 20:

This assignment of error is based upon the refusal of the Court to receive in evidence a letter written by J. W. Ferguson as President of the Waverly Coal & Mining Company to the Buckeye Powder Company, which letter appears on pages 509-510 of the record.

The letter states that the writer was "tied up with the duPont Company". Therefore, had wired the Buckeye Company to cancel the order. The writer proceeds to state that if the powder has been shipped, or if the Buckeye Company considers the powder to belong to the writer, the Buckye Company could antedate the invoice, "but don't give me away to the duPont Powder people".

It concludes by saying that he would be clear of them in a few months.

This letter was produced by plaintiff's counsel and shown to Mr. Ferguson, the writer of the letter, at the time Mr. Ferguson's deposition was being taken on behalf of the plaintiff (p. 509).

We can do no better in answer to this assignment of error than to quote the language of Judge Rellstab in excluding this letter. He stated as follows:

> "The Court: Well, but here you have the witness; this is not a case where you are seeking to put into the mouth of one person the declaration of another, but you are trying to put through the same mouth, understand, a letter that he wrote, * * * why didn't he give the facts which were contained in that letter while he was there" (pp. 2467-8).

Further the Court remarks:

> "The Court: He could see the letter then and you could interrogate him as to the contents of the letter—'Was not this so, wasn't that so'? 'It is so'; 'It is not so.' You see? The trouble in matters of that kind is this, that men do say things when they are not under oath that they wouldn't say under oath. * * * Now to say such a letter was written by such a person as that, who is on the stand, can be put in evidence as the fact, is contrary to all that I understand about the law, which excludes hearsay evidence" (Original Record, pp. 2469 to 2470).

Assignment No. 21:

The plaintiff offered in evidence certain letters passing between J. H. Somers & Company and the Buckeye Powder Company (pp. 858-863). The defendants objected to the offer of these letters, the objection was sustained and an exception was taken by the plaintiff.

To understand the basis of the Court's ruling, a part of the previous testimony must be given. This testimony

was that of Mr. Waddell, the chief witness of the plaintiff and president of the plaintiff company.

Mr. Waddell testified on page 856 of the record that he had sold a few carloads of powder to J. H. Somers & Company and that he then ceased to sell them, and that J. H. Somers & Company give him the reasons of their discontinuing the purchase of powder from the Buckeye Company. Mr. Waddell was then asked who obtained the business of J. H. Somers & Company, and his reply was the Austin Powder Company (p. 857).

It has heretofore been stated that the E. I. duPont de Nemours Powder Company owned 33 per cent. of the stock of the Austin Powder Company, but had no control or management of its business, and the Austin Powder Company was not even named as a co-conspirator in this suit. The offer of these letters was objected to on the ground that they were incompetent, irrelevant and immaterial and constituted hearsay evidence.

The record shows that the duPont Company had not secured the trade of J. H. Somers & Company. A reading of the letters shows that they merely deal with matters between the Buckeye Powder Company and J. H. Somers & Company, with which the duPont Company was in no wise connected.

These letters are hearsay and also wholly irrelevant. A reading of the same clearly shows that they have nothing to do with any issue in this case.

The Somers letters are printed at pages 858 to 863 of the record and refer to many facts, some existent at the time the letters were written and in many instances detailing past occurrences. The duPont Company is not mentioned in any of the letters. In the plaintiff's brief (p. 256) there are given four alleged reasons why these letters should have been admitted.

The first reason is that they showed the influence of the contract system in preventing the plaintiff from obtaining business.

It appears that the dealings of the Somers Company, if the letters and the previous testimony are to be be-

lieved, was with the Austin Powder Company. Consequently, they certainly cannot be evidence of any contract system inaugurated by the defendants.

The second reason is that the prices quoted by the plaintiff were higher than those quoted by its competitors.

This statement occurs in one of the letters, but who made the lower price does not appear from the record unless it may be inferred that the Austin Powder Company did it. Certainly this does not make the letters admissible,

The third reason given is that the letters show a direct attack made on the plaintiff by its competitors.

Whether this be true or not, it does not indicate that any attack was made on the plaintiff by the defendant.

The fourth reason is that the plaintiff lost profits because somebody quoted $1.02–1/2 to its customer, whereas the plaintiff quoted $1.05.

This, of course, does not make the letter admissible because there is no evidence that the price was one quoted by the defendants.

Assignment of Error No. 22:

This assignment of error is founded upon the refusal of the Court to admit in evidence the decree in the United States District Court for the District of Delaware in the case of the United States of America, Petitioner, against E. I. duPont de Nemours & Company, *et al.*, No. 280 in Equity, known as the Interlocutory Decree, and further for the refusal of the Court to admit in evidence the Final Decree in said proceeding.

The proceeding in question was a proceeding on behalf of the United States Government against all of the defendants in the present case and in addition thereto many other companies and some individuals. That proceeding was tried before the Circuit Judges of the Third Judicial Circuit, sitting as a special court under the provisions of the act generally known as the Expedition Act and resulted in the interlocutory and final decrees

which were offered in evidence by the plaintiff. This offer was made toward the end of the plaintiff's case and upon objection of the defendants the said decrees were excluded and an exception taken by the plaintiff.

We can think of only two grounds on which these decrees could be urged as admissible in this case. First, that the fact that such decrees were entered in the Government proceeding was a fact relevant to this issue. We do not understand that this claim is made nor do we see how the question of whether the Government was successful or unsuccessful and what findings and conclusions were embodied in those decrees can have any bearing upon the issues involved in the present proceeding. The second ground on which the admissibility of these decrees might be urged is that they were evidence of the fact that the defendants in this present case were guilty of some of the offenses under the same statute under which this action is brought. We know of no principle of law under which it can be claimed that these decrees are admissible for this purpose. Of course, we recognize the fact that a decree entered in a previous proceeding, wherein the issues were the same and the parties were the same, would not only be evidence but in most cases would be conclusive evidence in a subsequent proceeding between the same parties, involving the same subject matter, but in this instance neither of these two facts, which are the controlling facts, as to the admissibility of such records, exist. In the first place the parties are not the same. Ignoring the large number of other defendants in the former proceeding, the plaintiff in the former proceeding is not interested in this action. Furthermore the plaintiff in this action was not interested in the former proceeding. Consequently, there is an entire lack of the requisite identity of parties, nor is there any privity between the plaintiff in this case and the petitioner in the other case.

Nor is the other basis of admissibility of such evidence present, that is, the subject matter of the two proceedings is not the same. Ignoring again the fact that the

Government proceeding was for the purpose of administering equitable and injunctive relief, the issues that led to those decrees, such as they were, were entirely different from the issues in this action. There, in order to justify the decrees that were entered, it was sufficient to find offenses against either the first or second sections of the Sherman Law. As a matter of fact, the Court found the defendants guilty of offenses under both sections of that act, and, the conclusion is, of course, not open to question now that the pleadings in that action justified such findings and such decrees.

In this action the pleadings were such that the plaintiff was obliged to show offenses against the second section of the Sherman Law and no offenses against the first section of the Sherman Law, if they had been shown, could have availed the plaintiff in this action under the ruling of the Court, and in fact, under the pleadings as framed by the plaintiff. Consequently, all evidence in the Government proceeding that led to the decrees in question which was applicable to the first section of the Sherman Law is evidence that is entirely without bearing in the present action, and it having been presented in the Government proceeding, the presumption, of course, is, so far as this question is concerned, that if it had not been so presented, the decrees would have been otherwise. This is a sufficient reason for the exclusion of of the decrees.

To cite authorities upon the proposition that decrees entered in a former proceeding where the parties were different and where the issues were different are not admissible in evidence in a subsequent proceeding would seem to be a work of supererogation. Nevertheless, the basic principles are set forth with the simplicity that they deserve in the opinion of Chief Justice Marshall in the case of *Davis* vs. *Wood*, 1 Wheaton, 6, and, we may say, with all the discussion that such a proposition would seem to require. If any further corroboration of the views here set forth is required we submit that it will be found in the recent act of Congress supplementary to the

Sherman Law, commonly known as the Clayton Act, Section 5 of which is as follows:

> "SEC. 5—That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the anti-trust laws to the effect that a defendant has violated said laws shall be *prima facie* evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, That this section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity now pending in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken."

We, therefore, submit not only that there is no error in the ruling of the lower Court in this regard, but that it would have been reversible error if the Court had ruled otherwise.

The plaintiff in its brief seems to base its claim in favor of these two decrees upon two grounds:

First, that the decrees are proof of the fact that the defendants had been adjudged guilty of forming the same combination and conspiracy in restraint of trade, which was in issue, and Second, as an admission of guilt.

The first proposition we have already discussed to an extent in this brief. Of course these decrees are proof of the fact that in the Government's proceeding the defendants were adjudged guilty of unlawful combinations or conspiracies or an attempt to monopolize. No one disputes that; but that has nothing to do with the proposition that that fact is not a relevant fact in this action. This case is not based upon the proposition that the defendant had been dissolved by the Government or found

guilty by the Government. That fact has nothing to do with any issue involved in this case. Consequently, although these decrees may be proof of that fact, the fact in itself is inadmissible because it is irrelevant. In the same way the fact that a man has been convicted of assault and battery is not a relevant fact in a civil action for damages against him, although a judgment in a criminal action would be conclusive evidence of the fact that such a conviction had been had.

The second ground urged in the plaintiff's brief (pp. 264 to 267) is that these decrees are admissible as being an admission by the defendants that they were guilty of some offenses under the Sherman Law.

The law in reference to admissions as evidence of facts against the party making the admissions is fundamentally based upon the proposition that said admissions are voluntary statements by such parties contrary to the interests of such parties and therefore have a certain degree of verity and are received in evidence on that basis. The general principles in this regard are set forth in *16 Cyc., page 938.*

The claim of offenses under the Sherman Law on the part of the Government was strenuously combated by the defendant through all stages of that proceeding. The proceeding resulted, not in a consent decree, but in a decree *in invitum* against the defendants to the effect that they were guilty of offenses under that statute. This holding appears in the interlocutory decree offered in evidence for which it is not even claimed by the plaintiff that there was any element of consent.

Furthermore, when the final decree was formulated (Record, p. 3106) it took a double form. First, there is the same finding in the final decree, which is a finding *in invitum* against the defendants that they were guilty of offenses under the statute, a portion of the decree for which it certainly cannot be claimed that any consent was given by any of the defendants.

After having been placed in this position by the Court against their strenuous objection, the defendants did take

advantage of the permission granted by the Court to extricate themselves from the difficulties in which they found themselves—difficulties, however, which were certainly not brought about by any admissions on their part.

These decrees are now offered on the basis that they are admissions of offenses under the Sherman Law. The decrees themselves show that so far as that part of the holdings go, there were no admissions, but the decrees were entered absolutely against the contentions of these defendants.

The final decree then goes on to approve of the plan that was devised, and the only statement in that part of the decree which the plaintiff can point to as constituting an admission is that the defendants did not object to it. This is hardly an admission; the defendants were not in a very good position at that time to object to it. They had been found guilty, and this part of the proceeding simply related to the question of what was the best way out of that situation. It was to the plan to reorganize their business in harmony with the law that the defendants did not object. It is hard to see how this can be construed as an admission of their guilt of offenses against the Sherman Act.

It is, therefore, apparent that these decrees contain none of the elements of voluntary concessions or statements on the part of the defendants which are essential to support the proof of admissions by a party to an action.

Furthermore, the authorities cited in the brief of the plaintiff-in-error (pp. 261–267) justify the reception of these decrees on neither of the grounds urged by the plaintiff in error.

Portland Gold Mining Co. v. *Strattons Independence* (158 Fed. 63) as heretofore pointed out is a complete authority in favor of the defendants under Assignment of Error No. 3, but has nothing to do with the present proposition. It simply holds that where a tort feasor is liable only by virtue of the acts of another, a judgment

in favor of that other may be availed of by him. It certainly does not hold that a decree in a proceeding between other parties may be availed of in a different suit for the purpose of establishing guilt.

St. Louis Mutual Life Insurance Co. v. *Cravens* (69 Missouri, 72) simply holds that a judgment is evidence of the fact of the rendition of that judgment. This is undisputed, but is important only in a situation in which it becomes pertinent to show that a judgment was rendered, which is not the case here.

National Cash Register Case (222 Fed. 599, 629). It is claimed for this case that a decree of infringement of a patent was admitted as *prima facie* evidence of improper use of the patent laws against the rights of competitors. The case holds no such thing. It was a criminal proceeding under the Sherman Law against individuals, and among other things it was charged that they had used certain patents of the National Company as a basis for bringing suits against competitors, on the ground that those competitors were infringers. In other words, the bringing of such suits was one of the charges in the indictment and, of course, the fact that such a suit was brought was a pertinent fact to be proved as well as the result of the suit.

Coffey v. *United States* (116 U. S. 436) is a very good authority in favor of the defendants in this regard. The case involved proceedings for forfeiture under the Revenue Laws, and it appears that one of the parties had been previously proceeded against and acquitted upon the same facts. Therefore the subsequent proceeding was between exactly the same parties as the previous proceeding, and the same facts were involved, and this Court very properly held that the former judgment concluded the matter, but in doing so this Court stated (p. 443):

> "When an acquittal in a criminal prosecution in behalf of the Government is pleaded, or offered in evidence, by the same defendant, in an action against him by an individual, the rule does not apply, for the reason that the parties are not the

> same; * * * But upon this record, as we have already seen, the parties and the matter in issue are the same."

Last Chance Mining Co. v. *Tyler Mining Co.* (157 U. S. 683); *U. S.* v. *Parker* (120 U. S. 89); *Nashville* v. *United States* (113 U. S. 261), have to do with nothing except the determination of a kind of a trial that must be had in order to result upon a judgment on the merits.

This assignment of error was the subject of the following comment by Judge McPherson, speaking for the Circuit Court of Appeals:

> "If we are to understand that the plaintiff is seriously insisting thrt the Court erred in refusing leave to offer the decrees in evidence that were entered in the Government's suit (C. C.), 188 Fed. 127), we shall only say in reply that we are not aware of any rule of evidence in force at the time of the trial that would have warranted the court in making a different decision. The parties in the two suits were different; the subject-matter was different; and the trial judge's ruling is so fully justified by the well-established law then existing that no supporting authority need be cited."

Assignment of Error No. 23:

This assignment is based upon the refusal of the Court to allow Mr. R. S. Waddell on redirect-examination to go into the details of what information he gave his attorneys respecting the allegations in Paragraph 11 of the amended declaration. The only basis for the claim that he should have been so permitted to testify is that on his cross-examination that paragraph of the declaration was read to him and he was asked if he gave that information to his attorneys, and stated that he did (p. 1248).

The question was

> "Q. I would like to read you these statements from your complaint, Mr. Waddell.
>
> (This section was then read).
>
> Did you give your attorneys the information on which that was based, Mr. Waddell?
>
> A. Yes, and I will be glad to give it here."

The Court's ruling was perfectly proper. It was based on the proposition that the matter had been exhausted; Mr. Waddell had said that he gave the information and this was the only object of inquiry on the cross-examination.

The evident purpose of the inquiry was to elicit a lot of hearsay evidence which had been ruled out from time to time during the course of Mr· Waddell's examination.

Assignment of Error No. 24:

This assignment of error is based upon the allowance by the Court of a question put to Olive Taylor, a witness for the defendants. Similar questions were put to quite a number of other witnesses, and, therefore, it may be well to set forth in some detail the circumstances surrounding the asking of this question.

Mrs. Taylor's deposition was taken in Illinois and it appeared that her husband was a mine operator at Edwards, Illinois, under the name of Howarth & Taylor. Mrs. Taylor assisted her husband as a secretary and kept the books of the concern. She stated from her own knowledge that a test of Buckeye powder had been made in the mine and stated the result thereof; that the reason the test was made was that some of the men asked for Buckeye powder. The powder previously used was duPont, Hazard and Laflin & Rand. The result of the test was very unfavorable to the Buckeye powder. After the test was made a representative of that company expressed surprise that the tests could have shown such a difference in the effectiveness of the powders involved. They did, however, from time to time buy some of the Buckeye powder for the purpose of letting any miner who desired it have that powder. Mrs. Taylor purchased all the powder. She then testified that after she commenced to use the Buckeye powder in the year 1904 she had no conversation or communication with any agent of the duPont Company with reference to Buckeye powder. The above testimony of Mrs. Taylor is contained on pages 2069–75 of he record.

She was then asked the following question:

"Q. Now, Mrs. Taylor, in a suit instituted in the United States District Court for the District of New Jersey, by the Buckeye Powder Company against the E. I. duPont de Nemours Powder Company and two other companies, known as the International Smokeless Powder and Chemical Company and the Eastern Dynamite Company, the Buckeye Powder Company, in answer to a demand for the names of customers of the Buckeye Powder Company induced by the defendants, or by the other persons or corporations I will name to you, the Buckeye Powder Company has given the name of Howarth and Taylor as one of the customers of the Buckeye Powder Company which was induced by these defendants and persons which I will name, to abandon the purchase of powder from the Buckeye Powder Company. The names of these persons are: Thomas Coleman duPont, Pierre S. duPont, Alexis 1 duPont, Alfred I. duPont, Eugene duPont, Eugene E. duPont, Henry F. duPont, Irenee duPont. Francis I duPont, Victor duPont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmund G. Buckner, Frank L. Connable, Jonathan A. Haskell; and the following corporations: International Smokeless Power and Chemical Company, E. I. duPont de Nemours and Company, E. I. duPont de Nemours and Company of Pennsylvania, duPont International Powder Company, Delaware Securities Company, California Investment Company, Delaware Investment Company, Hazard Powder Company, Laflin and Rand Powder Company, Fairmont Powder Company and Judson Dynamite and Powder Company. Will you now state whether or not any of the persons that I have mentioned here, or any of the corporations which I have mentioned in the question, or any agent or representative of those persons or corporations, ever induced you, as purchasing agent for your husband, Daniel Taylor, trading as Howarth and Taylor, not to purchase powder of the Buckeye Powder Company?"

(P. 2074.)

This question was objected to as being irrelevant and immaterial, calling for a conclusion, etc., which objection was overruled and exception taken.

Mrs. Taylor's answer was as follows:

"They never tried to induce us not to buy it."

On recross-examination the plaintiff's attorney questioned Mrs. Taylor with reference to her answer to the above question and developed the fact that she meant that no one influenced her because no person came to her and asked her to abandon Buckeye powder (p. 2081).

The amended declaration in this case sets out various so-called overt acts that the defendants were accused of committing for the purpose of establishing a monopoly and the language of the declaration is to the effect that these acts were used in most instances to induce the customers of the plaintiff to desert the plaintiff and become customers of the defendants. A motion was made in the Court below among other things to compel the plaintiff to make his declaration in these regards more specific by inserting therein a statement as to what customers were so induced to leave the plaintiff. The Court overruled this motion on the ground that it was unnecessary to insert such information in the declaration itself, but held that the defendants were entitled to the information and directed that it be supplied them in the form of a bill of particulars. Thereupon the bill of particulars that appears in the case was filed, containing the names of about three hundred and eleven different concerns, mostly coal mining operators scattered all over the Middle West, as being those so alleged in the declaration to have been induced to leave the plaintiff by the methods indicated. It being impossible to procure the attendance of these witnesses at Trenton, the defendants thought it necessary to take and did take the depositions of some thing like one hundred and thirty (130) of these witnesses for the purpose of demonstrating the fact that they were

not induced to leave the plaintiff company, as alleged in the declaration.

These witnesses were examined upon the general plan above indicated in the testimony of Mrs. Taylor. After having been asked about their experience with Buckeye powder and whether they had ceased using it, they were asked their reasons, and after having stated them a question like the one objected to was in many instances propounded for the purpose of proving what we conceive to be a relevant fact in this case. That is, whether or not said witnesses were induced by anything that was done by the defendants to make a change in the powder they were using. To begin with, if there were anything objectionable in this question, that objection would be cured by the fact that the witnesses gave the details of their experience with these respective powders and gave the reasons which induced them to change, if they did change. Therefore, to end up and round out their statements with a general question of this sort is simply to summarize the testimony already given. Furthermore, the testimony so given was the subject of cross-examination and the plaintiff's attorney did cross-examine the witnesses in these regards, often at length.

We submit that it is perfectly proper under these circumstances to ask a witness whether a certain defendant induced him to do a certain thing. It is equivalent to asking him whether he was influenced by that defendant to do that thing. In other words, it calls for the reasons that the witness had for his conduct in reference to purchasing powder and a statement of whether those reasons were the result of any action on the part of the defendants.

It is evident that these witnesses are the only ones who would be in a condition to enlighten the Court on such a subject and it certainly was a very pertinent fact in this case to show that no conduct, whatever it may be, good, bad or indifferent, on the part of the defendants, was influential in any determination to which the plaintiff may have come in regard to powder.

In the next place, under the circumstances outlined it is the only practical kind of a question that could be asked a witness. The only substitute that could be suggested would be to go through the category of every imaginable way in which the witness might be influenced and ask him whether or not any such thing was done. This would have been an interminable process and would undoubtedly have led to the same result.

It is difficult to see if this question was improper how it was harmful to the plaintiff. In every instance the history of the relations of the witness with Buckeye powder and duPont powder was fully given; the plaintiff's counsel fully cross-examined the witness and developed the ideas of the witness as to what the witness meant in the answer, if it was to the effect that he had not been induced not to purchase the Buckeye powder. Indeed, the question was advantageous to the plaintiff in error, as it threw wide open the door for inquiry as to whether any of the alleged wrongful methods had been used by the defendants or their alleged co-conspirators. The open door was taken advantage of on cross examination as it was intended it should be. Having taken advantage of the invitation and elicited information in some instances cited in the brief as tending to prove the plaintiff's contentions, it is difficult to see where the plaintiff has suffered prejudicial error in permitting the question excepted to to be answered.

This question is referred to by the plaintiff in error as a hypothetical question. It is not and was not propouuded as such, and the rules of law applicable to hypothetical questions are not applicable to thls.

Assignment of Error No. 25:

This assignment of error is based upon the instruction of the Court to the jury, as follows:

> "The plaintiff claims thirty cents a keg profit, but there is no evidence in the case that would justify the conclusion that that was a fair profit."

The above extract from Judge Rellstab's charge is only a small part of what he said on this subject. He went on to explain to the jury (p. 2505) that during certain periods that much, and even more, profit was realized by some powder makers, but that the record disclosed that at other periods powder was sold at prices that would not show anything near such a profit; that illegal restraints on the trade by the Trade Association alone permitted of the thirty cent profit on account of the arbitrary prices resulting therefrom. He then adds:

> "So far as this present record is concerned, the only basis for 30c. profit is that which is furnished by this arbitrary and therefore illegal means employed by the Trade Associations."

With the passing away of the Trade Association, that amount of profit could not be maintained unless there was an unusual increase in the demand; that the record shows there was no such increase, for various reasons.

We submit that the above is a complete and sound statement of the law as it is related to this record.

There is no evidence in the record that 30c. a keg is a fair profit on powder, despite the one statement from the testimony of R. S. Waddell that is quoted by the plaintiff in its brief on pages 286 and 7. This statement by Mr. Waddell was repeatedly repudiated by him in the course of his examination, both before and after the particular statement quoted in plaintiff's brief was made. It appears in the record (p. 773) that Mr. Waddell was shown a certain document marked "Plaintiff's Exhibit 52W for Identification", being a document never admitted in evidence, and he was asked how he arrived at the figures contained in that document "including thirty cents profit". He explained various figures that appeared on the document, and then added:

> "I want to correct that idea there in regard to the thirty cents profit. That was merely an approximate and was put on there by the young man who made up this list. That I did not authorize."

The above is not quoted in the plaintiff's brief.

Mr. Waddell then, at the insistence of his counsel and over the objection of the defendants, gave the equivocal testimony that is quoted in the plaintiff's brief (p. 287).

This evidence is clearly not sufficient to submit to the jury as evidence to the effect that thirty cents a keg was a fair profit during the period that Mr. Waddell was operating his plant. To begin with, he had not shown any sufficient knowledge of the subject to permit him to give an estimate of what such a fair profit would be, as was very conclusively shown upon his cross-examination. We submit that the statements quoted in the plaintiff's brief were clearly inadmissible in evidence.

On cross-examination it was developed that the only experience he had had from which he could even claim that anyone had got a profit of thirty cents a keg was during the operations of various trade associations, and he repeatedly admitted that there was nothing normal in those conditions and, therefore, of course, they were conditions on which he could not rely as a basis for any estimate of what a fair profit would be under normal conditions.

The following are statements made by Mr. Waddell on his cross-examination (p. 987):

> "I do not yet understand about these normal conditions in which there was no restraint of trade during this period. I understood you to say that there has never been a time since 1871 when conditions were not restrained. Did you not so testify?
> "A. There has never been a time since 1871."

His attention was then called to various periods in the history of the powder industry, and he testified that none of them were normal.

Page 988 he testified:

> "Q. That was not a normal condition then?
> A. No, nothing normal in the trust."

Again, in regard to another period (p. 988):

"Q. Was that a normal condition as you claim?

A. No, I should say it was abnormal. The trust was in power.

Q. Very good; now you have answered my question.

A. I am talking about the normal price.

Q. I am talking about normal conditions, and I think you know it, Mr. Waddell.

A. There has never been a normal condition since the organization of the Powder Association in 1872."

It is, therefore, apparent that Mr. Waddell's statement in regard to thirty cents profit at the most is only a guess on his part, and represents hope and not experience.

Further, at a later stage of his cross-examination he again entirely repudiated the thirty-cent idea. On page 1005:

"Q. Now, how much profit would you have gotten each year if you had gotten thirty cents a keg, Mr. Waddell?

A. I don't know.

Q. You were marketing under conditions there, were you marketing your total output?

A. I should have thought that plant, taking in the exigencies of the business, considering the exigencies of the business, the dangers of the plant being entirely wiped out in a moment, as the Indiana plant was, capital entirely destroyed, I should say that a profit of $50,000. would not be excessive.

Q. Then you are not willing to subscribe to a profit of thirty cents a keg straight through on your total capacity?

A. Well, you would not get thirty cents.

Q. Well, you have so stated in your papers here, haven't you, Mr. Waddell?

A. Well, there are a great many ways that thirty cents would go besides clear, for instance, at the end of the year——

Q. Nevertheless, you carried it into all those exhibits which you have been trying to get into evidence, didn't you?

A. No, I did not.

Q. Well, you had somebody do it for you, then, didn't you?

A. I cut that thirty cent idea when I fixed the prices.

Q. When did you do that?

A. When I fixed the prices for a distance, for instance, for a place in Illinois, $1.20.

Q. Then you don't think you ought to have thirty cents on 250,000 kegs, which would be $75,000 a year profit?

A. I think a part of that could be used in exigencies of the business, the demands that would come upon it.

Q. And you don't think you ought to have $90,000., which would be 30 cent profit on 300,000, which is one of the capacities which has been mentioned here of your mill, and that would be unreasonable?

A. I should think that would be an excessive claim. I should be satisfied with a more moderate amount."

The plaintiff's brief (p. 287) mentions the testimony of Mr. Haskell to the effect that certain prices were reasonable. This testimony referred entirely to a period during the existence of the trade associations, as did also that of Mr. Patterson,—periods long prior to the organizatiou of the plaintiff.

Mr. Moxham's so-called "speech" is also referred to. This is simply a statement of what Mr. Moxham thought his company ought to try to get for powder in view of the fact that the times were very prosperous, the material for the speech having been furnished by Mr. Waddell, and there is nothing in it to indicate that such hoped for prices were either ordinary, reasonable or could be obtained.

Assignment of Error No. 26:

This assignment is based upon the instruction by the Court to the jury in regard to the measure of damages.

Under this assignment the plaintiff has quoted a long extract from the charge of the Court to the jury in

which it is stated that the plaintiff's claim is that 3-1/7 cents a keg is the amount of profit which the plaintiff had made during the only period in which it made any profit. This was stated to the jury as one of the facts to be considered by the jury in passing upon the question of whether the plaintiff was entitled to recover future profits which it was claimed it had lost on account of the illegal operation of the defendant (Record, p. 3215).

The only exception that we find in the record to this portion of the charge is as follows:

> "We except to that portion of your Honor's charge which limits our profits to 3-1/7 cents, or such portion thereof, as the jury may find" (p. 2520).

We do not find anything in the charge of the Court that does so limit the plaintiff. The only statement is that that is the plaintiff's claim. In fact, when this exception was taken, the Court remarked:

> "That is your own standard, although I verified it. You may take an exception to what I said in that regard" (p. 2520).

The record discloses that after many attempts the plaintiff finally promulgated a set of figures which resulted in an alleged profit of 3-1/7 cents and argued it to the jury. There wasn't any discussion or exception in reference to this amount being too small, but all the discussion that occurred was in regard to whether or not there was any amount of profit shown. We do not know of anything in this record that indicates that the plaintiff claimed a higher standard in this regard than 3-1/7 cents a keg. Therefore, the plaintiff certainly cannot be heard to complain that the Court adopted a claim made by the plaintiff itself.

The Court very carefully instructed the jury in regard to the matter of damages claimed by the plaintiff as profits which the plaintiff did not receive. This portion of the charge is at pages 2504 to 2512 of the record and

we submit that a reading of that charge, which is too long to be here quoted, well demonstrates the entire soundness of the position taken by the Court in regard to this matter. The claim of damages as formulated by the plaintiff and handed in as a memorandum is quoted on page 2496 as a portion of the charge, from which it appears that the plaintiff was claiming sixty-seven thousand odd dollars as loss of profits on powder actually made and sold by it, and about $154,000. for loss of profits on powder which it did not make, but claimed it could have made and sold at a profit. There seems to be no exception in the record covering the latter claim, or anything that the Court said about it.

The Court had told the jury that if the plaintiff's business was illegally interfered with by the defendants and the plaintiff thereby had suffered damage, it was entitled to recover that damage, provided it had been proven. The Court said:

> "But how much? This the plaintiff must show with reasonable certainty; upon him is cast the burden. Has he satisfied it? It is not to be determined at a guess, nor by the fact that we may believe that any unprofitableness of the plaintiff's business was due to the defendants' wrong doing, and then because of the consciousness borne in upon us by reason of such belief, proceed to arbitrarily fix the profit."

The Court goes on to state that the jury may exclude mere conjecture or speculation, and points out as we have heretofore shown in this brief, that there was no evidence as to what profits the plaintiff might have made, unless it was to be found in the history of the plaintiff's own business.

The plaintiff claimed that there was a period of twenty-two months immediately preceding September 18th, 1905, during which the plaintiff had made a profit. All dam ages prior to the date mentioned were cut off by the Statute of Limitations.

The Court told the jury that if they were satisfied that there was such a profit, which at the most was 3-1/7 cent.

a keg, and were further satisfied that that profit had been maintained for such a period and under such circumstances as to form a reasonable basis for finding that such conditions would have continued if not interfered with, then they might consider such previous profits as a basis for assessing damages for profits lost during the subsequent period by the plaintiff on the powder which the plaintiff actually sold.

We submit that in so instructing the jury the Court correctly pointed out the only possible evidence in the case which could be considered sufficiently definite to form the foundation for any assessment of damages in the regard mentioned. In fact, we submit that the Court was too liberal in this regard, and if it were necessary we could point out many things in the record that show that even this evidence was too remote and uncertain to form the basis of an assessment of damages.

The question involved is not whether the plaintiff is entitled to recover damages on account of illegal interference, but whether he has presented the evidence necessary in order to enable the jury to measure his damages.

This whole subject was exhaustively considered and effectively disposed of in an opinion by Judge Sanborn, *Central Coal & Coke Co.* vs. *Hartman* (111 Fed. 96). Judge Sanborn, in referring to many authorities, states:

> "The general rule is that the expected profits of a commercial business are too remcte, speculative and uncertain to warrant a judgment for their loss."

The citation includes cases from the Supreme Court of the United States, the Federal Reporters and various state courts.

He then goes on to show that there is a notable exception to this general rule.

> "It is that the loss of profits from the destruction or interruption of an established business may be recovered where the plaintiff makes it reasonably certain by competent proof what the amount of his loss actually is."

The Court goes on to point out that the only method of making such damages certain is by referring them to an anterior period during which such profits have actually been secured. If such period has been of a reasonable length and such profits have been made under normal conditions, the jury will be allowed to accept such conditions as evidence of what the future conditions would have been. If, however, no such previous period has existed in the history of the business, the plaintiff finds himself in the unfortunate position of possibly having been damaged, but being unable to recover therefor on account of a lack of proof. The Court says:

> "He who is prevented from embarking in a new business can recover no profits, because there are no provable data of past business from which the fact that anticipated profits would have been realized can be legally deduced."

The Court cites many authorities to support this proposition, and sums up the whole subject as follows:

> "The truth is that proof of the expenses and of the income of the business for a reasonable time anterior to and during the interruption charged of facts of equivalent import is indispensable to a lawful judgment for damages for the loss of anticipated profits of an established business."

This case effectively disposes of any contentions that the plaintiff can make under the portion of the charge involved in this assignment of error.

Assignment of Error No. 27:

This assignment of error is based on the instruction of the Court to the jury as follows:

> "As the evidence does not furnish us with a legal basis upon which we can determine, as a matter of fact, that the plaintiff could have sold on a profitable basis any more powder than it actually sold, no allowance can be made for such unmade or unsold merchandise."

The Court was correct in this instruction, because to allow the jury to consider how much powder the plaintiff might under some circumstances have made and then to further consider how much the plaintiff could have sold that powder for, and then to further consider whether or not the defendants prevented the plaintiff from making so much powder or from selling it at such a price, would allow them to embark into the realm of fancy.

Any such damages are entirely too remote, speculative and contingent to be recovered in an action at law.

We have already discussed this matter fully under Assignment No. 26.

Assignment of Error No. 28:

This assignment of error is based upon the instruction of the Court to the jury to the effect that the condition of the record does not permit the finding of any damages on account of the loss of good will.

There would seem to be one sufficient answer to this proposition. The jury was instructed that there was evidence which they might consider to the effect that a profit was made during one period of the operations of the plaintiff company. Thereby it was left to the jury to determine whether there was a sufficient profit shown for a sufficiently long period to be used by the jury as a standard by which to measure what future profits would have been, had they not been prevented by the illegal acts of the defendants. The jury having considered this matter and brought in a verdict for the defendants, must have done so in this regard on either one of two bases. First, that no illegal acts had been shown which resulted in damage, or second, that there was no such standard present in the case.

Inasmuch as that very kind of a standard is an essential element in any recovery for the loss of good will, it is evident that in passing upon questions that were submitted to the jury, the jury found against the plaintiff

on one of two propositione, either one of which findings would be equally fatal to any claim of right to recover for good will. Therefore, even if any fault could be found with this instruction, it is apparent that it was harmless.

This matter is discussed from page 297 to 305 of the plaintiff's brief, in which the position is taken that there is evidence of some good will growing out of three things as follows:

(*a*) Location of plant.

(*b*) Experience and character of Mr. Waddell and his salesmen.

(*c*) The rule used by accountants (notably Mr. Bruneau).

It is plain that even if all these things mentioned existed in connection with the business, if they did not result in a profit, their loss could not be the basis of damages whether it is permissible to put them in the category of elements of good will or not. It is admitted that during the period subsequent to September 18, 1905, none of these things resulted in any advantage to the plaintiff. Consequently, their loss did not injure the plaintiff in any way so far as any evidence in this record is concerned. It does not help the plaintiff to refer to a previous period in which he claims there was a profit, because if there was a good will during said period, its loss occurred prior to the date mentioned and is barred by the statute of limitations.

Furthermore, the last element of good will, namely, Mr. Bruneau's rule, thorougly refutes the plaintiff's contention. The entire basis of that rule as set forth on pages 304 and 305 of the brief is the "earnings" of the concern involved. Thereby, of course, is meant the net earnings. That element being absent, there is nothing on which to found a measure of the value of the good will.

Assignments of Error Numbers 1 and 2:

These assignments of error are to the refusal of the court below to set aside the judgment of the District Court and to the affirmance of the judgment of the District Court by the court below.

The plaintiff in error has considered these assignments in its brief from pages 305-311, and therein to an extent there are reviewed the assignments that have heretofore been discussed, and it is not our intention to add to the discussion thereof.

It is, however, claimed in the concluding pages of the brief that the result in this case is such that if upheld it will render any proceeding under Section 7 of the Sherman Law ineffective. In taking this position, it is contended that if a plaintiff is to be subjected to certain hardships that are therein mentioned Section 7 of the Sherman Act might as well be stricken from the statute books. The obvious answer to this argument is that the plaintiff herein was not subjected to any of the hardships that are mentioned. The complaints seem to be as follows:

That the plaintiff was held to ancient and technical rules of pleading. This is not true. It was simply pointed out to the plaintiff that if it desired to avail itself of two causes of action, it should have supplied two counts to its declaration,—a not unreasonable request.

It is next contended that the plaintiff was obliged to prove all allegations by direct and positive evidence and that it was allowed to leave nothing to inference. This is not true. The District Court left many matters to the inference of the jury. This did not satisfy the plaintiff, but the plaintiff insists that matters should have been left to be inferred by the jury when there was nothing whatever from which they could be inferred.

It is next contended that the plaintiff was required to show that each member of a conspiracy actually partici-

pated in all of the overt acts committed in pursuance of the conspiracy. No such thing was held by the Court, but it was held that before a defendant could be subject to that rule it must have been shown competently that such defendant was a member of the conspiracy,

It is next contended that the plaintiff was required to prove the defendants' guilt out of their own mouth. This is not the fact. The plaintiff was required to conform to the not unreasonable rule that he must prove such contentions out of the mouth of somebody. Plaintiff seems to feel that it was unnecessary for it to prove them at all.

It is next contended that the plaintiff was held to stand in a different relation to the transactions than he would have sustained if he had entered business previously. No such thing was held except to the extent that the jury was told that no specific injury could have been done to the plaintiff's business by things that occurred previous to the plaintiff's commencement of business.

It is next contended that the plaintiff was required to clear itself of a suspicion that it did not intend to conduct a legitimate business. This is not true. There was much evidence to the effect that the plaintiff did not intend to conduct a legitimate business, a situation which, of course, would have a very substantial bearing upon the matters in controversy, and that evidence, such as it was, was all submitted to the judgment of the jury under fair and adequate instructions.

It is next contended that the Court held that a competitor had a right to follow Waddell around with detectives to prevent him from obtaining employes and other purposes. This is not true. All the evidence in regard to detectives was submitted to the jury in full for its consideration.

It is next contended that the Court held that the defendant had a right to exercise surveillance over the plaintiff's trade for the purpose of acquiring the secrets of its business. No such thing was held. All evidence in

the case in reference to such matters was submitted to the judgment of a jury.

It is next contended that the Court held that the plaintiff must engage in a fight in which the victor is justified in going away with the spoils. The instructions of the Court, as limited by it, were perfectly proper.

It is next contended that the plaintiff was subjected to a price-cutting contest and the defendants sold their goods at a loss. All matters in regard to price cutting were submitted to the jury and there was no evidence that the defendants sold their goods at less than cost, and in fact, the evidence clearly showed that all price-cutting contests were begun by independent companies and largely headed by the plaintiff itself.

It is next contended that the Court held that the plantiff must submit to the stirring up of prejudice, boycotts and strikes against his product. There was no evidence in the record in this regard, except possibly what was known as the "Spicer incident", which was fully submitted to the jury and passed on by it.

It is next contended that the plaintiff was denied the right to recover for such losses as it may have sustained by reason of having been prevented from doing business. The Court took no such position. It simply again insisted that in order to recover damages the plaintiff must produce some adequate evidence of the amount of those damages.

Based on the above unjustified contentions, the plaintiff in error complains of the ineffectiveness of the law as administered in this case.

Inasmuch as none of these contentions are justified by the record, it is unnecessary to pursue the subject at length, but it may not be out of place to direct the Court's attention to the fact that the position of the plaintiff results in the claim that the Sherman Law is ineffective unless a plaintiff who has succeeded in producing no adequate evidence is to be allowed a recovery of upwards of three million dollars ($3,000,000), not to forget

an adequate attorney's fee, as recompense for unproved injuries to a business in which the plaintiff never invested more than one hundred and fifty thousand dollars ($150,000), and to the conduct of which business the plaintiff brought neither adequate capital, business or technical experience, or that degree of upright and fair dealing that is necessary to inspire confidence in the minds of customers and business associates.

A fair reading of this record shows that Mr. Waddell, a man who had been a trusted employe of the defendant for twenty (20) years, who had been a large participant, if not an originator, of many of the methods in the black powder business concerning which he complained, after having observed the successful enterprise of one of his assistants in building a powder mill and selling it out to the defendants at a profit after having demoralized the defendants' trade, undertook to emulate such example, fully convinced, as he told Mr. Rice, that he would not be required to manufacture powder, but would engage in the business of manufacturing prices. Under such circumstances he built a flimsy mill, began to cut prices, had no money, no experience as a powder manufacturer, no integrity, manufactured powder that could not be used, failed to furnish that powder, such as it was, according to his contracts, devoted his time to attacks upon the defendant rather than to the advancement of his own business, and eventually reaped the logical conclusion of such methods in coming to a point where he was obliged to sell his business to a man who did know how to run it and who, immediately upon the acquisition thereof, rebuilt his plant and made real powder and in a measure achieved some success with the enterprise. Further than this, a fair reading of the testimony of Mr. Waddell, whose testimony contains the chief evidence relied upon by the plaintiff, will show that Mr. Waddell stood before the jury entirely discredited in everything he had testified to and largely from correspondence and documents signed by himself.

We submit that if an enormous verdict must be insured to such a plaintiff in order to save the Sherman Law from annihilation it would be much better that such annihilation should ensue, than that such a measure of encouragement should be afforded to every illegitimate enterprise that sees fit to prey upon the community.

The judgment should be affirmed.

Respectfully submitted,

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No. [redacted]7

Supreme Court of the United States

OCTOBER TERM, 1916.

THE BUCKEYE POWDER COMPANY (a Corporation),
Plaintiff-in-Error,

against

E. I. DU PONT DE NEMOURS POWDER COMPANY (a Corporation of New Jersey), EASTERN DYNAMITE COMPANY (a Corporation of New Jersey) and INTERNATIONAL SMOKELESS POWDER & CHEMICAL COMPANY (a Corporation of New Jersey),
Defendants-in-Error.

In Error to the United States Circuit Court of Appeals for the Third Circuit.

Reply Brief of Plaintiff-in-Error.

TWYMAN O. ABBOTT,
WILLARD U. TAYLOR,
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ROYAL LAW PRINTING CO., 79 WALL STREET, N. Y.

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Supreme Court of the United States,

OCTOBER TERM, 1916.

THE BUCKEYE POWDER COMPANY (a corporation), Plaintiff-in-Error, against E. I. DU PONT DE NEMOURS POWDER COMPANY (a corporation of New Jersey), EASTERN DYNAMITE COMPANY (a corporation of New Jersey), INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY (a corporation of New Jersey), Defendants-in-Error.	No. 249.

REPLY BRIEF OF PLAINTIF-IN-ERROR.

There are so many unsupported assertions and denials in defendant's brief concerning the record in this case, which are calculated to confuse or mislead the Court, together with important admissions which do, in fact, support some of plaintiff's assignments of error to the extent of proving them to be well taken, that it seems to be necessary to make a short reply thereto.

Furthermore, in making a study of some of the arguments therein set forth, a new point has been discovered which, if we are right in our contention, will alone have the effect of reversing the judgment.

The point is this: The law has been amended since the judgment was rendered so as to suspend the operation of the Statute of Limitations in favor of the exercise of the remedy provided for by Section 7 of the Sherman Law, which we claim to be applicable to the present action; and thereby a new legal right has been given to plaintiff pending the final review of the action of the Trial Court.

It is the undoubted law of this Court, as established in many cases, that, whenever a new law intervenes after a judgment, and during the pendency of the controversy in an Appellate Court, so as to change the rule which governs the rights of the parties, "the Appellate Court must dispose of the case under the law in force when its decision is given, even although to do so requires the reversal of a judgment which was right when rendered."

Gulf, Col. & S. F. Ry. vs. Dennis, 224 U. S., 506;
United States vs. *The Peggy,* I Cranch, 103;
Gwin vs. United States, 184 U. S., 675;
Dinsmore vs. Southern Express Co., 183 U. S., 120;
Mills vs. Green, 159 U. S., 651.

We respectfully call to the attention of the Court that Section 5 of the Act of Congress of October 15, 1914, known as the Clayton Act (38

U. S. Stats., 730) contains the following provision:

> "Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the anti-trust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the *pendency* thereof."

This action was begun on September 18th, 1911. The defendants plead the statute of limitations in bar, and the Court sustained the plea so as to limit plaintiff's recovery to such injuries as had been sustained within six years prior to said date, namely, September 18, 1905 (Trans., p. 2507, fol. 7521). Plaintiff began actual business in September, 1903, and, therefore, by this ruling was deprived of the right to be heard as to such damages as it suffered during those two years.

The amended petition in the case of the United States vs. The E. I. Du Pont de Nemours & Co., 188 Fed., 127, was filed on the 5th day of August, 1907, and the final decree was entered therein on the 13th day of June, 1912. Said action is known in the record in the present case as the "Government Case."

It was a "suit or proceeding in equity" instituted by the United States to prevent, restrain or punish violations of the anti-trust laws, and plaintiff's right of action was based in part, if not in whole, on matters complained of in that suit.

The question is, does the statute above quoted operate to extend the period of limitations applicable to plaintiff's right of action which was in process of enforcement at the time of its enactment?

If this question is answered in the affirmative, then the running of the Statute of Limitations against plaintiff's right of action was suspended from August 5th, 1907, to the 13th day of June, 1912.

> "When the statute declares generally that no action, or no action of a certain class, shall be brought except within a certain limited time after it shall have accrued, the language of the statute would naturally make it apply to past actions as well as those arising in the future."
>
> Sohn vs. Waterson, 17 Wall., 596, 599.

The intent of Congress to make this provision retrospective is also evidenced by the fact that Section 5 is divided into two distinct paragraphs, the first of which relates to "a final judgment or decree *hereafter* rendered," and provides that it shall be *prima facie* evidence in other proceedings. The second paragraph is the one above quoted in full relating to the Statute of Limitations.

It would seem that by separating the section into two distinct paragraphs—especially in view of the fact that the first paragraph is so unmistakably limited to future actions—Congress intended to clearly differentiate the two subjects. Furthermore, the provision itself says that whenever any suit or proceeding *"is"* instituted—not "is hereafter" or "shall be" instituted.

It seems clear from the language of the statute, and also from the circumstances under

which it was made part of Section 5, that it was the intent of Congress to give a person bringing an action under Section 7 of the Sherman Act, whether pending before or after its passage, the benefit thereof.

The record shows that it was during this period that may of the acts complained of were committed by the defendants.

The evidence shows, as has already been pointed out in our former brief (see pages 100-101), that it was during this period that the trade in the immediate neighborhood of Peoria, Ill., was practically all tied up by contracts in anticipation of the entry of plaintiff into that field. (See Plaintiff's Exhibits 1143, 1144, Trans., pp. 2708-2718.) And there are many other important facts which have an immediate bearing upon the question of damages during that period, which do not apply as effectively to the subsequent period.

Furthermore, it was during this period that plaintiff made profits amounting to 3-1/7 cents per keg, which although grossly inadequate, would have authorized the jury to find that plaintiff had *good will,* even according to the rule adopted by the Court. This is made clear by the argument of the defendants where it is contended that because all the facts pointed out by us in our former brief as going to prove good will failed to show a profit, after Sept. 18, 1905, their loss could not be made a basis of damages, for the reason that "all damages prior to the date mentioned were cut off by the Statute of Limitations" (Defendants' brief, p. 115). The following statement (p. 119), covers their contentions, which were finally adopted by the Court:

"It is admitted that during the period subsequent to September 18, 1905, none of these things resulted in any advantage to the plaintiff. Consequently, their loss did not injure the plaintiff in any way so far as any evidence in this record is concerned. It does not help the plaintiff to refer to a previous period in which he claims there was a profit, because if there was a good will during said period, its loss occurred prior to the date mentioned and is barred by the statute of limitations."

Unsupported Assertions and Denials.

It is unfortunate that the defendants have seen fit to base their contentions, with respect to some of the issues, largely upon assertions and denials, which they do not support by references to the record.

Time and again they assert, without controverting plaintiff's citations or references to the record, that "this is not a fact," or "the record discloses no such evidence," or "this is not true," and no references to the record are given to support these bald and blunt assertions.

It would therefore serve no useful purpose to attempt a complete reply to a brief of this character. But some of the statements concerning the evidence, and concerning plaintiff's position with respect to the issues, are made so boldly and repeated so frequently, that unless controverted, it might appear that we had conceded them to be true. Furthermore, their very boldness might well be misleading to the Court.

Attempt to Confuse the Court with Immaterial Issues.

On pages 4-9 of defendants' brief there appears a statement of eleven so-called "propositions," concerning which, it is said, there was evidence offered on both sides, "and that such evidence was submitted to the jury and all questions in reference thereto were foreclosed by the verdict of the jury, or else the plaintiff-in-error succeeded in producing no evidence whatever in reference thereto."

None of these "propositions" form the basis of assignments of error except the first, fourth, and fifth, relating to the employment of detectives, spies and railway agents; and nothing was foreclosed by the verdict of the jury except those matters which were *properly* submitted to them, and then only insofar as such questions related to the defendant Du Pont Powder Company.

The assertion is frequently made in various forms throughout the brief, that certain questions have been "foreclosed by the verdict of the jury," and we wish to repeat with emphasis what was said in our former brief, once and for all, that there is not a single issue involved, in any of the assignments of error, which relates to the action of the jury in exercising its fundamental right to pass upon the *weight* of the evidence which was submitted to them.

Whatever is said in plaintiff's brief about any of the matters which do not form the basis of specific assignments is said in connection with the direction of a verdict in favor of the Eastern Dynamite Company and the International Smoke-

less Powder Company, and as *to these two defendants* no evidence was submitted to the jury or foreclosed by their verdict.

The Attempt to Prejudice the Court on the General Issue of a Meritorious Cause of Action.

The method of presenting the defense seems to have for its object to create the impression that even though there may have been error committed, the plaintiff is wholly without standing in good conscience, because it has had its day in court, and therefore, should not be heard to complain.

On page 8 of defendant's brief, we find the following statement, with not a single reference to the record to support it. It is, in fact, a paraphrase of what was said by the Circuit Court of Appeals in its opinion (Trans., p. 3185), and for this reason deserves some attention (The parenthetical references are ours for convenience):

> "Hundreds, if not thousands, of pages of the record go to show that the misfortunes of the plaintiff were due, not to any attack by the defendants, not to any undue conditions in the trade for which the defendants were responsible, but on the contrary were due to (*a*) lack of proper organization on the part of the plaintiff, (*b*) lack of capital, (*c*) lack of business experience, (*d*) inattention to business, (*e*) misrepresentations to customers, (*f*) inability to fill orders, and (*g*) furnishing bad powder. (*h*) The record is full of evidence to the effect that the de-

fendants in no wise interfered with any of the customers of the plaintiff, in no wise induced any of them to leave the plaintiff. (*hh*) Of the one hundred and thirty customers that were examined, not one testified that the defendants, or any of them, induced such customer to leave the plaintiff, but on the contrary, they all testified that they left for other and legitimate reasons, disconnected with anything except the failure of the plaintiff to satisfy them. (*i*) The record is further full of testimony to the effect that during all the period of the existence of the plaintiff company a very large number of independent competitors sprang up with the consequent result of lower prices; (*j*) that prices were decreased not by any action of the defendants, but by the action of these new concerns including the plaintiff, and in fact under the leadership of the plaintiff, which was one of the first to be established; (*k*) that during the whole period instead of increasing its hold upon the trade and the volume of its trade, the defendant lost trade and the volume of its trade continually decreased."

It would seem that if there were "hundreds if not thousands" of pages of the record to support the foregoing, counsel could easily have pointed out some portion thereof. That they have not done so is evidence that they are giving expression only to their opinion and do not care to submit that opinion to the test of the facts.

We do not know of, and do not believe that defendants' counsel can point out, any evidence that will support the statements made at (a), (b), (c), (d), (e), (f), (g) and (j.)

As to the statements at (h) and (hh), the

only evidence that there is to support them is fully discussed in our former brief at pages 270-276, and it is based solely on the hypothetical question which is set forth as the 24th Assignment of Error, from which it appears that the answers all show that none of the witnesses had the slightest comprehension of the "inducements" alleged in the Declaration, and which alone formed a proper basis for the question. That we are correct in this position is also shown by what defendants say at page 107 of their brief, namely, that in answer to their demand for a bill of particulars, plaintiff furnished them with "the name of about 311 different concerns, mostly coal-mining operators scattered all over the Middle West, as being those so *alleged in the Declaration* to have been induced to leave the plaintiff *by the methods indicated,*" and they again repeat that they took the depositions of something like 130 of them "for the purpose of demonstrating the fact that they were induced to leave the Plaintiff Company *as alleged* in the Declaration."

The statement that 130 of plaintiff's customers were examined by the defendants is very reckless and inaccurate, for the record shows (pp. 2065-2069) that only 79 such customers were examined, which leaves the "inducements" which influenced 232 of plaintiff's customers unaccounted for, even assuming that the assertion is correct that "not one" of the 79 testified that he was induced to leave plaintiff by the defendant. Their own testimony, and other undisputed evidence in the record, shows that the trade of many of these witnesses amounted to from two to twelve kegs of powder each. That their trade was in-

finitesimal and of no consequence so far as plaintiff's business was concerned, is not questioned. Furthermore, what the "other *legitimate* reasons" were, which it is said these witnesses testified actuated them to abandon plaintiff, is not pointed out and cannot be pointed out. Some of those whose trade was important testified to the presence of the very "inducements" alleged in the Declaration, namely, that they were tied up by contracts with the defendants, or that they received lower prices from the defendants, or that they were influenced by the demands of the miners—as will be seen by reference to the plaintiff's former brief.

As to (*i*) and (*k*), the contention of the defendant Du Pont Company, was that after it succeeded to the Gun Powder Trade Association, those members of that association whose full legal title it did not acquire, immediately *entered into competition with it,* as a result of which prices were reduced and its volume of trade fell off. That this was a fallacious and entirely unsupported plea is shown by the facts as set forth in our former brief at pages 113-114. Furthermore, one needs but to read the testimony of the defendants' witness, Mr. Barron, the head of the American Powder Company, which was one of the "Fay Companies" and a member of the Association until its final dissolution. He claimed on his direct examination that his company was an active competitor of the Du Pont Company, and yet on cross examination it appeared that nearly all the customers his company ever had were such as it had had for twenty or thirty years (Trans., pages 1968-1972). In-

stead of showing that his company was a competitor of the Du Pont Company, he confirmed what is pointed out in our former brief at page 105 relative to the Du Pont Company "respecting" the contract trade of all former members of the Gun Powder Trade Association, after that association was dissolved.

The statement made at (*j*), that "prices were decreased not by the action of the defendants, but by the action of these new concerns, including the plaintiff, and in fact under the leadership of the plaintiff", is already partially answered by the discussion in our former brief at pages 87-94, but it is reiterated so often in the defendants' brief without pointing out any evidence in the record to sustain the charge, that we feel it our duty to call attention to the following additional facts as shown by the record:

The Price-Cutting Charge.

It was contended at the trial that plaintiff could not be heard to complain of the conduct of the defendants, because it was itself the "leader in price-cutting", and that it "began to cut prices" as soon as it entered the explosives field.

Mr. Patterson, a Vice-President of the Du Pont Company, testified that plaintiff "started the price-cutting", but upon further examination gave the following explanation as his only reason for so testifying (Trans., pp. 189-190):

> "Q. Now, you stated a while ago that from your best recollection the Buckeye Company

first cut prices. Is that correct? A. That is my impression.

"Q. Well, now, upon what do you base that impression? A. *I do not see how any concern can start in business and get along, except by cutting prices. I have no specific case in mind.*

"Q. You have not mentioned any amount in which the Buckeye Company cut prices? A. Not at present.

"Q. Then, your answer was purely an imaginary one? Is that right? That they might have done it, if they wanted to, in order to get business? A. I do not see how it could get business if it did not.

"Q. Now, is that the sole reason that you stated that the Buckeye Company was the one which started the price cutting, in order to get business? A. That is my impression. *I have no specific case in mind.*"

Nor do counsel attempt to deny the correctness of the report made by Mr. Brewster, an official of the Du Pont Company, as pointed out in our former brief at pages 91-92, which shows that plaintiff's prices were higher than those of the defendant, and that it was this report that precipitated the general cut made by the Du Pont Company to 95 cents per keg, which immediately followed, and which price Mr. Bumstead, the head of the competitive division of the Du Pont Company, told him "was low enough to get the business" (Trans., p. 2402, fol. 7206).

The references given to the record by no means exhaust the record that might be cited to show that from the moment that plaintiff began to solicit business down to the time when it was compelled to close its doors, the defendants pursued a relentless policy of underbidding.

But assuming, for the purpose of the argument, that the plaintiff did "cut prices," the first pertinent inquiry is—**Whose Prices Did Plaintiff Cut?**

Were they the defendant's prices?

The evidence shows that the only "fixing" or "cutting" of prices was done by the Du Pont Company. Whenever they saw fit they established such prices as they pleased, and kept them secret. If a competitor, by chance or by design, happened to make a price different from the price thus secretly established, he was a "price-cutter."

The testimony of the defendants own witnesses shows that the Du Pont prices were "fixed" by the Sales Board of the Du Pont Company, upon special application by an agent or salesman, stating the reasons therefor (Trans., p. 385). The only violation of this rule was the general 95-cent price which was made in May, 1905, and discontinued October 14th, 1907 (Coyne, p. 380, fol. 1138), in an effort to drive the plaintiff out of business.

The defendants also endeavored to make a distinction between "price-cutting" and "price-meeting." If plaintiff reduced its prices to its customers, this was denominated "price-cutting," but if the Du Pont Company reduced its prices to its customers, this was called "price-meeting."

In other words, the defendants would have it appear that they never varied from their prices except to *meet* lower prices which the plaintiff fixed. When confronted with numerous violations of this theory, their answer was that this was their *"policy."* (T. C. Du Pont, Trans,, pp. 1904, 1908, fols. 5712-5724; P. S. Du Pont, pp. 1952-3, fol. 5857; Haskell, pp. 1766, fols. 5296,

1935, 5803; Moxham, p. 1946, fol. 5837; Barksdale, pp. 1913, 1920, fol. 5738; Patterson, p. 185.)

Plaintiff's Exhibit 1248, known as the "95-cent price list" (discussed in our former brief at p. 92), which gives a list of 445 instances of cuts not based upon any competitive bidding, is an eloquent refutation of this pretense. When Mr. Haskell was confronted with instances in which the record showed a cut *below* plaintiff's price (Trans., pp. 1804-1805), he at once took refuge behind the claim that the Du Pont Company cut the price "if a competitor was either *making* a cut, or was *ready* to make it" (Trans., p. 1804, fol. 5412).

In our former brief we also pointed out that no open *price list* of explosives was ever issued in the history of the trade until in October, 1907—after the 95-cent price had accomplished the work for which it was designed by driving plaintiff out of business—thus proving the wisdom of Mr. Bumstead's foresight that it was "low enough to get the business."

Mr. Waddell testified that he would not have dared to cut a price if he knew it (Trans., page 1075), and the defendants have not pointed to any portion of the record which shows that he did know, nor could have known, what the Du Pont prices were. He was extensively cross-examined as to the prices at which the plaintiff sold powder to certain of its customers, as shown by its books. In many instances he was asked the following or a similar question: "What was the Du Pont price to such customer at that date?" and invariably he replied substantially as follows: "I do not know;" "I knew nothing of Du Pont prices only what customers told me;" "the

Du Pont prices were secret" (Trans., pp. 1482-1516).

However, we wish it distinctly understood that plaintiff stands upon the broad principle that the defendants had not the right, legally or morally, to establish prices to which the plaintiff was bound to conform; and that so long as the plaintiff used no unfair or improper methods in carrying on its competition for business, it had a legal and moral right to make such prices as it might deem proper without regard to the prices fixed by the Du Pont Company.

If this is not so, where did the defendants acquire the right, legal or moral, to establish prices for explosives to which all others must conform?

To uphold their contention that they have such a right would be in effect to give them the power to continue the monopoly, which they built up and long maintained through the Gunpowder Trade Association, and thus to nullify the Anti-Trust laws. For is it not self-evident that to give the Du Pont Company the right to *establish* prices to which all other manufacturers must conform, is, in effect, to perpetuate its monopolistic control, and is in fact to confirm it as a legal monopoly.

In the National Cotton Oil Co. vs. Texas, 197 U. S., 115, 129, it was said:

> "It is certainly the conception of a large body of public opinion that the control of prices through combinations tends to restraint of trade and to monoply, and is evil. The foundations of the belief we are not called upon to discuss, nor does our purpose require us to distinguish between the kinds of combinations or the degrees of monopoly. It is enough to say that the idea

> of monopoly is not now confined to a grant of privileges. It is understood to include a 'condition produced by the acts of mere individuals.' Its dominant thought now is to quote another, 'the notion of exclusiveness or unity;' in other words, the suppression of competition by the unification of interest or management, or it may be through agreement and concert of action. And the purpose is so definitely the control of prices that monopoly has been defined to be 'unified tactics with regard to prices.' "

The absurdity of the price-cutting charge, even if proved, as furnishing an excuse for the conduct of the defendants, is shown by the mere statement of the facts established by the evidence that the plaintiff's plant had a capacity of 250,000 kegs per year, and its operations were limited by freight rates, to a few of the central states; while the plants owned by the defendant Du Pont Company alone had an annual capacity of 8,250,000 kegs in 1904, and its operations covered the entire United States and some foreign countries.

It is perfectly apparent that the Du Pont Company could have entirely ignored the plaintiff as a competitor, without affecting its trade in any appreciable degree, and that it would have done so but for its determination not to permit the plaintiff to live. Monopoly was the *sole object* of the defendant in its effort to deprive the plaintiff of enough business to keep its mills in operation.

This policy was well-voiced by their counsel on his cross-examination of Mr. Waddell (Trans., pp. 1157-1158), where the theory was advanced that because the Associated Powder Companies

feared that, if a given competitor was allowed to obtain a fair share of the trade, and to conduct its business at a reasonable profit, it might have been able to get "*an ever increasing share*" of trade, until it had been selling its *full output*, and as a result "some other person would have come along and built three or four mills and gradually these Associated Companies would have had nothing left." (Trans., p. 1158, fol. 3474.) Mr. Waddell's answer to this theory is very much in point. (*Ibid*, fols. 3471-3472):

> "If the Associated Companies had allowed an independent to live, allowed them a fair share of the business, a small share of it, of the growing business of the country, they wouldn't have had this fight; but it wasn't the policy of the Associated Companies in any of the fights; they wanted to rule or ruin."

The Quality of Plaintiff's Powder as an Issue.

On the examination of Mr. John B. Falcetti, a user of about 24,000 kegs per year, called as a witness for the defendants, the following question was propounded by plaintiff's counsel (Trans., p. 2339, fol. 7016):

> "Q. What did you find was the result of the powder so far as its quality is concerned?

Thereupon the following colloquy occurred:

> "Mr. Katzenbach: That is objected to as incompetent, irrelevant and immaterial, *the*

issue in this case not being a case of the merits or demerits of the Buckeye powder.

"Mr. Abbott: If you will stipulate that I will not ask another question.

"Mr. Katzenbach: *I will say that that is my understanding of the law.*"

The answer of the witness was given as follows:

"A. The Buckeye powder was all right. It done the work."

Notwithstanding the quality of plaintiff's powder as a material issue was thus *expressly abandoned*, the contention is now made by Defendant's counsel in their brief (without, however, pointing to any portion of the record to sustain it), that plaintiff "furnished bad powder" to its customers (Brief, p. 8); and that Mr. Waddell's motives in establishing his plant might account for "the poor quality of powder that he made therein" (p. 51).

Many witnesses who had used Buckeye powder testified that they found that it produced better results than Du Pont powder, but on account of contracts with the Du Pont Company, or the influence exerted with miners and other reasons not connected with the quality of the powder, they could not purchase it. (See testimony of R. E. Lewis, Trans., pp. 631-632; of Robert Morton, Trans., pp. 643-644; of Samuel Stephens, Trans., p. 461; of Thomas Jeremiah, Trans., pp. 522-523; of David Harris, Trans., p. 1577; of Seth Whites, Trans., p. 1587, fol. 4761; of Charles A. Party, Trans., pp. 1568-1569; of David S. Thrush, Trans., p. 1583; of William D. Evans, Trans., pp. 1590-1591.)

One customer used nearly 50,000 kegs (C. G. Thurston, Trans., pp. 510-513); another used nearly 28,000 kegs (Thomas Jeremiah, Trans., pp. 522-523).

These and many other witnesses show that wherever a contest was made between Buckeye powder and Du Pont powder the results proved that an average of about 18 tons of coal per keg was obtained with Du Pont powder, and an average of from 22 to 23 tons per keg was obtained with Buckeye powder.

Some of the defendants' witnesses testified that they did not get satisfactory results from *every shot* they made. But they also testified that every kind of powder, including DuPont powder, *at times proved unsatisfactory,* and did not produce good results from every shot.

But even if it were true that plaintiff did lose the trade of every person whose testimony was produced on account of any dissatisfaction with the quality of its powder, *the total amount of the annual business which would have come from this source,* if plaintiff had acquired it all, would not have amounted to 5,000 kegs. It is apparent that a loss of that amount of trade would have had no appreciable effect on a plant with a capacity of 250,000 to 300,000 kegs per annum. We think the Court will agree with the contention that if plaintiff's retirement from business was due to the loss of its customers by reason of the poor quality of its powder, that fact cannot be established by showing that *some* customers were lost on this account. It must be made to appear that these customers were sufficiently numerous and important to have made a de-

cided impression on plaintiff's business. This was not done. Defendants concede that plaintiff furnished them with a list of 311 customers, and even if it were true, as counsel for defendants state, that they produced more than 130 of them, who said that they declined to do business with plaintiff on this account, *there would be 181 customers still remaining to do business with it,* but as we have above pointed out there were only 79 such customers who were examined by defendants—thus leaving 232 unexamined.

Furthermore the evidence shows, as has already been pointed out in our former brief, that there were consumers of vast quantities of powder who were willing to become plaintiff's customers, and the quality of its powder was not the deterring motive, but the acts of the defendants were (see Brief, p. 291).

POINT I.

The direction of a verdict in favor of the Eastern Dynamite Company and International Smokeless Powder Company.

(See former brief, p. 45 *et seq.*)

But defendants make several important *admissions* with respect to the action of the Court in directing a verdict in favor of the Eastern Dynamite Company and International Smokeless Powder Company, which, as we view it, in effect concedes this assignment of error. One of these

is contained in the following extract (Defendants' Brief, p. 11):

> "The plaintiff-in-error cites a number of cases on pages 33-37 of its brief, which go to the point that a conspirator may in some instances be liable for the acts of his co-conspirators. *This proposition probably could not be successfully denied,* nor is it necessary to deny it. The Court here did not hold that one conspirator is not liable under proper limitations for the acts of his co-conspirators, but held that there was no evidence *that either of these corporations was a conspirator,* and it was on *that ground* that the verdict was directed in their favor."

In refutation of the above statement that the direction of the verdict was on the ground that there was "*no* evidence that either of these corporations was a conspirator," it is sufficient to point to what the Court itself says, namely (see assignment No. 3):

> "The evidence, however, fails to support any *participation* by the Eastern Dynamite Company and the International Smokeless Powder Company, and my instructions to you are that you return a verdict of no cause of action in their favor."

The proposition set forth at pp. 33-37 of our brief, which it is admitted above "probably could not be successfully denied," is (a) that every conspirator is liable for all the overt acts of his co-conspirators, whether he actually "participated" in them or not; and (b) that the evidence in this case shows that the defendants Eastern Dynamite Company and Smokeless Powder Company were members of the con-

spiracy, and was for the jury to weigh and pass upon.

This evidence, as collated in our former brief, and which the jury never had an opportunity to consider in so far as it applies to these two companies, conclusively shows that they both were co-conspirators with the Du Pont Company in *maintaining a monopoly* of the explosives industry. It is practically the same evidence upon which Judge Lanning so found as a fact, and based the decree of dissolution in the Equity case.

The argument of the defendants' brief is that because the Eastern Dynamite Company and the International Smokeless Powder Company were not parties *in name* to the Gunpowder Trade Association, they could not possibly have been parties to the conspiracy. The co-operative methods described by us in our former brief at pp. 64-84 are ignored.

They also say (Brief, p. 23), that the "Haskell-Fay" agreements, which marked the beginning of the combination of the dynamite interests and the black powder interests (see our former brief, p. 68), were "abrogated long before plaintiff went into business." No reference is made, and none can be made, to anything shown in the record to support this statement. The record shows that the agreement was, by its terms, to continue until three months' notice of discontinuance was given (Trans., p. 2788, fol. 8362). The record does not disclose that any such notice was ever given. It did in fact continue until the dissolution of the Gunpowder Trade Association in June, 1904, and was succeeded by the "Sullivan-Fay" agreement—which related solely

to dynamite (Trans., pp. 1963-1964)—and which continued the relationship between the same interests represented by the "Haskell-Fay" agreements until March 31, 1903—Sullivan representing the Du Pont Company and Mr. Fay representing the same interests he did under the "Haskell-Fay" agreements. (See references in our former brief, p. 75.) The plaintiff was organized in February, 1903, and shipped its first powder in September, 1903; therefore it will be seen that there is no foundation whatsoever for the assertion that this agreement was abrogated before planitiff went into business.

Further assertions that other agreements were abrogated before plaintiff came into being are made by counsel for defendants (Brief, p. 23). But it will be observed that not a single citation to the record is made to support these assertions. It will, therefore, be unprofitable and useless to give further attention to them.

On the question of stock ownership and control of the Eastern Dynamite and Smokeless Powder Companies as supporting plaintiff's claim of unlawful combination, we call attention to the fact that in the Standard Oil and Tobacco cases, the monopolies were built up and maintained largely by stock ownership and control of many subsidiary corporations. The classification of the various corporations proceeded against in the Tobacco Case, as shown by the recital at 221 U. S., 143-147, might properly be followed as the classification in the present case: the Du Pont Powder Company (like the American Tobacco Company) "because of its dominant relation to the *subject matter* of the controversy

as the *primary* defendant"; the Eastern Dynamite and the International Smokeless Powder Companies "because of their relation to the controversy as the *accessory*", defendants and the 110 subsidiary corporations named in the Declaration, and shown by the evidence, to be co-conspirators. This Court considered the power exercised by the primary defendant, the American Tobacco Company, over the accessory and subsidiary corporations, whether due to stock ownership and control, or other facts, in relation to the *whole* situation. Chief Justice White, at p. 237, said:

> "Our conclusion being that the combination *as a whole*, involving all its *co-operating* or *associated* parts, in whatever form clothed, constitutes restraint of trade within the first section, and an attempt to monopolize or the monopolization within the second section of the Anti-Trust Act", etc.

Admission that Foreign Agreement Was an Agreement in Restraint of Trade, and that the Eastern Dynamite Company Was a Party to It.

After having said that "the Foreign Agreement is not in evidence", and that the summary of its provisions as set forth by us at pages 51-52 of our former brief "is most exaggerated" —not, however, pointing out any such exaggeration—counsel for defendants make the following admission concerning the provisions of this agreement and its purpose and effect, which

establishes all that is necessary to be established in order to show that the Eastern Dynamite Company was a party to the unlawful combination to control the explosives industry, and that it was error to direct a verdict in its favor. We quote their interpretation of the purpose and effect of the Foreign Agreement as stated by the defendants in their brief at page 22:

> "It seems to have related to a *division of territory*, and to have been to the *effect* that the European factories would not build plants or sell certain products in the United States, and a reciprocal provision was contained".

Also, on the same page:

> "It is difficult to see how the plaintiff could have been harmed by an agreement which resulted in keeping a lot of foreign companies from manufacturing and selling black powder in the United States."

This concedes the essential fact relating to the Foreign Agreement, namely, that it was an agreement between certain "American Factories"—of which the EASTERN DYNAMITE COMPANY was one—and certain "European Factories", whereby the explosives trade of the world was divided up and restrained and was, therefore,

> "a contract in restraint of trade and commerce among the several states and with foreign nations",

and prohibited by Section 1 of the Sherman Act.

But with marked inconsistency counsel for defendants follow the above with the statement that plaintiff cannot complain of this agreement because "it was abrogated *prior* to the time that plaintiff herein was entitled to collect damages."

The defendants' plea of the Statute of Limitations cut off plaintiff's claim of all damages suffered prior to Sept. 18, 1904 (Trans., p. 2507, fol. 7521), and the undisputed evidence is that the Foreign Agreement was abrogated and cancelled in 1906 (T. C. Du Pont, Trans., p. 214). So that, whether the ruling based upon the Statute of Limitations was correct or not, the "Foreign Agreement" operated for nearly two years after the plea became effective.

On page 16 of their brief, the defendants say that the Du Pont International Powder Company, which is the company owning the stock of the International Smokeless Powder Company, "was engaged exclusively in the manufacture of smokeless powder". They do not point to anything in the record to sustain this statement, and we know of nothing.

Defendants also contend that the direction of a verdict in favor of the Eastern Dynamite Company and International Smokeless Powder Company was harmless, because the evidence, in so far as it related to the Du Pont Company, was submitted to the jury, and that defendant was exonerated by the verdict. They say (pp. 28-29):

> "To all intents and purposes these two corporations stand in the position of two sureties sued in connection with the principal for whom they are sureties."

And they argue that sureties cannot be held unless there is a verdict against their principal. Without stopping to discuss this proposition as applied to sureties, we would say that this is the first time we have ever known of the doctrine

of principal and suretyship being invoked by co-conspirators in the commission of crime to avoid the legal consequences of their acts.

Defendants cite Portland Gold Mining Company vs. Stratton's Independence, 158 Fed., 63, as an authority to support their contention that these two companies were discharged of liability from further prosecution. But the injuries complained of in that case resulted from a trespass and grew out of *contract* obligations. The rules governing contract liability do not apply to criminal conspiracy.

It is perhaps sufficient to point out, as was said by this Court in Bigelow vs. Old Dominion Copper Company, 225 U. S., 11, 132, that

> "In many cases this Court has held that a judgment without satisfaction against one of two joint trespassers is no bar to another action against the other for the same tort. The common law imposes upon a joint tortfeasor the burden of bearing the entire loss which he, in co-operation with another, has inflicted. The injured person may sue those who co-operated in the commission of the tort together, or he may sue them singly. He may recover against less than all if he sue them jointly, and may have a judgment for unequal sums against all who are joined in the suit. Or, if he sue one such wrongdoer and recover judgment, he is not estopped from suing another upon the same facts unless his first judgment has been fully satisfied."

Furthermore, whether the defendant Du Pont Company has been exonerated depends altogether upon whether the question of its liability was properly submitted to the jury—and that is one of the issues before this Court at this time.

POINT II.

In re the purchase of plaintiff's plant by Olin, and the inducements given by the defendants.

(See our former brief, pp. 109-130.)

In order to overcome the effect of the plain and uncontradicted evidence of Mr. Olin himself, which establishes a direct ownership in the plant which he purchased from plaintiff at its instance, by the Du Pont Company, counsel try to show that Mr. Olin did not mean what he said (Brief, pp. 65-66). "His answer is somewhat confused", they say, and he "had in mind" to say something quite different from what he did say—that is, the thing which they wished him to say. The plain language of his testimony does not need any construction, and the effort of counsel to place a construction upon it so widely different from what he said, is a confession that the position taken by the plaintiff as to the meaning and effect of his testimony is correct.

Furthermore, on page 66, in order to avoid the effect of the agreement between Mr. Olin and the Du Pont Company, whereby that company agreed to purchase from 75,000 to 100,000 kegs of powder per year, to be manufactured by him at plaintiff's plant, which was his inducing motive to purchase the plant, counsel say (p. 66):

> "It further appears that a month or so after Mr. Olin and Mr. Lent purchased this property, the Du Pont Powder Company bought some powder manufactured there,

this for the reason that it had had an explosion in one of its western plants."

Counsel do not cite any portion of the record to sustain this statement, and we know of none such.

In answer to our contention that the Du Pont Powder Company shared some of its customers with Olin after he purchased the plant, counsel say: "There is not the slightest evidence in the record to substantiate any such statement." Since they do not deny the correctness of our references to and quotations from the record at pages 125-127 of our former brief, we can only conclude that the above is merely an expression of their own personal views.

POINT III.

The order requiring plaintiff to elect between Sections 1 and 2 of the Sherman Act.

(See plaintiff's former brief, pp. 131-143.)

Referring to Assignment of Error No. 4, we find the following language at page 34 of defendants' brief:

> "It is therefore apparent that the plaintiff is basing his contention at this stage of the proceedings upon the proposition that his declaration is bad. He is maintaining that his declaration consisting of only one count, *does, as a matter of fact, contain two causes of action,* and that he ought to have been allowed to avail himself of both those causes

> of action before the jury. In order words, he is forced to the position, not only that his declaration is the *subject of duplicity,* but that *it is properly so,* and he can take advantage of the duplicity that is therein contained."

And again at the bottom of the same page this statement is repeated and authorities are discussed to sustain a contention that nobody disputes, namely, that where separate causes of action are combined in one count election may be required.

It is difficult to understand the motive of counsel in making statements so entirely wide of the facts, because at page 41 of their brief they make the following directly contrary statements:

> "The plaintiff endeavors to escape the situation in which it finds itself by maintaining that a cause of action for damages under the Sherman Law is based entirely upon Section Seven of that statute. That, therefore, in any one count any number of offenses can be relied upon, whether they are under one or both of the first two sections of that act, and it is stated that to consider each separate act as constituting a cause of action would make it necessary to formulate a separate count for every separate overt act or step in a conspiracy as a separate cause of action."

In view of the position taken by plaintiff in its brief (at pages 135-143), namely, that plaintiff's right of action is given by Section 7 of the Sherman Act, *and not by Section 1 or Section 2;* and that Section 7 does not distinguish between things that are declared unlawful by Section 1 and those that are declared unlawful by Section 2; but that

it gives plaintiff a right to recover for such injuries as it may have suffered "by reason of *anything* forbidden or declared unlawful by *this act;*" and that this right constitutes a *single and indivisible* cause of action.

The controversy in the Standard Oil and Tobacco Cases involved both Sections 1 and 2 of the Anti-Trust Act, and yet, the bill in each case presented a single cause of action covering both sections. It may be assumed from the well-known intensity of the contest in those cases and the ability of the counsel on both sides, that if the contention is correct that the subject of each section requires a separate count, it would have been discovered and the question raised at that time.

It is of course beyond question that Sections 1 and 2 cover different *subjects:* "There could be no doubt," said Chief Justice White in the Standard Oil Case (221 U. S., 30), "that the sole *subject* with which the first section deals is restraint of trade as therein contemplated, and that the attempt to monopolize and monopolization is the *subject* with which the second section is concerned."

But that these two *subjects* constitute separate and distinct *causes of action* which must be declared upon in separate counts—as the defendants so strenuously insist—has never been held by any Court except in the case of Rice vs. Standard Oil, which is exclusively relied upon by defendants. This case has, however, been virtually overruled by this Court, and is contrary to the rule laid down in numerous cases, as pointed out in our former brief at pages 134-138.

All the cases there cited were decided after the Swift case, and everyone has taken a contrary view to that taken in the Rice case.

Furthermore, the Rice Case was based upon the New Jersey practice. The provisions of the "Conformity Act" (U. S. R. S., 914), require that the Federal Courts shall conform to State practice "as near as may be," and "in like cases" only. It has been held in many cases, and well stated in Hills vs. Hoover, 220 U. S., 329, that:

> "This section was not intended to require the adoption of the State practice where it would be inconsistent with the terms or *defeat the purposes* of the legislation of Congress. * * * It follows that where the State statute, or *practice* is not adequate to afford the relief which Congress has provided in a given statute, resort must be had to the power of the Federal Court to *adapt its practice* and issue its writs and administer its remedies so as to enforce the Federal law."

In Ware-Kramer vs. American Tobacco, 178 Fed., 117, the Federal Courts began to adapt themselves to the new rules of pleading prescribed by the Supreme Court. It is well said on p. 125:

> "The evil at which this statute is aimed is of national importance, and the remedies provided for its punishment and repression should not be restricted by technical and narrow rules of pleading. If the plaintiff, in an intelligent way and by 'a connected story,' sets forth his grievance, he should not be turned away from the Court, or his pleading so mutilated, by striking out more or less essential averments, as to embarrass him and unduly limit the scope of his proof when he comes to trial."

In addition to the authorities already cited, we desire to call attention to what Judge Carpenter said on this question of duplicity, when the Swift Case was before him (188 Fed., 92, 97):

> "The objection is not sound. The crime charged is a combination in restraint of trade. Such a combination may design to accomplish its object in many different ways, and the enumeration of the various means adopted does not render the indictment bad for duplicity. Duplicity in an indictment means the charging of more than one *offense*, not the charging of a single offense committed in more than one way. Duplicity may be applied only to the result charged, and not to the method of its attainment. Anderson vs. United States, 171 U. S., 604; Connors vs. United States, 158 U. S., 408."

The general rule as many times applied to civil actions for conspiracy is thus stated in 8 Cyc., 676:

> "Specific acts done to effectuate the conspiracy may be set forth and are not to be considered as constituting several causes of action, although they may be different in their particular character, were done at different times, and defendants do not all claim to be interested in, or benefitted by each of them, or in the same degree as to any of them."

POINT V.

Mr. Waddell's alleged motives as an issue.

(See plaintiff's former brief, pp. 157-168.)

Counsel for defendants have seen fit, all through this case, to make a personal attack, not only upon Mr. Waddell as plaintiff's principal witness, but upon stockholders who have appeared as witnesses, or who have sought in any way to protect their interests through this proceeding.

The personal attacks upon Mr. Waddell have known no bounds; contemptuous epithets and insinuations at the command of counsel have been thrown at him, and yet with his entire history and record in the defendants' hands for a period of 21 years, they were unable to uncover a single fact involving his integrity.

At many places in defendants' brief, they renew these personal attacks and assail his motives and conduct by innuendo and assertion, but do not refer to the record to support their charges. These attacks culminate in the following amazing summary at pages 123-124, with not a single reference to the record. (The parenthetical notations are ours):

> "A fair reading of this record shows that (a) Mr. Waddell, a man who had been a trusted employee of the defendant for twenty years, (b) who had been a large participant, if not an originator, of many of the methods in the black powder business concerning which he complained, (c) after having observed the successful enterprise of one of his

assistants in building a powder mill and selling it out to the defendants at a profit after having demoralized the defendants' trade, undertook to emulate such example, fully convinced, as he told Mr. Rice, that he would not be required to manufacture powder, but would engage in the business of manufacturing prices. Under such circumstances he (d) built a flimsy mill, (e) began to cut prices, (f) had no money, (g) no experience as a powder manufacturer, (h) no integrity, (i) manufactured powder that could not be used, (j) failed to furnish that powder, such as it was, according to his contracts, (k) devoted his time to attacks upon the defendant rather than to the advancement of his own business, and eventually reaped the logical conclusion of such methods in coming to a point where he was obliged to sell his business to a man who did know how to run it and who (l) immediately upon the acquisition thereof, rebuilt his plant and made real powder and in a measure achieved some success with the enterprise. (m) Further than this, a fair reading of the testimony of Mr. Waddell, whose testimony contains the chief evidence relied upon by the plaintiff, will show that Mr. Waddell stood before the jury entirely discredited in *everything* he had testified to and largely from correspondence and documents signed by himself.

(n) We submit that if an enormous verdict must be insured to *such a plaintiff* in order to save the Sherman Law from annihilation it would be much better that such annihilation should ensue, than that such a measure of encouragement should be afforded to every illegitimate enterprise that sees fit to prey upon the community."

Assuming that all these statements are true

they can avail defendants nothing as a legal proposition; for as we pointed out in our former brief at pp. 157-168 the right of the plaintiff to recover for injuries suffered at the hands of the defendants cannot be affected by the knowledge which Mr. Waddell had gained as an employee of the Du Pont Company, concerning their unlawful policies and practices, nor the motive which controlled him in entering into the manufacture of powder.

If these charges and insinuations were supported by references to the record we would be content to let the Court judge of their accuracy without comment. Since, however, Mr. Waddell is now dead and unable to defend himself, we cannot permit them to go unanswered, for they constitute, as they no doubt were intended to constitute, an attempt to influence the judgment of this Court—as they have no doubt already influenced the jury.

Furthermore, the charge of "no integrity" seems to be a particularly ill-fitting uncalled-for and malicious effort to blacken the memory of a dead man, for it is now made for the first time.

We will therefore consider them as briefly as possible:

(a) It is true that Mr. Waddell was a trusted employee of the Du Pont Company for over twenty years, and we challenge the defendants to show that he ever betrayed the trust. The record shows that during this period he handled more than ten million dollars of the money of his employers and did not default in a single cent (Trans., p. 929). Even after the death of Eugene Du Pont in 1902, under whom he had served most

of this time, Mr. T. C. Du Pont, the new head of the Du Pont interests, transferred him to Wilmington and made him General Sales Agent for the United States, increased his salary from $9,000 to $10,000 the first year, $11,000 the second year and $12,000 the third (Trans., pp. 827, 1417-1418), and assigned him to perform a large part of the duties which he (Mr. Du Pont) was officially called upon to perform as a member of the Gunpowder Trade Association (Trans., 718-720).

(b) The record does not show that he was the originator of any of the policies or practices complained of, except in the sense that, as an employee, he was called upon by his employers for advice, and gave it; and was instructed to carry out their policies, and obeyed instructions (Trans., pp. 925-926).

(c) The files and records of the defendants during the whole period of Mr. Waddell's activities as the employee of that company were searched for all sorts of letters or other communications which by some possibility might be given a construction which would uphold the idea that he had long been plotting to enter the powder business and reap for himself some of the profits which had been made by others.

The record discloses nothing but the most devoted loyalty to the interests of his employers in everything he did and said. The policy of consolidation and absorption which had been going on for so long finally resulted in taking most of his trade away from the Cincinnati office, which he managed, and when he realized

this he reached the conclusion that his employers were about through with him, and began to think about establishing a powder business for himself. (Trans., pp. 1405-1410; also 1416.)

This was held up as an offense against good morals—a proposition which we confess we have never been able to understand except upon the theory of the "divine right" of the Du Pont Company to monopolize the explosives industry.

We have already discussed in our former brief (page 160) the alleged conversation as testified to by Mr. Rice. (See also Trans., pp. 1401-1404, 1455.)

(d) The record is not in dispute that plaintiff's plant cost over $118,000, and the defendants' own witnesses (including Mr. Olin) all admitted that the buildings were substantial and that the plant was equipped with up-to-date machinery, and until counsel point out something in the record to support their assertion that Mr. Waddell built "a flimsy mill", the statement is not worthy of further attention.

(e) The statement that plaintiff "began to cut prices" has already been shown to be wholly unsupported. (See *supra,* p. 12.)

(f) The record shows that every dollar of the entire capital stock, namely, $100,000, was paid in in cash; and that plaintiff had the credit to, and did obtain its necessary working capital as required (Trans., pp. 938-939).

(g) The charge that he had no experience as a manufacturer of powder is true only in the sense that he had never before owned and controlled a

powder plant. The evidence shows that he was well versed in the art of powder making (Trans., p. 1518) and was employed by Olin to operate the plant for the first year after its sale at a salary of $12,000 per year.

(h) The charge that he had "no integrity" is a malicious libel, without the remotest vestige of truth, and we challenge the defendants to point to the record to support it. It is almost beyond belief that an honorable and faithful servant, who devoted twenty-one years of the best period of his life to the service of Du Pont Company, should be subjected to such unwarranted and altogether unfounded attacks upon his integrity. We have already pointed out in our former brief (pp. 161-165) some portion of the record which flatly contradicts this statement. We also refer to Plaintiff's Exhibits 42 and 44 (Trans., pp. 2565 and 2570), where it is shown that Mr. T. C. Du Pont, representing the Du Pont interests, negotiated with Mr. Waddell with a view to joining him in the building of a powder plant, and where Mr. Du Pont says that Mr. Waddell's associations with the Powder Company had been "entirely satisfactory", and that because the Powder Company "does recognize the ability and appreciates the long and faithful service of R. S. Waddell", etc. (fols. 7694, 7710-7711), it desires to join with him in the enterprise.

These negotiations failed because it developed that the Du Pont interests desired to have stock control of the company, or its output, in such a manner that at any time they saw fit they could assume control of the business. This Mr. Wad-

dell did not care to do, and he discontinued negotiations, resigned from their service, went out and interested other capital, and conducted his business independently. The very men whom he had served so long and faithfully placed detectives on his track and followed him throughout the country as if he were a common criminal.

(i) The falsity of this charge is sufficiently pointed out, *supra,* p. 17.

(j) We know of no evidence to support the statement that plaintiff failed to furnish powder according to its contracts.

(k) That Mr. Waddell "devoted" his time to attacks upon the defendants is merely an epithet. There is no evidence whatever to that effect. That he gave as much of his time to *defending* the plaintiff from the attacks made upon its business by the defendants and their large corps of officers and salesmen throughout the country, as he could spare, is unquestionably true. When he found the plaintiff rapidly being forced into bankruptcy, he *fought back* with all the power and ability at his command. He first tried the publicity method, that is by trying to awaken the interest of the public, and especially the consumer, against the methods of the defendants; and finally filed a petition with the Department of Justice, charging them with violation of the Sherman Law, thus setting the machinery of justice to work to bring them to book, and aided the Department of Justice with all the evidence and influence which he could bring to bear. That he was justified is proved by the fact that the defendants were convicted in that proceeding.

It was not until he set about to bring the defendants to book and force them to suffer the penalty of their own offenses that he became an outlaw, in their opinion. Having accomplished this object, he turned his attention to securing the private redress guaranteed to him by the statute, and in this he has so far failed.

(1) The statement that the purchaser of plaintiff's plant "immediately rebuilt" it, is clearly at variance with the record. The evidence shows that no changes were made in the plant during the first year, except to install a new separator at a cost of not to exceed $1,000, for the purpose of making *sporting* powder, which had never been made at the plant before, and which, on account of the smallness of the grains, required a finer mesh to produce (Trans., pp. 2415-2417). And as to Mr. Olin being responsible for the success of the business because he was "a man who knew how to run it and made *real powder*", it is a sufficient answer to say that Mr. Olin employed Mr. Waddell himself for the first year, at a salary of $12,000, who had full charge of the business; that there was no change in the formula. Mr. Olin succeeded where the plaintiff had failed because the Du Pont Company and other allied companies became his principal customers, and purchased the greater part of his output and paid 90 to 95 cents at the mill, and assumed all the expense of carrying and transporting the same, which represented a good profit (Cryne, pp. 378-379). Furthermore, all opposition to the product of the mill among the miners and others, immediately ceased because there

was no longer any competitor interested in instigating such opposition.

Mr. Olin, as defendants' witness, on direct examination made the general statement that he had expended $100,000 on the plant *since he had bought it;* but on cross examination he could account for none of this expenditure during the first year, and was in fact unable to account for more than $10,000 or $12,000 of the amount *at any time.* Such of his expenditures as he did account for were for the purchase of *additional* land, the replacement of buildings and machinery destroyed *by explosions,* and the installation of a *keg making plant.* All this covered a period of *over four years* after he bought the plant and had nothing to do with the original plant (Trans., pp. 2019-2023).

(m) The statement that Mr. Waddell was "discredited in everything he testified to largely in correspondence and documents signed by himself" is one which, if true, it would seem only common decency would dictate should have been supported by some reference to the record. None was given and in our judgment, none is possible.

(n) The conclusion that it is better that the Sherman Law should suffer annihilation than that "such a plaintiff" should be encouraged to prey upon the community with its "illegitimate" enterprise, no doubt expresses the heartfelt sentiments of the defendants and all others similarly infected with the idea of monopolistic control by divine right, who do not care to be disturbed in their purpose to defy and break the laws of the land, and crush out opposition to their plans at

their pleasure. It has not been the policy of this Court heretofore to grant such fervent prayers from such sources, and we do not believe it will be in the future.

POINT IX.

Inciting opposition among the miners, against plaintiff's powder.

(See plaintiff's former brief, pp. 190-221.)

In regard to Assignment of Error No. 12, which relates to inciting of boycotts among the miners against plaintiff's powder, counsel for defendants (Brief pp. 68-83), make so many denials and assertions, without making citations to the record to support them, and also without questioning our references to the record, that it would be futile to attempt any specific answer to them. But we cannot refrain from expressing a word of caution against this method of attempting to influence the Court.

Admission as to Assignment of Error No. 13.

(See plaintiffs former brief, pp. 221-224.)

As to Assignment of Error No. 13, which is directed to the charge of the Court to the effect that plaintiff had a paid representative at the Applegate & Lewis mine while the test between

plaintiff's powder and Du Pont powder was going on there, the defendants make the following admission, which, in effect, concedes the error of the Court (Defts'. Brief, p. 83):

> "In reference to the statement that Mr. Alec Thrush was not present while this test was being made, the Court stated that the period was in dispute. It is also true that the period at which the test was made is *not definitely* established, and furthermore, the Court did not tell the jury that *this man* was present at the test, but simply stated that while the test was going on the plaintiff had a paid representative among the miners. This statement is perfectly true."

Counsel do not point out any part of the record which supports the concluding words of the above quotation. The record does not show, and so far as we know it has never before been intimated, that the plaintiff ever employed any other person to act for it in any capacity at the Applegate & Lewis mine, except Alec Thrush; and as pointed out in our former brief (p. 223), he himself testified that he was not there at the time of the test. So that it does not matter whether the period during which he was employed at the mine was in dispute or not, since if it appears that he was not there at the time of the test, then the instruction of the Court was wrong. If, therefore, "this man" was not present at the test, it is incumbent upon the defendants to point out who the man was that was present at the test, as a paid representative of plaintiff's powder—which of course they cannot do.

POINT XI.

The rejection of letters and statements of persons solicited to become plaintiff's customers.

(See former Brief, pp. 249-256.)

The defendants argue that because the letters and statements that the Court rejected were written or made by persons who were *not yet* customers of the plaintiff, but were merely being solicited *to become* customers, their motives for refusing to do so do not come within the rule laid down in Lawler vs. Lowe. (Defendant's Brief, pp. 89-91.)

But as we understand the decisions of this Court as pointed out in our former brief at pp. 292-294, it is just as unlawful to *prevent* a person from obtaining business, as it is to *destroy* his business. Therefore, to prevent a person from obtaining customers is just as wrongful as to cause his customers to abandon him, and the reasons given by consumers of powder for not becoming plaintiff's customers, when solicited, are just as relevant as their reasons would be if they were abandoning plaintiff.

In the Danbury Hat case, the contention was that statements made by a customer explaining his refusal to purchase hats which he had customarily purchased, are admissible if given in the ordinary course of business, when he is being solicited for orders, as an explanation of his act of refusal. Such evidence is admissible under well-established principles as part of the *res gestae* to explain an equivocal act, such as a dis-

continuance of patronage or employment, and to prove the state of mind which the defendants produced.

Elmer vs. Fessenden, 151 Mass., 361;
Hine vs. N. Y. E. R. R. Co., 149 N. Y., 154.

POINT XV.

Measure for damages.

(See plaintiff's former brief, pp. 278-279.)

On the question of loss of profits, the defendants cite Central Coal & Coke Company vs. Hartman, 111 Fed., 96, to sustain the action of the Trial Court in its instructions. (Defts'. Brief, p. 116.)

But in so far as the rule laid down in that case relates to damages sustained by one who has been *prevented* from carrying on business, it is in direct conflict with the decisions of this Court, beginning with the *Kissel* case, 218 U. S., 601, and the subsequent cases following the rule there laid down (cited in our former brief, pp. 292-295), to the effect that it is just as unlawful to *prevent* a person from engaging in business, as it is to drive a person out of business.

It would indeed be an empty privilege to extend to a person a *right of action* for injuries sustained by being prevented from establishing a business and making profits and then deny him the right to recover any damages because he

had no established business upon which to base an estimate of his loss of profits.

And yet, that is what Judge Sanborn held in the Hartman case, as the following clearly shows (111 Fed., 99):

> "He who is prevented from embarking in a new business can recover no profits, because there are no provable data of *past business* from which the fact that anticipated profits would have been realized can be legally deduced."

The fact is that the Hartman case was decided September 30th, 1901, and the Kissel case was decided nine years later—December 12, 1910—and if the rule there laid down by this Court is to be of any value whatsoever, then the Hartman case is not an authority.

Respectfully submitted,

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Counsel for Plaintiff-in-Error.

BUCKEYE POWDER COMPANY *v.* E. I. DuPONT DE NEMOURS POWDER COMPANY ET AL.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 7. Argued April 30, May 1, 1917; restored to docket for reargument June 10, 1918; reargued November 13, 1818.—Decided December 9, 1918.

In an action for triple damages under § 7 of the Sherman Act, where the scope of the declaration, plaintiff's interpretation of it and the nature of the proofs characterized the case as based on § 2 of the Act, dealing with attempted and effected monopolies, rather than on § 1, dealing with contracts and combinations in restraint of trade, and where the case was fully tried upon this basis, without objection, and the jury was allowed to consider contracts so far as they bore upon the supposed attempt to subject plaintiff to a monopoly,—

Held: (1) That technical error committed at the close of the trial in requiring plaintiff to elect whether it would rely on the first or second section of the act (whereupon it elected the second without asking to amend,) was harmless. P. 60.

(2) That instructions pointing out that § 2 extends to attempts to monopolize were advantageous rather than harmful to plaintiff. P. 62.

In such an action, where the only ground for holding a defendant is responsibility (through stock ownership) for the acts of another defendant, error in directing a verdict for the former is harmless if the latter be exonerated upon the merits by the jury, after instructions fairly presenting the case against it. P. 62.

Before the Clayton Act, c. 323, 38 Stat. 731, a judgment in a Government proceeding finding a company guilty of an attempt to monopolize was inadmissible in a private action for triple damages under § 7 of the Sherman Act. P. 63.

The provisions of § 5 of the Clayton Act for admitting such judgments, "hereafter rendered" in Government cases, in other litigation, and for suspending the statute of limitations as to private rights pending Government prosecutions, do not affect retrospectively, on review, a judgment rendered in an action for triple damages before the Clayton Act was passed. *Id.*

A corporation suing for triple damages under the Sherman Act has

no ground to complain of the mere existence of a power in trade attained by a defendant and known to the organizers of the plaintiff before the plaintiff was created, without proof of some oppressive use of it afterwards. P. 63.

An instruction *held* to state correctly that, on the question whether plaintiff's failure in trade was due to its incapacity or to defendant's oppression, the jury might consider whether the motive in organizing plaintiff was to sell out to defendant or to compete. P. 64.

In an action for triple damages under the Sherman Act, the court excluded statements by third parties of their reasons for refusing or ceasing to do business with plaintiff. *Held* correct, as the statements were wanted not as evidence of motives but as evidence of facts recited as furnishing the motives. P. 65.

Where the jury found for defendant, rulings as to damages *held* immaterial. P. 65.

223 Fed. Rep. 881, affirmed.

THE case is stated in the opinion.

Mr. Twyman O. Abbott, with whom *Mr. Willard U. Taylor* was on the briefs, for plaintiff in error, among other points, urged that § 7 of the Sherman Act, prescribing a remedy for injuries suffered "by reason of anything forbidden or declared to be unlawful by this act," gives a single and indivisible right of action, and makes no distinction between the things that are declared to be unlawful by § 1 and those that are declared to be unlawful by § 2; citing *United States* v. *Kissel*, 218 U. S. 601, 607; *Cilley* v. *United Shoe Machinery Co.*, 202 Fed. Rep. 598; *Strout* v. *United Shoe Machinery Co.*, 202 Fed. Rep. 602; *Corey* v. *Independent Ice Co.*, 207 Fed. Rep. 459, 463; *Monarch Tobacco Works* v. *American Tobacco Co.*, 165 Fed. Rep. 774; *People's Tobacco Co.* v. *American Tobacco Co.*, 170 Fed. Rep. 396, 407; *Occidental &c. Co.* v. *Comstock Tunnel Co.*, 111 Fed. Rep. 135. Furthermore, in practically all equity cases brought by the Government under the Sherman Act, both §§ 1 and 2 were involved, and the Government had never been compelled to elect under

which section it would proceed. Under the Clayton Act, it was now provided that private persons might sue in equity. Act of October 15, 1914, § 16, 38 Stat. 731. If the ruling of the trial court were correct, the absurd situation would be presented of requiring a private person to elect in an action at law, but not in an equity proceeding. The error in requiring an election, was not harmless. The opinion below, in stating that "practically" all the evidence was directed to a monopoly, conceded that there was some to show a contract or combination. But in any event, plaintiff was entitled to have the scheme or combination considered as a whole, by the jury, and not in part only.

Amendment at that stage of the case was entirely out of the question, as a matter of fact, even if not as a matter of law. Furthermore, the order came as a complete surprise to the plaintiff as it was a reversal of the earlier position taken by the court upon the motion to strike the declaration. Plaintiff relied, and had a right to rely, upon the ruling made at that time, as being the law of the case.

Defendants did not acquire the right to perpetuate their monopoly by reason of long continued misconduct; and the fact that defendants were large and powerful as factors in the trade and that plaintiff's promoter had knowledge of this fact, and of their monopoly and of their practices and policies in maintaining it, did not alter plaintiff's right of action under § 7 of the act to recover for injuries suffered by reason of conduct forbidden by that act. Plaintiff was not bound to enter the business at its peril by reason of this knowledge, nor did plaintiff occupy any different position as a competitor than it would have occupied if it had been in existence during the period that the defendant's influence was being developed, and had suffered injuries at the hands of the defendants during said period or afterwards. In *Loewe* v. *Lawlor*, 208 U. S.

274, it was said that: "The act made no distinction between classes." It did not create any distinction between the rights or remedies of a person injured by an unlawful combination, whether such person or corporation was in existence before the combination had developed its power and influence, or afterwards; or whether it had previous knowledge, or acquired it later.

It was unnecessary and improper for the court to instruct the jury upon a supposititious case which was not in issue. The question was not what would have been the plaintiff's rights had it been in existence earlier, nor what would have been the rights of some other person who might not have been cognizant of the facts. The sole question before the court was, What are plaintiff's rights now? *United States* v. *Breitling*, 20 How. 252; *Railroad Co.* v. *Houston*, 95 U. S. 697, 703.

The question whether plaintiff was sufficiently capitalized to compete was a question of fact, not of intention. Even if the intention had been, as it was not, to be bought out rather than to compete, that would not afford the slightest excuse in law for the unlawful acts of the defendants, since the exercise of a legal right cannot be affected by the motive which controls it. *Sullivan* v. *Collins*, 107 Wisconsin, 291; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; *Strait* v. *National Harrow Co.*, 51 Fed. Rep. 819; *Northwestern Consolidated Milling Co.* v. *Callam & Son*, 177 Fed. Rep. 786; *Independent Baking Powder Co.* v. *Boorman*, 130 Fed. Rep. 726.

A combination of individuals engaged in interstate commerce is a veritable outlaw. It has no right to exist. And whatever it does "by reason" of which any person suffers injury, must be compensated for. The contention is that any and all injuries which may be suffered by reason of the competition induced by an unlawful combination in interstate commerce, must be

compensated for regardless of whether the acts which caused them were "fair" or "unfair," and regardless of whether such acts might have been in themselves lawful.

It has been several times held by this court that it is not alone the actual doing of the prohibited thing which the anti-trust acts strike at, but the power to do it. *National Cotton Oil Co.* v. *Texas*, 197 U. S. 115, 129; *Swift & Co.* v. *United States*, 196 U. S. 375; *United States* v. *Trans-Missouri Freight Assn.*, 166 U. S. 290, 322; *Monarch Tobacco Works* v. *American Tobacco Co.*, 165 Fed. Rep. 774, 780.

The reasons given by customers for ceasing to do business with plaintiff, as shown by their letters and by their statements to its officers and agents, should have been received. The question of the admissibility of such evidence is no longer an open one since the decision in *Lawlor* v. *Loewe*, 235 U. S. 522. 3 Wigmore, Evidence, § 1729 (2); *Elmer* v. *Fessenden*, 151 Massachusetts, 161; *Mutual Life Ins. Co.* v. *Hillmon*, 145 U. S. 285, 295. The testimony rejected by the trial court all touched upon the vital issue whether the acts charged against the defendants and their co-conspirators had really accomplished the object of "inducing" consumers not to use plaintiff's product.

The decrees in the "Government Case" which adjudged the defendants guilty of violation of the Sherman Act upon a state of facts almost identical with those presented in this case, and directed their dissolution, should have been received. *Portland Gold Mining Co.* v. *Stratton's Independence*, 158 Fed. Rep. 63. The grounds upon which plaintiff relies to sustain admissibility are: (1) As evidence of the fact that the defendants had been adjudged guilty of forming the same combination and conspiracy in restraint of trade which was in issue. *St. Louis Mutual Life Ins. Co.* v. *Cravens*, 69 Missouri, 72; 1 Greenleaf,

Evidence (16th ed.), § 538; *National Cash Register Case*, 222 Fed. Rep. 599, 629; *Coffey* v. *United States*, 116 U. S. 436. (2) As an admission of guilt. *Last Chance Mining Co.* v. *Tyler Mining Co.*, 157 U. S. 683, 691; *United States* v. *Parker*, 120 U. S. 89; *Nashville &c. Ry. Co.* v. *United States*, 113 U. S. 261.

As supporting the first of these grounds, it was important to consider that plaintiff's president and chief promotor and sponsor made the petition which led to the government suit, assisted actively and was virtually treated as the plaintiff in that case,—facts which were fully brought out by the defendants in this one. As supporting the second ground, the decree in the government case was made by consent, after months of negotiation.

Mr. William H. Button and *Mr. Frank S. Katzenbach, Jr.*, with whom *Mr. John P. Laffey* was on the brief, for defendants in error.

Mr. Justice Holmes delivered the opinion of the court.

This is an action brought by the plaintiff in error to recover triple damages under the Sherman Act, July 2, 1890, c. 647, § 7, 26 Stat. 209, 210. There was a trial that lasted five months, in which the facts were shown at great length, and after a very full and fair charge by the presiding judge the jury found a verdict in favor of the principal defendant, the E. I. DuPont de Nemours Powder Company, on the merits, and for the other two by direction of the Court. Elaborate exceptions were taken but they were overruled by the Circuit Court of Appeals. 223 Fed. Rep. 881. 139 C. C. A. 319.

The first one that we shall deal with complains of the Court's sustaining a motion at the end of the trial that the plaintiff should elect whether it would rely upon the

first or the second section of the Sherman Act. If the case were different the question presented might be grave. In the one before the Court the only error was in the use of the word election and the implied admission that the trial possibly could be taken not to have proceeded upon the second section of the act, coupled of course with § 7, giving a private action to persons injured by breach of the statute. The first section deals with contracts in restraint of trade, the second with monopolizing and attempting to monopolize it. The declaration, after stating the organization of the plaintiff in January, 1903, for the purpose of manufacturing and selling powder, particularly black blasting powder, alleges a long previous conspiracy on the part of various companies to monopolize the trade in explosives, which ended in the organization of the E. I. DuPont de Nemours Powder Company in May, 1903, in order more completely to carry out that end. It is alleged that the defendants and others have carried out that end, and that in pursuance of it they did acts, detailed at great length, for the purpose of compelling the plaintiff to join them or else go out of business. That, with an allegation that they succeeded and forced the plaintiff to sell out at a loss, is the whole scope of the declaration. There was a motion to strike it out for duplicity, but the motion was overruled on the ground that the declaration was as we have stated. 196 Fed. Rep. 514. The trial proceeded on that footing without complaint. So far as contracts bore upon the supposed attempt to subject plaintiff to the monopoly the jury was allowed to consider them. The case was fully tried upon the ground taken by the plaintiff at the outset and the only one on which it could hope to succeed. The plaintiff did not ask to amend. It is unnecessary to advert to the statement of the judge that in his opinion the exception to be considered should have the whole record behind it, or whether, as has been suggested, the

second section is not the only one addressed to transactions such as were alleged. *Northern Securities Co.* v. *United States*, 193 U. S. 197, 404. When the plaintiff, after the ruling of the judge, went through the form of electing to rely upon acts done contrary to § 2 of the statute, it simply adhered to the interpretation of its declaration that it had accepted at the beginning and had endeavored to sustain throughout. Portions of the charge are criticised in this connection for pointing out to the jury that § 2 embraced not only monopoly but attempts to monopolize. But this was wholly to the plaintiff's advantage, as it explained that if the plaintiff was driven out of business by the defendant's acts it was entitled to recover if those acts were done in the course of an attempt to monopolize, whether or not they were crowned with success. It allowed the jury to consider everything that indicated such an attempt.

Next in importance is an exception to the Court's directing a verdict in favor of the Eastern Dynamite Company and the International Smokeless Powder and Chemical Company. There were no acts done by either of these companies that were aimed at the plaintiff. The only substantial ground for charging them was that if they were parties to a conspiracy as alleged they became responsible for the acts of the DuPont Company as their own. As the jury exonerated the latter company this ground fails. So that even if the ruling was wrong it did no harm unless something more can be found in the case. *Portland Gold Mining Co.* v. *Stratton's Independence*, 158 Fed. Rep. 63. The ruling did not import that there was no evidence against the DuPont Company, the case against which was put fairly to the jury, but that there was no evidence that the other defendants conspired with it, so far at least as the plaintiff was concerned. These companies did not make black blasting powder and had no interest immediately adverse to the plaintiff.

The basis of the charge of conspiracy affecting the black blasting powder business was that the DuPont Company directly or through another company was interested in their stock. No other is suggested in the declaration and it would be hard to extract any act from the evidence. Certainly none could be found that was more than an infinitesimal fraction of those done by the DuPont Company. Here again the Court was of opinion that the exception to be considered should have the whole record behind it, but on the record as it stands we think it sufficiently appears that the plaintiff suffered no real harm.

The next matter requires but a few words. The plaintiff offered in evidence decrees in a proceeding by the Government finding the DuPont Company guilty under the Sherman Act of an attempt to monopolize. 188 Fed. Rep. 127. These of course were held inadmissible. The Court also ruled that the statute of limitations barred recovery for any damage suffered before September 18, 1905, six years before the beginning of the present suit. The plaintiff now contends that the Clayton Act of October 15, 1914, c. 323, § 5, 38 Stat. 731, making admissible such criminal judgments "hereafter rendered," in some way should affect our decision upon a ruling made years before, and that by virtue of the same section the running of the statute of limitations was suspended retrospectively as to claims already barred, pending the Government suit. These matters do not need more than a statement of what was argued and what was done.

Another exception seems to us over-critical. Mr. Waddell, the organizer of the plaintiff corporation and chief witness on its behalf, started it directly after leaving the DuPont Company, with which he had been for many years. He knew all the elements of the situation before he embarked on the venture, and did not do so until the DuPont Company had reached the height of its power. The judge remarked in his charge that the plaintiff did

not stand like a competitor that had been in existence while the defendant's influence was being developed and that had been injured in its business during the course of such development—that the mere existence of the defendant's power as it was when the plaintiff was born was not in itself a cause of action to the plaintiff, but that the plaintiff must show that the defendant used its power oppressively, if not against the plaintiff, at least in the course of defendant's business. This was innocuous truth. The plaintiff could not be called into being in order to maintain a suit for conduct that made it not pay to be born. Claims for such antenatal detriments are not much favored by the law. See *National Council, United American Mechanics*, v. *State Council of Virginia*, 203 U. S. 151, 161.

Another statement in the charge concerning Mr. Waddell's knowledge of the defendant's power and policy is complained of, but the complaint seems to us based upon a perversion of its meaning. The defendant had put in evidence tending to show that Mr. Waddell organized the plaintiff merely to sell it out to the defendant, without any real intent to compete. The Court said that of course Mr. Waddell had a right to go into business and that his motive was of little moment so far as that was concerned, but that it might have a bearing on the question whether the plaintiff was sufficiently capitalized to meet normal conditions, adding that it did not matter whether it was or not as against a competition forced upon it by unlawful means. This is treated as if it had made the motive an answer to the claim. What it really did was to state correctly that, on the question whether the plaintiff's failure was due to the defendant's oppression or to the plaintiff's incapacity, the jury in estimating the evidence and finding what the facts were might consider Mr. Waddell's motive if they should find it to have been what the defendant alleged.

We agree with the Circuit Court of Appeals that it is not

necessary to deal specifically with all the details brought up by the dragnet of the plaintiff's exceptions and assignments of error, sixty-nine in number and occupying more than sixty pages of the record. *Central Vermont Ry. Co.* v. *White*, 238 U. S. 507, 508, 509. Several exceptions were taken to the exclusion of statements by third persons of their reasons for refusing or ceasing to do business with the plaintiff. We should be slow to overthrow a judgment on the ground of either the exclusion or admission of such statements except in a very strong case. But the exclusion in this instance was proper. The statement was wanted not as evidence of the motives of the speakers but as evidence of the facts recited as furnishing the motives. *Lawlor* v. *Loewe*, 235 U. S. 522, 536; *Elmer* v. *Fessenden*, 151 Massachusetts, 359, 362. In view of the finding of the jury the rulings as to damages are immaterial and need no discussion here. The defendant put in evidence tending to show that its conduct was not the cause of the plaintiff's failure, and its evidence, or the weakness of the plaintiff's, prevailed. Our conclusion upon the whole case is that the plaintiff has had a fair trial and that the judgment should not be disturbed.

Judgment affirmed.